

## SEVENTY-SEVENTH SESSION

### *In re* MOLLA

#### Judgment 1337

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Tawye Molla Sharew against the Food and Agriculture Organization of the United Nations (FAO) on 13 June 1993 and corrected on 20 August and the Organization's reply of 5 November 1993;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, which neither party has applied for;

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

A. The World Food Programme (WFP) was set up under resolutions that the Conference of the FAO and the General Assembly of the United Nations adopted in 1961. It is an affiliate of the FAO and has its headquarters in Rome. It runs a Transport Operation in Ethiopia, known as the WTOE, under agreements it has concluded with the Government of that country. The WTOE is in charge of the distribution of emergency supplies to distressed areas of the country and has several hundred lorries, tractors and trailers at its disposal for the purpose. The competent Government agency is the Relief and Rehabilitation Commission, known as the RRC. Both the WTOE and the RRC have headquarters in Addis Ababa.

The complainant is an Ethiopian citizen who was born in 1955. He concluded a "special service agreement" with the WTOE in July 1987 to serve as a traffic officer for the period from 1 August 1987 to 30 June 1988. The WTOE extended the duration of that agreement several times and in particular up to 31 December 1991. From 1 February 1988 he was head of its "Base Traffic Unit".

In a telex of 30 January 1992 the WTOE's Administration and Personnel Service informed heads of department and bases that it was extending the contracts of local staff as from 1 January. But by a memorandum of even date the project manager and the head of the Administration Department of the WTOE informed the complainant that his appointment would terminate "effective 1 February 1992" and they cited clause 2 of the agreement, which read:

"This agreement shall ... expire ... not later than the above-noted expiration date, unless sooner terminated under the terms of this agreement. Either party may terminate this agreement at any time by giving the other party 30 days' notice in writing of its intention to do so."

The WTOE also said it would pay him one month's salary in lieu of notice.

In letters of 10 February, 30 July and 12 November 1992 he asked the project manager to review the decision. Having got no reply, he is impugning the implied rejection of his claims.

B. The complainant submits that his separation was wrongful on four counts. He submits, first, that it came without written or other warning and in the absence of any reprimand. Secondly, the WTOE gave him no reasons for it. His third plea is breach of equal treatment: the other WTOE employees had their contracts extended. Lastly, he points out that the decision came while the project was in full swing: that was in breach of "the labour laws" of the United Nations and of member countries.

He claims reinstatement, including "payment of salary from the date of termination till now", and costs.

C. In its reply the FAO submits that the complaint is irreceivable because the complainant was never under contract with it. The service agreement he signed identifies the United Nations no fewer than 13 times as the other contracting party and makes it plain in particular that the United Nations shall pay for his services and may terminate the agreement. So any redress he might be entitled to under the agreement he ought to have claimed from the United Nations, with which he concluded the agreement, and not from the FAO. The Tribunal having held in

Judgments 1285 (in re Haile-Mariam) and 1286 (in re Mulate) that it lacked competence to entertain a complaint against the FAO by a party to a special service agreement with the United Nations, the Organization does not argue the merits.

#### CONSIDERATIONS:

1. As was said in Judgments 1285 (in re Haile-Mariam) and 1286 (in re Mulate), the Government of Ethiopia concluded an agreement in 1968 with the World Food Programme (WFP) for the supply of food to support projects for economic and social development and to meet urgent needs for food in that country. The WFP is a joint programme of the United Nations and the FAO. At the material time its local staff were subject to the Staff Regulations and Staff Rules of the United Nations, and the United Nations Development Programme (UNDP) took care of staffing in Ethiopia through its office in Addis Ababa. The 1968 agreement was signed by the UNDP's Resident Representative in Ethiopia as the duly appointed representative of the WFP.
2. The Ethiopian Relief and Rehabilitation Commission has entered into another agreement with the WFP on the Government's behalf to set up what is known as the World Food Programme Transport Operation in Ethiopia (WTOE) to help in the distribution of supplies for emergency relief by providing a fleet of several hundred lorries and other vehicles.
3. The complainant, an Ethiopian citizen, was employed under a special service agreement from 1 August 1987 to 30 June 1988 as a traffic officer for the WTOE in Addis Ababa. He had that agreement extended from time to time. From 1 February 1988 he headed the "Base Traffic Unit" of the WTOE.
4. By a circular in the form of a telex of 30 January 1992 the Administration and Personnel Service of the WTOE announced that the contracts of local staff were in general to be extended from 1 January 1992. But it informed the complainant by a memorandum also of 30 January that his contract was to terminate on 1 February 1992 and that he would be paid one month's salary in lieu of notice.
5. By letters dated 10 February, 30 July and 12 November 1992 the complainant appealed to the project manager of the WTOE against the decision to separate him from service. Having received no reply, he is impugning the implied rejection of his appeal on the grounds that (a) he was given no prior oral or written warning or reprimand; (b) no reasons were stated for the decision; (c) he was refused further extension despite the general decision to extend the contracts of WTOE local staff, being thereby denied equal treatment; and (d) the project was still in full operation and his services were still needed. He claims reinstatement with pay as from the date of termination, and costs.
6. Without addressing the merits, and relying on Judgments 1285 and 1286, the FAO asks that the complaint be dismissed on the grounds that the complainant's special service agreement was with the United Nations, not with the FAO; that his claim, if any, to redress lies against the United Nations; and that the Tribunal therefore lacks competence.
7. The Tribunal accepts that argument. Although in some circumstances an agreement signed by the WFP might have bound the FAO, the special service agreement that the complainant signed stated that it was between him and the United Nations. The fact that it provided for services to the WFP and to the WTOE does not make either of those bodies or the FAO itself a party to the contract or liable thereunder. The conclusion is that the Tribunal is not competent to hear the case.

#### DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Sir William Douglas, Vice-President of the Tribunal, Mr. Edilbert Razafindralambo, Judge, and Mr. Mark Fernando, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 13 July 1994.

William Douglas

E. Razafindralambo  
Mark Fernando  
A.B. Gardner

Updated by PFR. Approved by CC. Last update: 7 July 2000.