

TWENTY-SECOND ORDINARY SESSION

***In re* KRAICSOVITS**

Judgment No. 140

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the United Nations Food and Agriculture Organization (FAO) drawn up by Mr. Rudolf Alex Kraicsovits on 15 May 1968, the Organization's reply dated 21 June 1968, the complainant's rejoinder dated 1 November 1968 and the further reply of the Organization dated 6 December 1968;

Considering article II, paragraph 5 of the Statute of the Tribunal and FAO Manual provision 314.211;

Considering the written evidence of Mr. Onesimo Tessore and the Organization's observations thereon;

The oral proceedings requested by the complainant having been disallowed;

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

A. Mr. Kraicsovits, who is of Italian nationality, was engaged by FAO on 18 January 1966 under a contract of thirty-six months as hydrogeologist, Grade P.3, and assigned to FAO/Special Fund Project No. 212 in East Jordan.

B. Within the three months preceding the expiry of his twelve months' probationary period, the Organization states that it received communications from the Project Manager, Mr. Barber, from the United Nations Resident Representative in Amman and from the Project Supervisor, Mr. Thomas, indicating that, despite his excellent technical academic qualifications, Mr. Kraicsovits lacked the necessary practical experience to carry out his duties satisfactorily, and that he was unable to adjust to the conditions in which his work had to be done. By a letter of 8 November 1966, confirmed by a subsequent communication of 16 November 1966, the Organization informed Mr. Kraicsovits that his services with the Organization would be terminated on the expiry of his probationary period on 17 January 1967, in accordance with FAO Manual provision 314.211.

C. Having received an appeal from Mr. Kraicsovits, the Director-General of the Organization informed him on 9 March 1967 that he had confirmed the decision to terminate his services. The complainant then lodged an appeal with the FAO Appeals Committee, which unanimously recommended, in a report dated 31 January 1968, that the decision should be confirmed. This recommendation was accepted by the Director-General and the complainant was so informed on 15 February 1968.

D. In his complaint, supplemented by a memorandum in rejoinder to the reply of the Organization, Mr. Kraicsovits categorically denies the charges of incompetence and ascribes the adverse decision taken against him to the animosity of the Project Manager under whom he had served. He draws attention to a favourable testimonial supplied to him by Mr. Thomas in January 1967 and claims that the reasons given by the Organization in support of the decision resisted are based on an incorrect interpretation of the facts, and that the decision is therefore tainted by error of law.

E. The Organization prays that the complaint should be dismissed.

CONSIDERATIONS:

As to the procedure:

1. After the close of the written proceedings the complainant communicated to the Tribunal a statement dated 8 May 1969 and signed Onesimo Tessore. In principle the Tribunal takes account of all documents produced before the opening of the session at which the relevant case is to be judged. In the case at issue, the Tribunal has no reason not to take the statement submitted into consideration. At the most it might ask the complainant to certify its

authenticity, but this is unnecessary since the document in question cannot affect the outcome of the proceedings.

As to the merits:

2. Under FAO Manual provision 314.211, a staff member may be separated during or at the end of his probationary period if it is clear after a fair trial that he does not perform satisfactorily the duties of the post to which he is assigned. The decisions taken under this provision lie within the Director-General's discretion. It follows that the Tribunal will interfere with them only if they are tainted by procedural irregularities or by illegality, or are based on incorrect facts, or if essential facts have not been taken into consideration, or again, if conclusions which are clearly false have been drawn from the documents in the dossier.

3. In the case at issue the complainant, in challenging the decision to terminate his appointment at the end of the probationary period, alleges solely that the Director-General based his decision on information received directly or indirectly from the Project Manager, Mr. Barber, whom the complainant accuses of bias. Consequently the question at issue is whether the Director-General misinterpreted the facts or drew false conclusions from them.

That is not so. While it is true that Mr. Barber made an unfavourable report on the complainant's competence, his criticism was confirmed by Mr. Keen, United Nations Resident Representative at Amman, and also by Mr. Thomas, Project Supervisor. In a letter of 2 October 1966, Mr. Keen does indeed refer to personality conflict, but attributes less importance to that factor than to the lack of feeling for field work of the complainant, who was primarily interested in the theoretical aspects of hydrogeology. Again, in a letter of 18 January 1967, Mr. Thomas states that the main reason for not prolonging the complainant's appointment was his inadequate technical competence and the fact that he could advantageously be replaced by other hydrogeologists. It is clear from the terms of these two letters that they do not merely reflect the allegedly malicious intentions of Mr. Barber, but also express the personal view of their authors. Taken together with Mr. Barber's evaluation they justify the termination of the complainant's appointment.

The documents submitted by the complainant do not invalidate the impression left by the letters of Mr. Keen and Mr. Thomas. While the Technical Consultant, Mr. Harschbarger, congratulated and thanked the Project Manager and his collaborators, he did not make any special reference to the complainant's abilities. Moreover, the testimonial which Mr. Thomas supplied to the complainant was no doubt intended to help him to find another job, and it cannot therefore be given the same weight as Mr. Thomas's other letter, referred to above. As for Mr. Tessore's statement, it is couched in terms which are too general to be conclusive.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and Mr. A.T. Markose, Deputy Judge, the aforementioned have hereunto subscribed their signatures, as well as myself, Bernard Spy, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 3 November 1969.

(Signed)

M. Letourneur
André Grisel
A.T. Markose
Bernard Spy