

EIGHTEENTH ORDINARY SESSION

***In re* GHATWARY**

Judgment No. 114

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the United Nations Food and Agriculture Organization (FAO) made by Mr. Moussaad Morsy Ghatwary on 16 June 1966, the reply of FAO on 28 July 1966, complainant's rejoinder of 11 August 1966 and FAO's reply to that rejoinder of 7 October 1966;

Considering Article II, paragraph 5, and Article VII, paragraph 1, of the Statute of the tribunal, and FAO Staff Regulations 301.111 and 301.112, Staff Rule 303.138 and Manual Section 331.51;

Having examined the documents in the dossier, oral proceedings having neither been requested by the parties or ordered by the Tribunal;

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

A. Mr. Ghatwary entered the service of FAO on 11 September 1962 as accounting clerk in the Near East Regional Office in Cairo. On 7 January 1966, as a result of an investigation carried out in the Near East Regional Office first by an internal auditor and later by the Chief of the Internal Audit Section into certain irregularities in the accounts for which Mr. Ghatwary was alleged to be responsible, complainant received a memorandum signed by the Assistant Director-General for Near Eastern Affairs on 18 January 1966 it was agreed that Mr. Ghatwary should submit his resignation effective on the same date. On 8 February complainant wrote to the Director-General of FAO requesting him to reconsider all the facts of the case. He was informed on 23 February 1966 that the Organization could not reconsider its acceptance of his resignation. Mr. Ghatwary then asked, in two successive letters addressed to the Director-General, that a fresh investigation should be made by a neutral committee. In its reply of 17 March 1966 the Organization pointed out that an investigation had already taken place, that complainant's resignation of 18 January had been accepted, that the matter was therefore closed, and that any further correspondence on the subject would serve no useful purpose. On 31 March Mr. Ghatwary wrote a letter to the Chief of the Personnel Section of FAO stating that he accepted the contents of the letter of 17 March and asking for a certificate of service.

B. In his complaint to the Tribunal dated 16 June 1966 Mr. Ghatwary prays the Tribunal:

1. To cancel the decision to terminate his services and to order payment of arrears of salary;
2. To order payment of a sum of US dollars 50,000 as compensation for the material injury and hardship and worry resulting from the false and unjustified case purposely prepared against him.

C. The Organization submits that the complaint is not receivable, complainant not having exhausted such other means of resisting the decision impugned as were open to him under FAO Staff Regulations, a required by Article VII, paragraph 1, of the Statute of the Tribunal. It points out that complainant did not address an appeal in proper form either to the Director-General or to the Chairman of the Appeals Committee.

In his rejoinder Mr. Ghatwary contends that the internal appeals procedure exists for the sole advantage of complainants and that it is accordingly open to them to forgo recourse to it and to address an appeal directly to the Tribunal. He states further that, in any event, he interpreted the letter of 17 March 1966 as indicating that there was nothing more to be hoped for from the Organization, so that recourse to the internal procedure would serve no useful purpose. In its reply to this rejoinder FAO maintains its original submissions that the complaint is not receivable, and subsidiarily, that the case should be dismissed on its merits.

CONSIDERATIONS:

It follows from the fact that Mr. Ghatwary did not submit an appeal to the FAO Appeals Committee in pursuance of Staff Rule 303.131 that he has not exhausted the means at his disposition, under the applicable Staff Regulations, of resisting the Decision of 17 March 1966. Accordingly his complaint is irreceivable under Article VII, paragraph 1, of the Statute of the Administrative Tribunal of the ILO.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgement, delivered in public sitting in Geneva on 18 October 1967 by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures, as well as myself, Bernard Spy, Assistant Registrar of the Tribunal.

(Signed)

M. Letourneur
André Grisel
Devlin
Bernard Spy