

## **EIGHTY-FIRST SESSION**

### ***In re* WASSEF (No. 10)**

#### **Judgment 1532**

THE ADMINISTRATIVE TRIBUNAL,

Considering the tenth complaint filed by Mr. Maher Nabih Wassef-Gerges against the Food and Agriculture Organization of the United Nations (FAO) on 31 March 1995 and corrected on 11 May, the FAO's reply of 3 July, the complainant's rejoinder of 22 July and the Organization's surrejoinder of 18 December 1995;

Considering Articles II, paragraph 5, and VII 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. Information about the complainant's career with the FAO and about the illness he caught while on mission in Chad appear under A in Judgments 1401 on his first and second complaints and 1486 on his eighth one. His own doctor declared him on 4 January 1994 to be "clinically cured" and he left the Organization's service on 7 January.

On 22 March 1994 he filed an internal appeal, No. 448, with the Appeals Committee asking that, without awaiting the medical board's findings, the Organization recognise that his illness was service-incurred, pay the travel and subsistence expenses incurred by his wife for the purpose of being with him in Paris when he was ill, acknowledge his right to be re-employed after twelve to eighteen months and grant him 2 million dollars in compensation. In its report of 8 November 1994 the Committee recommended rejecting all his claims as unfounded, save the one about his illness, which it held to be premature.

In a letter of 1 February 1995, which the complainant is now challenging, the Director-General approved, among other things, the Committee's recommendation and rejected his appeal.

B. The complainant charges the FAO with negligence, misrepresentation and victimisation. In his submission the Director-General took his decision after "all time limits" had run out. Under the material rules the Organization should have paid to let his wife go with him to Paris, where it had sent him for medical treatment. Since his "partial incapacity" limits his earning power the Organization has a duty to employ him. He complains of the FAO's "inscrutable and unclean manipulations of law-making process" and its "sovereign disdain" for human rights.

He asks the Tribunal to "express":

"1.1 the invalidity and the illegality of the Report of this Appeals Committee and that its contents are null and void,

1.2 its condemnation to the Administration's disrespect for this Tribunal's Rules governing the time limit for the Director-General's Reply,

1.3 its disallowance to the Administration's objections to receivability and its procedural tactics which offend the good faith that govern the relations of this Court with the staff.

2.... that a separate discussion and a separate judgement be made for each of my complaints based on the merits of each of them, and respectfully submit my objection for any judgement which covers more than one case at a time,

3.... the quashing of the separation decision, the Director-General's decision and request the payment of my due salaries on a continuous basis (please see point 4 below) disregarding of both the source of funding for my last assignment which is irrelevant and any third party's approval for my extension seen that my entitlements have been acquired under the FAO Staff Regulations as an FAO staff member,

4.... the recognition, as a precedent and a principal, of my service-incurred illness without recourse to the medical board due to the more than considerable lapse of time of unhealthy manipulations - 600 days since my evacuation and more delay yet to come - even if, in the meantime, my service-incurred illness has been recognised by either this Tribunal or the Director-General on other grounds, thus condemning this practice of inhuman torture by the Medical Service,

5.[that the Tribunal] impose by all means and ways on the Administration of FAO the recognition of my right for re-employment and the actual re-employment itself, without any further delay in conformity with the spirit of Manual Section 342.5 and basically on the basis of all human rights' measures which should have only been taken into consideration in such case without recourse to any wilful trickery and as a result of my physical incapacity,

6.The approval of my wife's travel to Paris to assist me in attending to the daily personal life requirements and the reimbursement of all related expenses,

7.The payment of US \$ 3 (Three) Millions as a compensation for this specific "electrical chair" lengthy and continuous psychological, moral and physical torture during sickness and its immediate and future consequences,

8.The payment of a lump sum of US \$ 8,000 = for photocopies, secretarial assistance, postage, stationery, etc.

9.... that this Tribunal recognises and holds the FAO responsibility and liabilities for the irreparable damages caused to the contributions to my pension funds and caused to my pension entitlements,

10.... the reimbursement by the FAO for the cost of publication of this judgement in 4 American, 4 European and 4 Arab daily newspapers and magazines and the Tribunal's non-objection for the discussion of this corruption in public.

11.... that this judgement contains a penalty clause for its execution within 30 days from the date of this judgement, equivalent to 50 % of the total of all salaries entitlements and awards for every two weeks of delay by the FAO Administration."

C.In its reply the FAO points out that since its rules set no time limit for a decision by the Director-General the challenged decision cannot be out of time. And the complainant's claims to \$3 million in damages, to the costs of photocopying and publication, to a penalty clause and to damages for loss of pension entitlements are irreceivable because he failed to put them to the Appeals Committee. Although he has lodged a claim to recognition that his illness was service-incurred it has not yet gone to the competent medical board and so is premature.

His other claims are devoid of merit. He has no right to another appointment, his last one having expired lawfully after the grant of a three-month extension for medical reasons. Because his wife was no longer resident at his duty station when the FAO sent him to Paris, the rules did not allow the Director-General to authorise her to travel there.

D.In his rejoinder the complainant answers the Organization's pleas and presses his claims.

E.In its surrejoinder the FAO disputes allegations in the rejoinder and says he should have pursued his internal remedies before asking the Tribunal to declare his illness service-incurred.

#### CONSIDERATIONS:

1.The complainant is challenging a decision the Director-General took on 1 February 1995 on a recommendation by the Appeals Committee to reject one of his many internal appeals, No. 448. The claims he put forward in the internal proceedings are set out above under A. His eleven claims in his complaint to the Tribunal are quoted in full under B.

2.The "claims" under 1 consist of mere pleas or applications for rulings on matters of procedure. In any event the complainant has failed to draft them plainly or coherently enough for the Tribunal to determine what it is he wants. So it will deliver no formal ruling on them.

3.The complainant's claim 2 - his objection to joinder - succeeds: since his complaints arise out of different causes of action they are not joined.

4.Claim 3, to the quashing of the decision to separate him from service, is irreceivable under Article VII(1) of the Tribunal's Statute. Not having made it in his internal appeal, he has failed to exhaust his internal remedies. Besides, the Tribunal rules on the claim in Judgment 1531, delivered this day, in 3 to 7. So there is no substance to it.

5.Claim 4, to recognition of his illness as service-incurred, fails, again because there is no substance to it, the Tribunal having ruled in Judgment 1486.

6.His claim 5 is to re-appointment in the FAO and he rests it on Manual paragraph 342.335.

7.The appointment he had was for a fixed term, and it expired. Manual paragraph 305.5123 says that the holder of a fixed-term contract has no right to the extension of his appointment. That too is the consistent thrust of precedent. Paragraph 342.335, on which the complainant relies, applies only where an appointment expires for reasons of service-incurred illness. But his did not, so he has no right to re-employment in the FAO, and his claim therefore fails.

8.His sixth claim is to the refund of expenses his wife incurred while he was in hospital in Paris and of the cost of her travel from Rome to Paris and back. In support he adduces, among other items, two certificates. One, dated 6 September 1993, is from the Hospital of the University of Paris and says that the state of his health required the company of his wife while he was there. The other, which his own doctor provided on 9 September, said: "The patient still needs ... support from his family". He observes that his wife always accompanied him abroad and that only because of administrative difficulties raised by the Italian authorities was she four months late in joining him at N'Djamena, in Chad. Although she was no longer in Chad when the FAO sent him to the hospital in Paris, that, he says, was because the Organization had on 28 February 1992 sent her too out of the country for reasons of health.

9.The FAO submits that under Staff Rule 302.651 and Manual paragraph 409.11 the Director-General could have authorised his wife's going to Paris only if she had been with him in N'Djamena at the time; but she was not.

10.The Tribunal is not satisfied that the Organization's answer is sound. Insofar as the reasons for his wife's absence were not plainly established the complainant should have been granted the benefit of Manual paragraphs 409.122 and 409.523 on the strength of the two medical certificates. Under the circumstances claim 6 succeeds.

11.Claim 7 is to the award of 3 million dollars in damages for "lengthy and continuous psychological, moral and physical torture during sickness and its immediate and future consequences". The complainant accuses the Organization's medical service of lying, harassment, racial discrimination and so forth. In Judgment 1485 the Tribunal dismissed a claim from him to the payment of 5 million dollars in damages for alleged "atrocities" on the grounds that his claim was too vaguely worded and challenged no particular decision by the Organization. The Tribunal dismisses a similar claim for the same reasons in Judgment 1531. On the same grounds claim 7 fails too.

12.His claim 9, being a corollary of claim 3, fails as well.

13.His claim 8 is to costs. Again the Tribunal reminds him, in view of the intemperate language of his submissions, that he owes a duty of respect to the Organization and to its staff. Because he has failed in that duty the Tribunal disallows his claim to costs, even though one of his claims succeeds.

14.Lastly, his claims 10 and 11 are unwarranted: indeed he himself does not even offer reasons why they should succeed.

#### DECISION:

For the above reasons,

1.The FAO shall pay the complainant the expenses incurred on account of his wife's stay in Paris while he was in hospital and the costs of her journey from Rome to Paris and back.

2.All his other claims are dismissed.

In witness of this judgment Sir William Douglas, President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Julio Barberis, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 11 July 1996.

(Signed)

William Douglas  
Mella Carroll  
Julio Barberis  
A.B. Gardner

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