

TWELFTH ORDINARY SESSION

***In re* SILENZI DE STAGNI**

Judgment No. 71

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the Food and Agriculture Organisation of the United Nations drawn up by Mr. Adolfo Silenzi de Stagni on 7 June 1963, the reply of the Organisation dated 8 August 1963, the additional statement of the complainant, in lieu of oral argument, dated 29 February 1964, and the reply of the Organisation to that statement dated 3 April 1964;

Considering article II of the Statute of the Tribunal;

Having examined the documents in the dossier, the oral proceedings and the hearing of witnesses requested by the complainant having been disallowed;

Considering that the material facts of the case are as follows:

A. Following a letter dated 6 August 1962 in which Mr. Silenzi de Stagni informed the Director-General of FAO that he wished to submit an application for a post in the Organisation, the Chief of the Recruitment Section advised him, by a letter of 20 September 1962, that it might be possible to make him an offer in the future but that, before giving him a definite reply, he was requesting him to complete a personal history form. On 21 September he informed Mr. Silenzi de Stagni that there was a vacant post in the Legislative Research Branch, gave him information concerning it, asked him whether he would be interested in it, and again requested him to send his personal history. On 3 October, Mr. Silenzi de Stagni cabled to say that he accepted the post on the conditions set forth in the letter of 21 September, On 4 October the Chief of the Recruitment Section of FAO wrote to him that he was pleased that he accepted and that, as soon as he had received Mr. Silenzi de Stagni's personal history, he would make him a firm offer. But on 25 October he advised Mr. Silenzi de Stagni that, owing to his inadequate knowledge of English and French, he could not offer him the post.

B. On 7 June 1963 Mr. Silenzi de Stagni laid before the Tribunal a complaint in which he submitted that the above-mentioned letter of 21 September constituted an unreserved offer of employment and that his acceptance of it gave rise to a contract between himself and the Organisation which the latter had broken improperly. In view of the impossibility of imposing upon the Organisation the fulfilment of the obligations resulting from the contract of which he considered himself to be the holder, he prayed for the granting of compensation for damages suffered.

C. In praying for the complaint to be dismissed, the Organisation maintains that, in the absence of an act of appointment, the complainant has not acquired the status of an official of FAO and that, consequently, the Tribunal is not competent to hear his complaint. Furthermore, an analysis of the facts shows that, apart from the absence of a firm offer on the part of the Organisation, it is evident from the preliminary discussions and the conditional offers that one of the two essential elements for the conclusion of a contract was always missing and that the complainant never had a contract of employment.

IN LAW:

1. It falls upon the Tribunal to determine the sense and exact significance of the letters sent to the complainant on 21 September and 4 October 1962.
2. As regards the letter of 21 September, it is apparent from its actual wording that its sole intent was to inform a person who was seeking employment with the Organisation that a post described in the letter was vacant, to ask him if it would suit him and, if so, to request him to forward a personal history so as to enable the competent authorities of the Organisation to evaluate his qualifications and his suitability for the post.

3. The telegram of 3 October must, moreover, be considered as an application for the post in question.

4. As regards the letter of 4 October sent as a result of this telegram, its author took note of Mr. Silenzi de Stagni's application and confined himself to reminding the applicant that, before the discussions embarked upon could reach a definite conclusion, he should send his personal history. The firm offer of a contract was therefore made subject to the receipt of this personal history, which was required in order to enable the Organisation to determine finally whether to make such an offer. The actual wording of this letter clearly implied, therefore, that no contractual relationship yet existed between the Organisation and Mr. Silenzi de Stagni and further that no promise of a contract had been made since the outcome of the matter was entirely dependent upon the furnishing of the personal history of the applicant.

5. Paragraph 6 of article II of the Statute of the Tribunal reserves access to the Tribunal to officials of the Organisations defined in paragraph 5 of the same article, which include FAO; to any person on whom an official's rights have devolved on his death; and to any other person who can show that he is entitled to some right under the terms of appointment of a deceased official or under provisions of the Staff Regulations on which the official could rely. It results from an examination of the correspondence exchanged between the Organisation and the complainant that no legal relationship whatsoever was ever established between Mr. Silenzi de Stagni and FAO; that, consequently, the complainant cannot be considered as an official of the Organisation in the sense of the above-mentioned article II, paragraph 6; and that, therefore, his complaint is not receivable.

DECISION:

The complaint is dismissed as irreceivable.

In witness of this judgment, delivered in public sitting in Geneva on 11 September 1964 by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President and Mr. Hubert Armbruster, Deputy Judge, the aforementioned have hereunto subscribed their signatures, as well as myself, Lemoine, Registrar of the Tribunal.

Signed:

M. Letourneur
André Grisel
H. Armbruster
Jacques Lemoine