

## TWENTY-FOURTH ORDINARY SESSION

### *In re* SCHMIDTH

#### Judgment No. 156

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the United Nations Food and Agriculture Organization (FAO) drawn up by Mr. Søren Johannes Howell Himmerland Schmidth on 23 April 1970, the reply of the Organization dated 10 June 1970, the rejoinder of the complainant dated 11 August 1970 and the surrejoinder of the Organization dated 31 August 1970;

Considering Article II, paragraph 5 and Article VII, paragraph 1 of the Statute of the Tribunal, and Rules 303.111, 303.131, 303.137, and 333.138 of the Staff Rules of the Organization;

Having examined the documents in the dossier, oral proceedings having neither been requested by the complainant nor ordered by the Tribunal;

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

A. Mr. Schmidth, a Rural Institutions Officer employed by the FAO since 1962, took two months' home leave in 1965, while serving in the Ivory Coast. Under FAO Manual Provisions 370.621(I) and (ii) he was entitled to home travel expenses only if he and the dependent members of his family had spent at least fourteen calendar days of the leave in his home country, Denmark. On finding that the family members had travelled only as far as Geneva and that Mr. Schmidth himself had remained in Denmark for less than fourteen days, the FAO disallowed the entire travel claim. Subsequently, on his representation that the rule regarding minimum stay in the home country could not be complied with for medical reasons, the FAO as a special exception allowed full travel allowance for Mr. Schmidth himself, but refused liability for a sum of US\$1,548.30, representing the travel expenses claimed for the dependants' journey as far as Geneva. This decision of the FAO was conveyed in a letter of 20 November 1969 received by Mr. Schmidth on 23 December 1969.

B. This decision of 23 December 1969 is impugned by Mr. Schmidth in his complaint to the Tribunal. He claims that as neither he nor his wife and children could comply with the rules due to medical reasons beyond their control, the Tribunal should order the FAO to pay him the disallowed travel allowance of US\$1,548.30.

C. The FAO maintains that the complaint is not receivable by the Tribunal because the complainant did not resort to the appeal procedure provided for in the Staff Regulations and Staff Rules before appealing to the Tribunal. In his rejoinder the complainant says that he was not in possession of a copy of the Staff Rules for presenting his appeal and that the Organization did not give him instructions in the matter. The Organization in its surrejoinder maintains that the complainant should have been expected to know the correct procedure and that in any case the Organization has no responsibility to give instructions in such matters.

#### CONSIDERATIONS:

Under FAO Staff Regulation 301.111 and Staff Rules 303.111, 303.131, 303.137 and 303.138, a decision may be impugned before the Appeals Committee within two weeks of the receipt of its notification and a final decision of the Director-General obtained on the recommendation of the Appeals Committee. Only such a final decision may be taken in appeal to the Tribunal (Manual Provision 331.51). Further, under Article VII, paragraph 1 of the Statute of the Tribunal, a complaint shall not be receivable by the Tribunal unless the decision impugned is a final decision and the person concerned has exhausted such other means of resisting it as are open to him under the applicable Staff Regulations. The Tribunal finds that the complainant has not impugned a final decision after exhausting the internal appeal procedure and that he cannot validly plead that he was unaware of the provisions of the Staff Regulations and Rules concerning internal appeal procedures to justify his direct complaint to the Tribunal.

#### DECISION:

For the above reason,

The complaint submitted by Mr. Schmidh 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 6 October 1970.

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

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