

TWENTY-SIXTH ORDINARY SESSION

***In re* FLAD**

Judgment No. 172

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint drawn up against the World Health Organization (WHO) by Mr. Jean Flad on 10 April 1970, brought into conformity with the Rules of Court on 27 April 1970, the Organisation's reply of 1 July 1970 and the complainant's rejoinder of 14 September 1970;

Considering Article II, paragraph 5, of the Statute of the Administrative Tribunal and WHO Staff Rules 530(d), 975 and 1030;

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

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

A. Mr. Flad was appointed for two years by the WHO Regional Office in Brazzaville on 25 October 1965 as Administrative Assistant (Pool Supervisor), his contract being subsequently renewed for two further years ending on 31 October 1969. By letter of 20 May 1969 received on 22 May, the Regional Director was informed by the manager of a shop in Brazzaville that Mr. Flad had removed goods from the shop without paying for them. In accordance with Staff Rule 530 the Regional Director suspended Mr. Flad from his functions pending the results of an administrative investigation, to be carried out by the Personnel Officer of the Regional Office. The latter went to the shop on 23 May 1969 and spoke to the manager, the chief of administrative services, the cashier and the supervisor. On the same day he sent the Regional Director a report on his inquiries which was later communicated to the complainant.

B. It appears from the report that the supervisor alleged that on Friday 9 May 1969 Mr. Flad filled two baskets with goods from the shop but paid at the cash desk for the contents of only one basket. When challenged by the supervisor outside the shop he allegedly stated that he was waiting for his wife, and according to the chief of administrative services, who then questioned him, explained that "he was waiting for his wife, who would pay for his purchases". The two baskets were then confiscated and Mr. Flad was allegedly asked to pay for their contents, namely cooked meats, cheese, fruit, salad, sponges and a toothbrush. Not having any money with him, he allegedly went home to fetch some and came back to the shop to make the payment requested. According to the cashier, she registered payment before Mr. Flad left the shop for the contents of only one basket. The shop manager had no direct knowledge of the incident.

C. On receiving the report of the investigation Mr. Flad replied to the Regional Director categorically denying the shop's version. He explained that he had bought oranges at the same shop earlier the same day in the company of his wife, that he had then accompanied her to visit a sick friend in a clinic and that on finding on his arrival at the clinic that the oranges were rotten, he left his wife, went back to the shop and exchanged the rotten oranges for good ones with the consent of the assistant at the fruit counter. He admitted that the supervisor had stopped him outside the shop and accused him of stealing the oranges, and had asked him to come to the manager's office, and that he had then replied "just a moment, let's be clear about this, give me back my groceries, my wife is waiting for me"; finally he agreed to go to the manager's office, where according to him an angry scene occurred. He attributed the charges brought against him to malice due to his frequent criticisms of the allegedly poor quality of the goods in the shop.

D. On 3 June 1969 the Regional Director asked Mr. Flad for further explanations, particularly with regard to the groceries and articles other than the oranges which he had allegedly failed to pay for. In his reply of 4 June 1969 Mr. Flad asked the Regional Director to give him a report on the incident drawn up by a competent public authority. He also alleged the existence of "a spirit of intrigue against him in the Regional Office". The Regional

Director again asked for an explanation on 5 June 1969, and next day the complainant replied that he was still waiting for the official report since the Office had merely endorsed the account given by the shop staff. In his reply he repeated his accusations against the shop and the Regional Office. On the same day, 6 June 1969, the Regional Director informed him that in the absence of a reply refuting the charges he had decided to terminate Mr. Flad's appointment on the grounds of misconduct in accordance with Staff Rule 975.

E. The complainant appealed to the Regional Board of Appeal. He alleged, among other things, that the Regional Director had shown prejudice against him and had made only a partial inquiry into the facts. The committee heard two witnesses (not eye witnesses) called by the complainant. It found that the complainant had merely contested the account given in the report without adducing any evidence in support of his denial, that he had indeed committed serious misconduct and that the sanction imposed by the Regional Director was warranted. The Regional Director having confirmed on 22 July 1969 his decision of 6 June 1969, Mr. Flad appealed to the Headquarters Board of Inquiry and Appeal. The Board considered that the period of eleven days between the date of the alleged theft and the date of the complaint to the Regional Director was unduly long. It held that the Administration of the Regional Office and the Regional Board of Appeal had apparently given weight only to the charges against Mr. Flad and had failed to consider any evidence at all which might exonerate him or put his guilt beyond any possible doubt. It accordingly recommended to the Regional Director on 15 November 1969 that Mr. Flad should be reinstated with full rights in the Organisation and without any prejudice to the continuity of his career therein. Nevertheless on 16 January 1970 the Director-General informed the complainant that he could not accept the recommendation made by the Headquarters Board of Inquiry and Appeal and confirmed the Regional Director's decision.

F. After leaving the WHO Regional Office Mr. Flad obtained on 12 October 1969 a two-year appointment at Grade P.2/I as an administrative officer in the office of the United Nations Food and Agriculture Organisation in the Democratic Republic of the Congo.

G. In his complaint Mr. Flad asks the Tribunal to quash the Director-General's decision of 16 January 1970 confirming that of the Regional Director and requests compensation for the moral prejudice which he claims to have suffered and for the financial consequences, as well as termination benefits and the payment of his salary up to 31 October 1969. In support of these claims he repeats the version of the facts which he gave formerly and maintains that he was the victim of concerted intrigue on the part of the shop, in revenge for his criticisms of its goods, and some of his colleagues in the Regional Office, including several high ranking officials, who wanted to get rid of him.

H. The Organisation considers that the complainant's guilt is beyond doubt, since he has failed to refute convincingly the detailed charges brought against him in the course of the administrative inquiry. It utterly denies the existence of any prejudice against the complainant and therefore prays that the complaint be dismissed.

CONSIDERATIONS:

The Regional Director's decision of 22 July 1969 terminating Mr. Flad's appointment by dismissal on grounds of misconduct and the Director-General's decision of 16 January 1970 confirming that decision are based solely on the assumption that on 9 May 1969 Mr. Flad committed attempted theft of certain articles in a large shop in Brazzaville.

This charge was brought by the shop manager on 20 May 1969, that is, eleven days after the incident to which it related.

Mr. Flad immediately denied the charges and gave a totally different and at first sight not improbable version of the incident.

The Personnel Officer of the Regional Office, appointed by the Regional Director to make an inquiry, merely heard the statements of the shop manager who had brought the charges, and of three of his employees, only one of whom had apparently witnessed the alleged attempted theft.

The Regional Director, and later the Regional Board of Appeal, in turn accepted those statements without making any real inquiry, as was required, to determine whether the shop staff or Mr. Flad was telling the truth. Moreover, in an opinion given on 5 November 1969 the Headquarters Board of Inquiry and Appeal pointed out the serious

defects of the inquiry carried out on the spot.

Such further investigations were particularly necessary since, to an impartial mind, it inevitably appears strange for an official of some status who had been employed by the World Health Organisation for four years, whose wife was also employed by the Organisation and who was consequently fairly well off, should have compromised his position by stealing a few articles in a shop.

Accordingly, and without there being any need to inquire into the validity of the charges of partiality brought by Mr. Flad against certain local officials involved in the affair, the Tribunal can only find that the facts leading to the imposition of the sanction are in no way proved and decide that the impugned decision should be quashed. There is no reason to order the complainant's reinstatement, which in any case he does not claim; his entitlement to compensation for the injury suffered by him should, however, be considered.

As to the amount of compensation to be awarded:

It appears from the information supplied by the WHO and not contested by Mr. Flad that he was recruited on 12 October 1969 by another international organisation and assigned to a neighbouring country, and in his complaint he does not ask for reinstatement in his WHO post. Nor does he contend that that post was preferable to his new one. He is therefore entitled only to compensation equivalent to the salary which the WHO would have paid him up until 12 October 1969, plus a sum in respect of the disturbance of his living conditions and family life which the Regional Director unlawfully caused him and in respect of the moral injury which he suffered on account of the unjust charges brought against him. Considering that he obtained equivalent employment fairly soon, the injury will be fairly assessed by awarding Mr. Flad compensation amounting to 15,000 French francs.

DECISION:

For the above reasons,

1. The Director-General's decision of 16 January 1970 is quashed.

2. The Organisation shall pay Mr. Flad:

(a) his salary up to 12 October 1969;

(b) compensation amounting to 15,000 French francs.

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 3 May 1971.

(Signed)

M. Letourneur
André Grisel
Devlin

Bernard Spy