

**TWENTY-FIFTH ORDINARY SESSION**

***In re* BIDOLI**

**Judgment No. 166**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the United Nations Food and Agriculture Organization (FAO) drawn up by Mr. Giancarlo Bidoli on 12 June 1969 and brought into conformity with the Rules of Court on 28 July 1969, the reply of the Organization dated 15 September 1969, the complainant's rejoinder dated 12 November 1969, and the Organization's reply thereto dated 13 January 1970;

Considering Article II, paragraph 5, of the Statute of the Tribunal, Article VIII of the Constitution, Rule XXXVI of the General Rules, and Staff Rules 303.111 and 303.112 of the Organization;

Having heard in oral proceedings on 9 November 1970, Messrs. Robinson, Pariboni, Frosini, Agostinucci, Perotti, Gertenbach and Tamburi and Miss Zeiser, staff members of FAO, as sworn witnesses, together with Mr. Bonnart, counsel for the complainant, and Mr. Roche, agent of the Organization;

Considering the written evidence communicated by Mr. Holliman, staff member of FAO, at the request of the Tribunal;

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

A. Mr. Bidoli was engaged by FAO on 14 September 1965 as a statistical clerk in Grade G.4 assigned to work in connection with the Indicative World Plan (IWP), under a fixed-term contract which was regularly extended up to 31 August 1968. The IWP was implemented by the Fishery Economics and Development Branch of the Department of Fisheries.

B. On 29 May 1968 Mr. Bidoli was informed by the Department of Personnel that his appointment would expire on 31 August 1968 and that his post, like many other IWP posts, would be abolished. (In fact, the appointment was subsequently extended to 30 September 1968 ) At an earlier date, from 10 February to 1 March 1968, the Organization had notified a vacancy for a permanent G.5 post of statistical clerk (No 6332-1262) in the Fishery Economics and Products Division, and Mr. Bidoli had applied for that post. The Appointments and Promotions Advisory Committee (APAC), however having considered the various applications and consulted interested parties, including the complainant's supervisor, recommended a person other than Mr. Bidoli - Mr. Cagnacci - to fill the vacancy. The G.4. post left vacant by the promotion of Mr. Cagnacci, which Mr Bidoli also applied for, was given to Miss Crispoldi, who until then had held a G.4. post as statistical clerk in the same unit as the complainant - a post which was also one of the abolished IWP posts. On being informed of this decision the complainant appealed against it on 12 July 1968 to the Director-General, asking for an explanation of the rejection of his application. On 2 August 1968 the Director-General replied that all the applicable provisions regarding selection of a candidate for the vacant post had been observed and that his supervisors had been consulted

C. Mr. Bidoli then lodged an appeal with the FAO Joint Appeals Committee in which he stated that his application for vacancy No 6332-1262 involved not merely a question of promotion, but the securing of a post of indefinite duration. Having been employed on a temporary basis for three years, he considered himself entitled to secure the post in question, and, failing that, he requested appointment to a similar post in the same grade. The Organization replied that under Article VIII of the Constitution of FAO and Rule XXXVI of its General Rules the appointment and promotion of staff was a responsibility of the Director-General, and that in accordance with Staff Rule 303.112 the Appeals Committee was not competent to deal with the appeal since it could consider only whether the decision had been motivated by factors extraneous to the candidate's efficiency and not the substantive question Mr. Bidoli replied that the refusal to appoint him to the vacant post or to another similar post was based on the purely personal and subjective judgment of his immediate supervisor, Mr. Robinson. As proof of Mr. Robinson's animosity towards him, he stated, among other things, that Mr Robinson had spread a rumour that he emitted a disagreeable body

odour and had caused him to undergo a medical examination which, however, had established that he was not suffering from any skin ailment. By a majority opinion the Joint Appeals Committee recommended on 14 February 1969 that the Director-General should not reconsider his decision, while two members of the Committee expressed the view that although the Committee had lacked certain essential documents necessary for the evaluation of the case owing to the confidential nature of the procedure of the APAC, the decision not to appoint the complainant to the post in question appeared to have been taken because of the complainant's personality. The Director-General decided nonetheless on 13 March 1969 to accept the Committee's recommendation and this decision was immediately notified to Mr. Bidoli.

D. In his complaint to the Tribunal the complainant contends that an official whose work has been entirely satisfactory may reasonably expect to have his appointment extended, that in accordance with the Tribunal's earlier judgments (in re Duberg, No. 17, and Leff, No. 18), such extension does not lie within the personal and sovereign discretion of the Director-General and that the non-renewal of his appointment was due to factors extraneous to his efficiency, and in particular to the personal animosity of his immediate supervisor, Mr. Robinson. He observes that, of all the officials affected by the abolition of IWP posts, he is the only one not to have been reassigned despite his excellent performance reports; moreover, the abolished posts included two for statistical clerks, namely his own and the post of his colleague, Miss Crispoldi. He is surprised that Miss Crispoldi, who had a shorter period of service and whose competence and skills were, in his view, no greater than his own, was not only given preference for assignment to a post in a related section, but actually remained in the Fishery Economics and Development Branch, to which she was "lent" by the related branch. He takes the fact that he did not enjoy similar treatment as proof of prejudice against him. He prays that the Tribunal may be pleased:

- (1) to declare his complaint receivable in accordance with Article VII of the Statute of the Administrative Tribunal;
- (2) to declare itself competent to rule on the validity of the decision not to renew the complainant's contract;
- (3) to quash the "decision" of the Joint Appeals Committee dated 14 February 1969;
- (4) to order the complainant's reinstatement in a post of the same kind and in the same grade as that which he held before;
- (5) in default, to award him compensation amounting to three years' salary;
- (6) for the rest, to dismiss the pleas of the Organization and to award costs against it;
- (7) subsidiarily, to allow him to prove the truth of his allegations by the hearing of witnesses.

E. In its reply the Organization submits, in the first place, that Mr. Bidoli's complaint is not receivable because he did not appeal to the Joint Appeals Committee against the non-renewal of his contract but merely against the decision not to appoint him to vacancy No. 6332-1262, G.5, or to an equivalent post hence the question of the non-renewal of his contract has not been dealt with through the internal appeals procedure, and the internal remedies have therefore not been exhausted (Art. VII, para. 1 of the Statute of the Tribunal). However, even if the complaint were to be considered receivable by the Tribunal, the Organization contends that Mr. Bidoli had no right to the renewal of his contract, and that the references to the judgments of the Tribunal (cases No. 17 and 18) omit one of the conditions specified by the Organization for the renewal of fixed-term contracts, namely the need for the services of the person concerned. The Organization also refers, in connection with the appointment to post No. 6332-1262 of a person other than Mr. Bidoli, to the arguments it put forward in the Appeals Committee, to which reference is made above. It denies that there was any prejudice against the complainant, and claims that he has not proved that the decision not to appoint him to post No. 6332-1262 was due to reasons extraneous to his qualifications. The Organization submits (1) that the complaint is irreceivable under Article VII, paragraph 1, of the Statute of the Tribunal; (2) that Mr. Bidoli had no right to the renewal of his contract; (3) that the Director-General's decision of 15 March 1969 was well founded.

F. In his rejoinder Mr. Bidoli argues that his complaint is clearly receivable because his appeal to the Joint Appeals Committee dated 6 August 1968, only a few days before the expiry of his contract on 31 August 1968, obviously raised the question of the renewal of his appointment. He considers that he was entitled to the renewal of his contract because his supervisors had always found his work satisfactory. He repeats his earlier arguments as to the true reasons for the non-renewal of his appointment, which he claims were extraneous to his qualifications. The

Organization replies that Mr. Bidoli was never informed that his contract would not be renewed, but simply that his present post was to be abolished because the IWP was not a permanent part of the FAO's programme. It therefore continues to maintain that in so far as it relates to non-renewal of the contract of appointment the complaint is irreceivable and that the rest of the complaint should be dismissed.

#### CONSIDERATIONS:

There being no need to examine the Organization's plea of irreceivability:

Mr Bidoli has referred to the Tribunal, first, the decision of 29 May 1968 by which he was informed that his contract of employment, which was due to expire on 31 August 1968, would not be renewed, and secondly, the decisions appointing candidates other than himself to the G.5 and G.4 posts for which he had applied. The action of the Director-General of FAO or of an official acting under his orders in deciding not to renew the temporary appointment of a staff member, and the action by which he chooses to fill a vacancy by appointing one of the applicants to the post, are both actions lying within the discretionary power conferred on the head of the Organization in the interest of the Organization itself. The existence of this discretionary power excludes any right on the part of Mr. Bidoli to the renewal of his appointment or to appointment to the post for which he had applied and also restricts the Tribunal's power of review. Action taken by the Director-General in the free exercise of his discretion cannot, in fact, be censured by the Tribunal in respect of its internal legality unless the exercise of such discretion was tainted by illegality or based on incorrect facts, or where it indicates that 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, or if there has been misuse of authority.

Within the limits of the Tribunal's jurisdiction, Mr. Bidoli claims that the refusal to extend his contract was due solely to the animosity of his immediate supervisor and that the selection of candidates other than himself for appointment to the posts for which he had applied was based on an obvious error of judgment in regard to his own merits and on unwarranted prejudice in favour of the persons so appointed.

With regard to the non-renewal of the complainant's contract, it is clear from both the evidence in the dossier and the oral proceedings that the measure in question was justified by the termination of the Indicative World Plan (IWP) for which he had been appointed, and by the exhaustion of the funds allocated to it, and also that the measure was of a general character which did not affect Mr. Bidoli alone. Moreover, the alleged animosity of Mr. Bidoli's immediate superior towards him has not been proved; in particular, although the complainant blamed his supervisor for the fact that he was obliged to undergo a medical examination in peculiar circumstances, the proceedings have shown that the supervisor had nothing to do with the matter.

With regard to the failure to appoint Mr. Bidoli to either the G.5 or the G.4 post, the proceedings have shown that after consulting various persons qualified to give an opinion on the candidates already employed by FAO and having interviewed the outside candidates, the responsible chief of service selected for appointment to the G.5 post Mr. Cagnacci, who was already working for him and of whose efficiency and diligence he had personal experience. Such a choice was quite normal and cannot be regarded in itself as being contrary to the interests of the Organization or tainted by favourable prejudice.

With regard to the G.4 post which became vacant as a result of Mr. Cagnacci's promotion, this was given to Miss Crispoldi who, like Mr. Bidoli, had been a statistical clerk working under Mr. Robinson. The chief of the service and Mr. Robinson stated, in particular during the oral proceedings, that while Mr. Bidoli was a competent official, Miss Crispoldi was better.

Neither the evidence in the dossier nor the oral proceedings have revealed any factor which might give rise to the suspicion that the judgment of the competent authority was tainted by any irregularity falling within the Tribunal's power of review. While the witnesses called by Mr. Bidoli described his work as excellent, none of them questioned the efficiency of Miss Crispoldi. Although Mr. Bidoli stressed his own greater experience in the field of fishery products, the work of a statistical clerk does not require a high degree of specialisation, but rather general ability to cope with the work of the division to which those officials belonged. Consequently this allegation by the complainant is not in itself sufficient to indicate that he was the better qualified candidate.

Moreover, in selecting an official for a vacant post the Director-General must base his decision not on a single criterion but on several considerations, such as occupational skill, length of service, experience, diligence, and

suitability for performing the functions of an international official, which he must weigh individually in each case before arriving at a decision.

Lastly, the fact that other staff members whose contracts, like that of Mr. Bidoli, had not been extended were able to find other posts within FAO does not in itself prove that the decisions not to appoint the complainant to the above-mentioned G.5 and G.4 posts are tainted by misuse of authority. While it may be a matter for regret that Mr. Bidoli, whose efficiency is not in question, should have had to leave the service of FAO, the Tribunal can only find that the decisions impugned are legally valid.

#### 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 the Right Honourable Lord Devlin, P.C., 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 17 November 1970.

(Signed)

M. Letourneur  
André Grisel  
Devlin Bernard  
Bernard Spy