

EIGHTY-FIRST SESSION

***In re* WASSEF (No. 14)**

Judgment 1534

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourteenth complaint filed by Mr. Maher Nabih Wassef-Gerges against the Food and Agriculture Organization of the United Nations (FAO) on 1 August 1995, the FAO's reply of 8 January 1996 and the complainant's letter of 26 January 1996 to the Registrar saying that he did not want to rejoin;

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. Facts relevant to this case appear under A in Judgments 1401 and 1452. As Judgment 1452 states, the complainant lodged an appeal on 16 April 1994 with the Appeals Committee against the implied rejection by the FAO of his claim to compensation for the injury which he says the Organization caused him by failing to provide a panel of counsel to help him in internal appeal proceedings.

In its report of 15 April 1995 the Appeals Committee recommended rejection of his appeal.

The complainant wrote twice, on 7 and 27 June, to the Director of the Personnel Division asking him to provide the date of submission of the Appeals Committee's report to the Director-General. Having got no reply, he came on 1 August to the Tribunal. By a letter of 15 September 1995 the Director-General rejected his appeal.

B. The complainant submits that he exhausted the internal means of redress but that the Director-General failed to take the final decision in reasonable time. His complaint is therefore receivable.

Citing Appendix B to section 331 of the FAO Manual, he explains at length why, in his view, it is important to have a panel of staff able to help appellants. By failing to establish the panel the administration impaired his right to due process.

It was also in breach of Staff Rule 303.1321 which says that the Appeals Committee must start proceedings within two weeks.

He asks the Tribunal to declare that the FAO's internal means of redress are unlawful and the reports of the Appeals Committee unreliable. He seeks an award of 2 million United States dollars in damages and \$6,000 in costs. He asks the Tribunal to order the FAO to reimburse him the cost of publishing the judgment in four American, four European and four Arab daily newspapers and to include in the judgment a penalty for failure to execute within thirty days of delivery.

C. The Organization replies that the complainant is not challenging a final decision. He failed to exhaust the internal means of redress, as is required by Article VII(1) of the Tribunal's Statute and paragraph 332.222 of the FAO Manual. He may not rely on Article VII(3) of the Statute, which applies only when there is no decision at all. The complainant went to the Tribunal before the Director-General had decided whether or not to endorse the Appeals Committee's recommendations. So the complaint is premature.

The defendant's pleas on the merits are subsidiary. It submits that the complaint is devoid of merit. The lack of a panel did not prevent the complainant from himself choosing a staff member to represent him before the Appeals Committee.

CONSIDERATIONS:

1. By a letter of 21 February 1994 the complainant asked the Director of the Division of Personnel to give him the list of officials on the "panel of counsel", set up in accordance with Appendix B to section 331 of the FAO Manual, who might represent a staff member with a case before the Appeals Committee. In a reply dated 3 March the Director told him that there was no such list "at present" but that in accordance with Staff Rule 303.136 he might appoint any staff member he chose to represent him before the Committee.

2. On 14 March 1994 he sent the Director-General a letter taking the FAO to task for failure to comply with the provisions of the Manual and claiming 2 million dollars in compensation for "psychological stress, worries, preoccupations and deprivation of rights and privileges, and risks resulting from this non-observance of Regulations and Rules". In a letter of 3 May 1994 the Assistant Director-General in charge of Administration and Finance rejected his appeal on the Director-General's behalf. On 16 April, however, he had gone to the Appeals Committee. The Committee did not report until 15 April 1995 and the Director-General told him on 15 September 1995 that he had endorsed the Committee's recommendation and rejected the appeal. The complainant had already come to the Tribunal on 1 August 1995.

3. The FAO submits that his complaint is irreceivable because he has failed to exhaust his internal remedies. Though he filed before he got the final decision of 15 September 1995 the Committee took a whole year to come up with a three-page report and the Director-General another five months to let the complainant have a decision. Such delays are exorbitant and unpardonable. Under the circumstances the complainant was entitled to come straight to the Tribunal without waiting any longer for a reply from the Director-General. The objections to receivability fail.

4. The complainant's main claim is to payment of 2 million dollars in damages for injury he attributes to the Organization's failure to draw up a panel of counsel. There is a general principle of law that for such a claim to succeed the claimant must provide evidence of (i) an unlawful act, (ii) actual injury and (iii) a causal link between act and injury. Here the parties agree that the Organization failed to draw up the prescribed panel of counsel. The complainant sees therein breach of a duty in law. The FAO retorts that to discharge that duty it needed co-operation from the staff associations, which had to put forward names for the panel, and that since the associations consistently refused to name anyone the Organization may not be properly charged with breach of duty.

5. The Tribunal need not rule on the issue. The complainant does not support his claim with any evidence of injury. Injury is not to be presumed: mere mention of "worries", "psychological stress" and "deprivation of rights" will not do. Since his main claim therefore fails, so do his other claims which are corollary.

DECISION:

For the above reasons,

The complaint is 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