

SIXTY-NINTH SESSION

In re NURUZZAMAN

Judgment 1047

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Muhammad Nuruzzaman against the Food and Agriculture Organization of the United Nations (FAO) on 28 September 1989, the FAO's reply of 6 December 1989, the complainant's rejoinder of 15 January 1990 and the Organization's surrejoinder of 5 March 1990;

Considering Article II, paragraph 5, of the Statute of the Tribunal, FAO Staff Rules 302.9012, 302.907, 303.1311 and .1313 and FAO Manual paragraphs 314.232 and 374.461,

Having examined the written evidence and disallowed the complainant's application for oral proceedings;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant, who was born in 1949, is a citizen of Bangladesh. He served, with several breaks, as a grade G.4 secretary from 1975 to 1979 under projects of the United Nations Development Programme (UNDP) in that country. Reappointed in 1980 under a one-year contract, he served as an administrative assistant at grade G.6 under a project, No. 79/034, for the strengthening of "agricultural extension services" in Bangladesh. He had several extensions of appointment, the last one being up to 31 December 1987, and was promoted to G.7 in 1986.

In 1987 the FAO started arrangements for bringing project 79/034 to a close by the end of 1988 and for handing over to national bodies. The arrangements included the retrenchment of administrative staff, the funds for administrative services to be in 1988 half what they had been in 1987. By a memorandum of 2 December 1987 the project manager informed the complainant that because of a "gradual reduction in the administrative workload" and the halving of funds not everyone could stay; his appointment would end at 31 December 1987. On 8 and 9 December he wrote to the Director-General asking that he be kept on until the end of the project, in 1988, but by a memorandum of 6 January 1988 the Director of the Personnel Division (AFP) confirmed the non-renewal and the reasons for it.

On 21 March 1988 the complainant appealed to the Director-General under Staff Rule 303.1311, but in vain, and on 15 November to the Appeals Committee under 303.1313. In its report of 25 May 1989 the Committee held that he had had good reason to expect renewal up to the end of 1988 and should have been warned earlier, but that, there being no breach of the rules and no evidence of bias, his appeal should be rejected. By a letter of 12 July 1989 the Director-General rejected his appeal, and that is the decision he is challenging.

B. The complainant recounts what he sees as the material facts, describing his career with the Organization, the progress of project 79/034 and the handling of his case, which he believes took too long. He points out that for over seven years he served the project well.

He contends that the reasons given for non-renewal were fabricated. The UNDP did not reduce administrative support costs: he cites a text of June 1989 making the latest revision of the project's budget, which shows a surplus in administrative costs. He denies that the workload was reduced. The decision was an abuse of authority, being taken in bad faith and out of a grudge against him on the part of the project manager, who wanted to have him out of the way for his own ends. That he had legitimate expectations of renewal is clear from a circular of 2 August 1987 about the project support staff that described the experience of administrative assistants as invaluable and set a procedure for "maintaining continuity of employment" for suitable people. In August 1987 he was allowed an advance on salary that he should not have got if he was not to have his appointment run into 1988. He had oral assurances from two senior staff members. There was breach of the terms of his appointment and of the rules, in particular 302.9012, in that he did not get due notice or termination indemnity, and the rules on "reduction in force" in Manual paragraph 314.232. The project manager resolved as early as September 1987 not to renew his appointment, yet did not tell him until December, and indeed kept assuring him that he would stay until the end of 1988. The decision discriminated against him in that other project staff, including a G.6 administrative assistant and a driver, were kept on.

He points out flaws in the Appeals Committee's proceedings and describes its report as inconsistent and factually wrong. He maintains that because of his seniority he was entitled to a continuing appointment under Manual paragraph 374.461.

He asks the Tribunal to set aside the impugned decision and to order his reinstatement, the recognition of his continuity of service, the grant of a continuing appointment as from 17 February 1975 and the payment of the sums due and any other redress the Tribunal thinks fit. He seeks costs.

C. The FAO gives its own account of the complainant's career, the project, its financial difficulties and the dispute.

It reaffirms that the reasons for the non-renewal were the halving of funds for administrative support and a steady decline in administrative work on the project. The text the complainant relies on was made after the project had ended, was meant to show actual expenditure before the closing of the accounts, and is therefore immaterial.

Over and above the cuts in the administrative costs of the particular project there were general financial constraints on expenditure on projects in Bangladesh at the time. The criteria for deciding who must go were fair, objective and in keeping with practice. The reason why the G.6 administrative assistant stayed on was that, though lower in grade, he was senior to the complainant, and the driver did not have comparable duties.

There was no breach of the rules. Rule 302.9012 is irrelevant because it is about termination of appointment: the complainant's appointment expired under Rule 302.907. He was given due notice of non-renewal in the project manager's memorandum of 2 December 1987. Manual paragraph 314.232 is also immaterial because it does not "apply to a reduction of staff which may result from ... the expiration of an appointment for a fixed term".

As the project drew to a close there was a run-down in the sort of administrative work the complainant had been doing such as the maintenance of stores and records and the processing of fellowships and group travel. Though administrative work increased briefly towards the end, a year after he had gone, it was not of the kind he had been doing.

Though a staff member may sometimes have legitimate expectations of renewal, the complainant did not. The circular of 2 August 1987 was for general information only. When he got the salary advance the FAO did not know his contract would not run into 1988. There is no evidence of any oral promise from senior officers; indeed one of them denies it.

He offers no evidence to back up his charges of fabrication and malice.

His claim to recognition of continuity of service from 17 February 1975 is unfounded because his unbroken career did not start until 2 July 1980.

His claim to conversion of his appointment is groundless. Manual paragraph 374.461, headed "General Service Staff in Field Missions and Projects", merely says that staff on a fixed-term appointment "may" be granted an indefinite one after five years' service.

D. The complainant rejoins that the Organization misreads the evidence and distorts the facts. The true reason for the decision was the "corruption and fraud" of the project manager, and he enlarges on his accusations against that official. He develops his contentions that there was breach of the terms of his appointment and of the rules. He takes issue with the FAO's allegations that administrative costs were reduced and that he had no legitimate expectations of renewal. He presses his claims.

E. In its surrejoinder the Organization enlarges on its earlier pleas. In particular it contends that the complainant's allegations of prejudice are not supported by a shred of evidence and are immaterial. It reaffirms that the two reasons for the non-renewal of contract were reductions in the budget for administrative costs and in the administrative workload, which made it quite impossible to keep the complainant on. The rules about notice on termination are irrelevant and do not apply to expiry of a fixed-term contract. As for his claim to a continuing appointment, the complainant offers no new argument in rebuttal of the objections the FAO put forward in its reply.

CONSIDERATIONS:

1. The complainant was employed by the FAO in Bangladesh on several projects from February 1975. He was first appointed as a grade G.4 secretary under a project from February to December 1975. He was reappointed to another project in February 1976 and stayed there under successive contracts until March 1979, having been upgraded to G.5 in June 1978. He then took up employment with a company. The Organization again sought his services and from 2 July 1980 employed him in Dhaka on a project financed by the United Nations Development Programme (UNDP) as a G.6 administrative assistant. He was promoted to G.7 on 1 September 1986. After he had held successive contracts the project manager informed him by a memorandum of 2 December 1987 that his fixed-term appointment, which was to expire on 31 December, would not be renewed. The reasons were stated as follows:

"As the project ends in 1988 there is a gradual reduction in the administrative work load, especially in the maintenance of stores/records, procurement of equipment/supplies, and processing of fellowships and group travel.

The budget available for the administrative support ... is only 50% of what was provided in 1987. With such meagre allocation of funds it would not be possible to sustain all the existing staff."

2. The complainant protested but the Director of Personnel sent him a letter dated 6 January 1988 from FAO headquarters in Rome confirming the decision. After an unsuccessful appeal to the Director-General he appealed to the Appeals Committee. In its report of 25 May 1989 the Committee noted that although the UNDP had decided in 1987 to reduce the administrative support costs there had been no decrease in the total budget of the project. The Committee held that the Organization had not substantiated one of the stated reasons for the abolition of the complainant's post, an actual decrease in workload, but that the abolition had become necessary because of the reduction in administrative support costs, that his separation on expiry of his appointment had been in accordance with the material rules, and that there were no grounds for regarding the decision as biased.

3. In his decision of 12 July 1989 the Director-General referred to the report of the Appeals Committee and its conclusions. He observed that the Organization had taken the same position all along and had stated throughout the proceedings that, having been separated in accordance with Staff Rule 302.907, the complainant was not entitled to a termination indemnity. As it had told him, the severe decline in the budget for administrative staff and the gradual reduction in the workload were the reasons for the non-renewal of his contract on its expiry. The Director-General agreed with that position and therefore rejected the appeal. That is the decision impugned.

4. Another official had taken over on 2 May 1988 as project manager on the resignation of the one who had taken the originally contested decision. The new project manager had previously held the same post. Two days after taking up duty he sent a telex to Rome referring to the complainant's pending appeal and saying that he was reassessing the workload. He also proposed a revision of the budget of the project to the UNDP's Resident Representative in Dhaka. In a report he submitted on 14 May to the FAO's Representative in Bangladesh he recommended reinstating the complainant in his post. The UNDP approved in full his proposals for revising the budget. Though the complainant was not formally reinstated, the project manager himself re-engaged him "on a casual-labour basis" in October 1988. The duration of the project having been extended by some months, he was kept on until the end of February 1989.

5. In a letter of 20 February 1989 to the FAO's Representative in Bangladesh the same project manager had this to say about him:

"Mr. Nuruzzaman is the only person who is well versed with all matters relating to project supplied equipments (procurement, distribution, write off etc.). In fact I found that without him it wouldn't have been possible to complete bulk of the work before project closure and I had no alternative but to employ him on casual basis for some time ...".

6. The Organization argues that the fact that he was hired "on a casual-labour basis" ten months after leaving was irrelevant to the decision, which had been taken between October and December 1987. It further submits that since the project was drawing to a close there was a reduction in the administrative workload, and in particular in the maintenance of stores and records, the procurement of equipment and supplies and the processing of fellowship and group travel, which were the complainant's duties. The Organization concedes that towards the end activities directly related to closing the project down led to a temporary increase in the workload. The project handled large quantities of equipment, and the disposal of it and the inventory-taking did entail more work, but that was not the sort of administrative work that corresponded to the duties the complainant had been regularly performing before

separation.

7. The FAO does not contend that the additional work corresponded to the duties which any other administrative assistant was required to carry out. It stands to reason that the activities directly related to closing the project down did not form part of anyone's normal workload. Yet it also seems reasonable that the official in charge of the maintenance of stores and records should have continued to keep the inventory necessary for closure and that the official in charge of the procurement of equipment should have been concerned with disposing of it. That indeed is borne out by what the project manager said in his letter of 20 February 1989.

8. The fact that a project manager with previous experience of the project reassessed the workload in May 1988, within 14 days of taking up duty, and then recommended reinstating the complainant shows that the decision communicated in December 1987 had failed to take relevant facts into account. The project was to be wound up at the end of December 1988. The work the complainant was called upon to do in October 1988 and in the extended period to February 1989 would properly have formed part of his projected workload for 1988. Whereas the Appeals Committee held that the Organization had failed to substantiate one of the reasons for the non-renewal, the reduction in workload, the Tribunal goes further and holds that the reason was quite unfounded insofar as it related to the complainant. The second reason, the reduction in the budget, is connected with the first and cannot be considered in isolation.

9. A decision by the Director-General not to renew an appointment is a discretionary one, but his discretion is not unfettered. Since one of the reasons he gave for the decision impugned in this case is unfounded and the other reason is tied in with it, the decision must be set aside.

10. The complainant held a fixed-term appointment under a project that was to have ended in December 1988 but in fact did not end until February 1989. It is therefore inappropriate to order his reinstatement. He is, however, entitled to an award of damages equivalent to the amount of his regular net monthly salary from 1 January 1988 to 28 February 1989, plus all allowances due, but less any sums actually paid to him for the period from October 1988 to the end of February 1989. He is not entitled to the grant of a continuing appointment since he was employed only on a project with a fixed duration.

11. Since the complainant has won his case on objective assessment of the reasons for non-renewal, there is no need to rule on the motives of the project manager who made the original decision. Such inquiry would in any event be speculative.

DECISION:

For the above reasons,

1. The FAO shall pay the complainant damages as set out in 10 above.
2. It shall pay him 1,000 United States dollars in costs.

In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, Tun Mohamed Suffian, Vice-President, and Miss Mella Carroll, Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 26 June 1990.

Jacques Ducoux
Mohamed Suffian
Mella Carroll
A.B. Gardner