

SEVENTY-SECOND SESSION

***In re* TOMSON**

Judgment 1141

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Pierre Alfred Tomson against the Food and Agriculture Organization of the United Nations (FAO) on 15 November 1990 and corrected on 7 March 1991 and the FAO's reply of 18 June 1991;

Considering Articles II, paragraph 5, and VII, paragraph 1, of the Statute of the Tribunal, FAO Manual Section 331. and Manual paragraphs 342.621 and 342.65;

Having examined the written evidence and decided not to order oral proceedings, which neither party has applied for;

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

A. The complainant, a Belgian citizen who was born in 1925, joined the FAO in 1972 and took retirement on the expiry of his appointment on 31 December 1982, though he served the FAO as a consultant for a short while in Chad in 1983.

He is in poor health. He is suffering from lumbago, a slipped disc and periarthritis in the right shoulder. Attributing his ailments to various accidents that had befallen him in the performance of his duties, he claimed compensation for service-incurred illness. On receipt of his claims, the first of which was dated 26 April 1982, the Organization put his case to its Advisory Committee on Compensation Claims. In October 1983 and again in October 1984 the Committee recommended rejecting his claims on the grounds - among others - that they were time-barred. The Director-General accepted the recommendations and the complainant was so informed by letters of 21 November 1983 and 14 January 1985.

On 20 April 1985 he lodged an "appeal" and on 7 September 1985 reported on an FAO form that he had sustained injury. The ensuing lengthy correspondence ended with communications of 12 March and 15 May 1986 from the Organization informing him that the matter was closed.

By a letter of 9 September 1981 the complainant had told the Organization that he had adopted a girl, Marie Chantal Ntonga born in 1971 to Mrs. Jeannette Kambla, whom he described as his wife, and claimed dependant's allowances. At first the FAO refused his claim. On 25 October 1982 he obtained an order from a court in Cameroon recognising the girl as his legitimate offspring. The Organization thereupon paid him dependant's allowances and made arrangements for payment of a "pension" for the child from the date of his retirement and until she came of age.

B. The complainant contends that his complaint is receivable and that he has neither failed to exhaust the internal means of redress nor filed out of time.

As to the merits, he cites the evidence he appends to his complaint and claims (1) a 34 per cent disability pension at the prevailing rate as from 7 September 1985, when he reported the injury; and (2) the pension which he says the FAO has refused to pay for his daughter.

C. In its reply the FAO raises several objections to the complainant's claim to compensation for service-incurred injury. He failed to submit his claim in time; he accounted differently at different times for his ailments; and he has never explained what exactly he is claiming. He set off two distinct procedures, one relating to his claim to compensation and the other to his claim to a disability pension. He did not file his internal appeal in time either.

His claim to a pension for his daughter is irreceivable too: he shows no cause of action because he has been paid in

full his entitlements on that score, and in any event he has never lodged an internal appeal.

CONSIDERATIONS:

1. The complainant, a former official of the FAO, is now living in retirement at Gisenyi, in Rwanda. He seeks two things: the quashing of a decision which the Director of Personnel took on 15 May 1986 to reject his claim to compensation for "injury or illness attributable to service", and an order that the FAO pay his infant daughter, Marie Chantal, a "pension" which he alleges it has refused her.

2. The complainant joined the FAO on 18 January 1972

as an agronomist. Apart from a short stint at headquarters in Rome he was on mission in several African countries, ending up in Zaire, as a specialist agronomist at grade P.5. He took retirement when his appointment expired on 31 December 1982, though he has since been briefly employed as a consultant in Chad.

3. The complaint raises two distinct issues and since in neither case is the cause of action easy to identify the material facts are summed up below.

The cause of action

The claim to compensation for service-incurred illness

4. It is not at issue that the complainant is in poor health. He is suffering from lumbago, a slipped disc and periarthritis in the right shoulder. He alleges that his ailments are service-incurred and attributes them to the hazards of work as an agronomist. He has been claiming under this head compensation which he comes eventually to call a "disability pension".

5. The first trace of this claim in the case records is a letter dated 26 April 1982 in which he says that the trouble all goes back to exposure to a thunderstorm on 21 October 1981 when he spent the night in an especially wretched inn in bush country at a place called Mweka, in Zaire. He made the claim

a second time in a letter dated 31 July 1982. This time he blamed his ills on being butted by a ram in 1976 while on duty travel and to professional negligence by the physiotherapist who had then treated him. He later spoke of long and gruelling journeys by jeep over rough tracks. Lastly, he set his ailments down to "falling into a hole" in 1982 and "further falls in Rome and in Chad" in 1983, though he gives no particulars.

6. On receipt of the original statements of claim the FAO referred them to the Advisory Committee on Compensation Claims, an internal body that is competent under Manual paragraph 342.65 to consider claims of that kind. The Organization told the Committee that in its view the complainant's claim was far too late: Manual paragraph 342.621 stipulated that any claim to compensation must be submitted within four months of the date of injury or the onset of the illness unless there were "exceptional circumstances justifying ... late submission". It had twice asked him to show such "exceptional circumstances" but had never got a reply. As to the merits it cited the opinion of its medical service that ailments of the kind he said he was suffering from often had no identifiable cause and in any event could not be put down to "exposure to a thunderstorm", however distressing.

7. In its report of 7 November 1983 the Committee did not go into the merits. It held that the complainant's claim was out of time and he had shown no exceptional circumstances warranting waiver of the time bar. It unanimously recommended rejection and a letter of 21 November 1983 from its deputy secretary accordingly informed him that his claim had been turned down.

8. In a letter of 5 June 1984 he protested that he had "treated himself at first" before seeking professional care

and that was why his claim was out of time. The FAO thereupon invited him to supply any further information at his disposal and agreed to have the Committee review his case. But in its second report, of 7 November 1984, the Committee reaffirmed that the records afforded no evidence of any exceptional circumstance and, again unanimously, it held to its original recommendation. Its deputy secretary informed him again by a letter of 14 January 1985 of the refusal of his claim, adding that should he wish to press it he might put an internal appeal to the Director-General under Manual section 331.

9. He did so by a letter dated 20 April 1985, which the Organization says he did not send off until 29 April. In his reply of 28 June 1985 the Assistant Director-General in charge of Administration and Finance pointed out that under Manual paragraph 331.4 the time limit was sixty days; his appeal was therefore time-barred if the decision he was challenging was the letter of 14 January 1985; but if he was objecting to some other one he should identify it within sixty days so that the Assistant Director-General could review his case.

10. On 7 September 1985 he submitted an FAO form reporting an injury. On receipt of the form the Assistant Director-General wrote him a letter explaining at length the Organization's position: his claims had been out of time; he had refused to answer questions about his case; what he had said about the cause of his ailments was vague; he had written concurrently to several departments on the same subject; his pre-retirement check-up had confirmed his fitness for work, he had gone on mission for the FAO after retirement, and that suggested he had not been disabled at the time.

11. The complainant stated further grievances, but the Organization told him by letters of 12 March and 15 May 1986 that the matter was closed once and for all. This complaint, which he filed on 15 November 1990, impugns the letter of 15 May 1986.

The claim to a "pension" for the complainant's child

12. By a letter of 9 September 1981 the complainant applied to the FAO for payment of allowances and medical coverage for his alleged dependant, Marie Chantal Ntonga,

born on 17 January 1971 to Mrs. Jeannette Kambla, whom he described as his wife. The FAO refused his claim on the grounds that he was not married to the child's mother.

13. On 25 October 1982 he secured an order from a court at Bertoua, in Cameroon, declaring Marie Chantal Ntonga to be his legitimate child. The FAO thereupon treated her as his dependant, paid him in full the allowances due as from the date of the court order and made arrangements to ensure pay-

ment to him of a "pension" as from the date of his retirement until she came of age. It duly explained all that to him in letters of 25 March and 9 June 1983.

14. But he seems to have gone on pressing claims under this head, and the FAO confirmed in a letter of 3 November 1986 and in a longer one of 20 July 1987 that the matter of his dependant had been sorted out and on that score he was already getting his full entitlements under the Staff Regulations. Yet in this complaint he is still claiming payment of the pension for his daughter.

The parties' pleas

15. The complainant submits that his complaint is receivable: he has neither failed to exhaust the internal means of redress nor filed out of time. He pleads that,

being an agronomist by training, he was unfamiliar with the ins-and-outs of appeal proceedings and the Organization omitted to point out the material rules. Being employed at outstations and often in the wilds, he had no opportunity of coping with the procedures for defending his rights. As to the merits he cites the evidence appended to his complaint.

16. In answer to his claim to compensation for service-incurred illness the FAO observes that he did not show proper diligence so as to file the required papers in time. He has, it points out, blamed his ailments on one thing after another. He has never properly identified the substance of his claim. He began by presenting it as a claim to compensation and thereby set off the procedure that governs such claims; he ended up by applying for a disability pension, which calls for a quite different procedure. In any event he is out of time because he missed the deadline for internal appeal. As for his claim to a pension for his daughter he shows no cause of action because he has received in full the benefits prescribed in the rules. Besides, the claim has never formed the subject of an internal appeal. The Organization invites the Tribunal to dismiss the complaint as irreceivable.

Receivability

17. According to Article VII(1) of the Tribunal's

Statute a complaint shall not be receivable unless the official has exhausted such other means of resisting it as are open to him under the applicable staff regulations. The purpose is twofold: the official should first avail himself of any opportunities he may have within the organisation for obtaining redress; then, if he presses his case, the Tribunal should have at its disposal full records on the administrative handling of the dispute. So the Tribunal will decline to entertain a complaint where, as in this case, internal appeal proceedings are defective because the complainant has, time and again, missed the deadlines notwithstanding the Organization's assiduous attempts at settlement.

18. The complainant may not plead ignorance of the rules on appeal or his living in far-off lands: every official may be expected to know the requirements of the Staff Regulations and Staff Rules, wherever he may be stationed or resident. In this instance the FAO made allowance at every stage in the proceedings for the difficulties in communication attributable to the complainant's conditions of work. Over and over again, though the time limits for his claims had expired, it gave him the opportunity of citing "exceptional circumstances" in favour of waiver of the time bar. Though not under the pressure of any deadline, he failed to do so.

19. The requirement in VII(1) has plainly not been met and for that reason the complaint is irreceivable, there being no need to determine whether it was filed within the time limit in VII(2).

The pleadings

20. The time limit granted to the complainant's counsel for filing a rejoinder to the FAO's reply expired at 9 August 1991, and the Registry of the Tribunal received no brief in the months that followed. On 15 November the Tribunal got from him a telex message applying for extension of the time limit for filing a rejoinder on the grounds of difficulties in communication at his place of residence which, he said, had prevented his counsel from filing it in time.

21. The Tribunal cannot allow that application, which reached it when it was already in session. There is no detriment to the complainant's rights on that account since the pleadings the Tribunal has before it afford an adequate account of the material facts and the parties' arguments. But it draws to the complainant's notice the precedents in the case law - for example Judgment 201 (in re Smith No. 2) - which allow the filing of an application for review of its judgment in the exceptional case where a party may rely on some fact or evidence on which, through no fault of his own, he was unable to rely in the original proceedings.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Mr. Jacques Ducoux, President of the Tribunal, Tun Mohamed Suffian, Vice-President, and Mr. Pierre Pescatore, Deputy Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 29 January 1992.

(Signed)

Jacques Ducoux
Mohamed Suffian
P. Pescatore
A.B. Gardner