

EIGHTY-SECOND SESSION

In re Carretti (Nos. 8 and 9)

Judgment 1607

The Administrative Tribunal,

Considering the eighth and ninth complaints filed by Miss Giuliana Carretti against the Food and Agriculture Organization of the United Nations (FAO) on 11 April 1996, the FAO's replies of 22 and 23 July, the complainant's rejoinders of 12 September and the Organization's surrejoinders of 25 October 1996;

Considering Articles II, paragraph 5, and VII, paragraph 1, 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 the present disputes are set out under A in Judgment 1360 of 13 July 1994 on Miss Carretti's fifth complaint. As that judgment said, the FAO dismissed her on the grounds of unsatisfactory performance by a decision from the Director of the Personnel Division which she got on 20 April 1993. The Tribunal dismissed her fifth complaint as irreceivable because she had not exhausted her internal remedies.

By a letter of 25 November 1993 to the chief of the Personnel Policy and Entitlements Service the complainant objected to the reckoning of her terminal entitlements which that Service had notified to her in a letter of 28 September. On 14 December 1993 the chief of the Service answered that the FAO was not changing the reckoning.

By a letter of 19 November 1994 she appealed to the Director-General under paragraph 331.4 of the FAO Manual asking him to reverse the dismissal of 20 April 1993 and a warning she had got on 22 December 1992; she also made claims about end-of-service "entitlements and their reckoning". In a letter of 21 December 1994 the Assistant Director-General in charge of Administration and Finance told her that the Director-General had rejected her appeal as time-barred. On 7 February 1995 she went to the Appeals Committee. In its report of 25 October 1995 the Committee recommended rejection for failure to observe the time limit. By a letter of 8 January 1996, which she impugns, the Director-General told her he was endorsing the Committee's recommendation.

B. The complainant submits that her complaints are receivable. In her eighth one she says she lodged her appeal of 19 November 1994 within ninety days of receiving the text of Judgment 1360 so as to get a "final decision" about her dismissal from the Director-General. The Appeals Committee should have taken up her case on the merits under Staff Rule 303.1322, which reads:

"... If any time limit prescribed in Staff Rules 303.1311 and 303.1314 has not been met, the Committee shall not, except insofar as provided otherwise in the FAO Manual, enter into the merits of the case."

Rule 302.3171 says that "The right of a staff member to claim any allowance, grant or payment existing but unpaid, shall lapse two years after the date on which the entitlement arose". The whole point of her writing to the Director of Personnel on 19 May 1995 and 30 March 1996 was to "stop the time limit".

On the merits of her eighth complaint she argues that her dismissal was unlawful and wrongful. The Director of Personnel utterly disregarded praise of her in testimonials from her first-level supervisors. Under Manual paragraph 308.416 an official may be dismissed only if poorly rated in the two consecutive reporting periods in which he may earn a salary increment. Under Staff Regulation 301.091 the Director had no authority to dismiss her. Her dismissal and the written warning of 22 December 1992 showed procedural flaws. The text dated 20 April 1993 recommending dismissal is insulting and at odds with the terms of the warning. She was promised a permanent job. Her dismissal constitutes misuse of authority. The FAO infringed the provisions of Manual paragraphs 308.411 and 308.4112 on the grant of within-grade increments.

In her ninth complaint she cites provisions of the Manual and precepts embodied in the legislation and case law of several countries.

In both complaints she seeks the quashing of the decision of 8 January 1996.

In the eighth one she asks the Tribunal to quash also the decision of 20 April 1993 that dismissed her for unsatisfactory performance, the recommendation of dismissal of even date and the warning of 22 December 1992. She wants all those texts and the relevant correspondence to be removed from her personal file. She seeks (1) an award of 25,000 Swiss francs in moral damages; (2) material damages for loss of employment and payment of earnings from the date of separation up to the end of the month in which judgment is delivered, plus reinstatement in her pension entitlements as from 27 May 1993 to 30 April 1996; (3) her two years' pay as from the date of judgment in lieu of reinstatement; (4) the grant of step XI in grade G.5 as from 1 June 1993 for service from 1 June 1991 to 31 May 1993, plus interest to be reckoned at the rate of 10 per cent a year and end-of-service entitlements reckoned accordingly; and (5) 10,000 francs in costs.

In her ninth complaint she asks the Tribunal to order the FAO (1) to discharge the obligations it incurred in giving her notice on 20 April 1993, viz. (a) to set the date of separation at 31 July 1993, (b) set the period of notice from 1 August to 31 October 1993 and pay her compensation accordingly and (c) treat 31 October 1993 as the last day of her appointment; (2) pay her 15 months' severance pay; (3) pay her for sick leave from 21 July to 31 July 1993; (4) declare Manual paragraphs 314.413 and 314.72 to be inconsistent; (5) determine whether she may contribute to the pension fund on account of the payment due to her under 1(b) above; (6) refund 278,586 lire she paid into the Van Breda health insurance scheme from 1 August to 31 October 1993; (7) pay her eight-and-a-half days' annual leave accrued from 21 July to 31 October 1993; (8) reckon her end-of-service benefit as for the period from 12 April 1976 to 31 October 1993; (9) grant her end-of-service benefit at the rate of 1/13.5 for the four months from 1 July to 31 October 1993; (10) give her an "accurate" certificate of employment instead of the one dated 21 December 1994; (11) pay her interest at the rate of 10 per cent a year as from 1 August 1993 on the sums due to her in lieu of notice and by way of compensation for dismissal and sick leave, health insurance payments, annual leave and end-of-service entitlements; (12) pay her 15,000 Swiss francs in moral damages and (13) award her 5,000 francs in costs.

C. In its replies the FAO challenges the receivability of both complaints. It says that the complainant has tried to get new decisions so as to set off new time limits.

In its reply to her ninth complaint it asks the Tribunal to join the two complaints.

D. In the rejoinder on her eighth complaint she says it was "in pursuance of Judgment 1360" that she appealed to the Director-General on 19 November 1994 and to the Appeals Committee on 7 February 1995. Her intention was not to get a new decision about her dismissal from the Director-General, who had not taken the original one: it was the Director of Personnel who took the decision of 20 April 1993. The only final decision by the Director-General was the one of 8 January 1996. She maintains that the Appeals Committee had a duty to take up her appeal on the merits.

She observes in the rejoinder on her ninth complaint that it does not raise the same issue of receivability as her eighth since Staff Rule 302.3171 covers the amounts she is claiming. She is opposed to joinder.

E. In its surrejoinders the FAO contends that she failed to make a timely challenge to the decision of 20 April 1993 and that the letter of 8 January 1996 contained no new challengeable decision.

CONSIDERATIONS

1. Facts with a bearing on these cases are recounted under 1 to 5 in Judgment 1360 of 13 July 1994. In that judgment the Tribunal dismissed Miss Carretti's fifth complaint as irreceivable on the grounds that she had failed to exhaust her internal remedies as Article VII(1) of its Statute required.

2. The dispute arises out of the decision of dismissal that the Director of the Personnel Division notified to her on 20 April 1993. On 19 November 1994 she appealed to the Director-General seeking reversal of the decision and payment of her end-of-service entitlements in full. By a letter dated 21 December 1994 the Assistant Director-General in charge of Administration and Finance replied on the Director-General's behalf that under Rule 303.1311

she was too late to challenge the decision of 20 April 1993. She went to the Appeals Committee on 7 February 1995. In a brief dated 24 May she cited a letter of 19 May 1995 in which the Director of Personnel had told her that any claim she might make to payments was not yet time-barred under Rule 302.3171. In its report of 25 October 1995 the Committee recommended rejecting her appeal as irreceivable. The Director-General endorsed its recommendation in a decision of 8 January 1996.

3. Since both complaints challenge that decision and raise the same issues of fact and law they will be joined to form the subject of a single judgment.

4. The FAO submits that they are irreceivable on the grounds of the complainant's failure to exhaust her internal remedies. It observes that the facts go back to the period from 1981 to 1993, when she and the Organization were at loggerheads, and culminated in its decision of 20 April 1993 to dismiss her for unsatisfactory performance. Several episodes of the dispute have already prompted seven complaints from Miss Carretti. In the fifth, which she filed on 8 July 1993, she asked the Tribunal to quash her dismissal. Judgment 1360 of 13 July 1994 declared that complaint irreceivable on the grounds that she had failed to exhaust her internal remedies.

5. In its submissions in reply to the complaints the FAO submits that her appeal of 19 November 1994 to the Director-General was out of time; so held the Appeals Committee, and on its recommendation the Director-General rejected her appeal in the decision of 8 January 1996 which she is impugning.

6. The defendant's plea is sound. In her eighth complaint the complainant's main claim is to the quashing of her dismissal dated 20 April 1993 and of the warning of 22 December 1992. As the Tribunal has often said, the rule in Article VII(1) of its Statute about exhaustion of the internal means of redress requires that the internal appeal procedure be not just followed, but properly followed, and in particular that any internal time limits be observed. Staff Rule 303.1311 says that someone who wants to appeal must write to the Director-General "within 90 days from the date of receipt of the decision impugned". Having got notice of the decision on 21 April 1993, the complainant was free until 20 July to appeal. That holds good, too, for her challenge to the warning of 22 December 1992. Since she did not act until 19 November 1994, long after the time limit had run out, she failed to exhaust her internal remedies under the Staff Rules and to get a final decision, the only sort challengeable under Article VII(1) of the Tribunal's Statute. Her eighth complaint is therefore irreceivable.

7. In her ninth complaint she says that her purpose in citing Rule 302.3171 is to show that her claim to end-of-service entitlements is not time-barred.

8. She is wrong. It was in a letter dated 14 December 1993 that the FAO gave her notice of the rejection of her financial claims. So her appeal of 19 November 1994 to the Director-General seeking reversal of the decision of 14 December 1993 was lodged after expiry of the ninety-day time limit in Rule 303.1311. So for the same reasons as those stated under 6 above her ninth complaint is irreceivable: she has failed to exhaust her internal remedies.

9. Since both her complaints are irreceivable, her claims fail in their entirety.

DECISION

For the above reasons,

The complaints are dismissed.

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

Delivered in public in Geneva on 30 January 1997.

(Signed)

William Douglas
E. Razafindralambo
Egli
A.B. Gardner

