

## THIRTIETH ORDINARY SESSION

*In re* LEE

### Judgment No. 199

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the United Nations Food and Agriculture Organization (FAO) drawn up by Miss Soo Lee on 28 February 1972 and the Organization's reply of 31 May 1972;

Considering Article II, paragraph 5, of the Statute of the Tribunal and FAO Staff Rule 302.3051;

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

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

A. Miss Lee reached the highest step in her grade, G.5, step 11, on 1 May 1968 and was promoted to grade G.6 on 1 December 1970. On 5 January 1971 the staff was informed by Administrative Circular No. 71/3 that three new steps (12, 13 and 14) had been added to grade G.5 with effect from 1 January 1971. In the meantime the complainant had been placed at step 6 in grade G.6 in accordance with Staff Rule 302.3051, which states:

"... a staff member upon promotion shall be placed at the entrance rate of the higher grade level, provided that at this rate he would receive for continuous service during the first year following promotion a salary amounting to at least one full increment step (of the grade level to which he has been promoted) more than he would have received without the promotion. If he would not receive such an amount at the entrance rate, then his salary shall be placed at the step within the higher grade level which would provide such an increase. The date of the staff member's next salary increment in the higher grade level shall be adjusted to achieve this end."

B. Miss Lee asked for review of the decision to place her at step 6 in grade G.6 and for the grant of a higher step to take account of the fact that she would have been placed at the new step 12 from 1 January 1971 had she remained at grade G.5. The Director-General dismissed her claim, and she appealed to the Appeals Committee. The Committee observed that it was not a court of law and that its function was to seek to settle grievances by making recommendations which took into account the interests of both the staff member and the Organization. It held that, although the letter of the Regulations had been adhered to no attempt had been made to accommodate the interests of the staff member, who had certain expectations which, though not legally binding, were worth considering. The Committee therefore recommended making Miss Lee's promotion effective from 2 January 1971 so that her step in her new grade would reflect her promotion to step 12 in grade G.5 on 1 January 1971. On 29 November 1971 the Director-General informed her that he could not endorse that recommendation. He noted that the Committee had itself admitted that she was not entitled to the proposed adjustment and stated that for reasons of principle he could not accept such an arrangement.

C. In her complaint impugning the decision of 29 November 1971 Miss Lee points out that the FAO Council approved the inclusion of three new steps in grade G.5 in October-November 1970, i.e. before her promotion, and that the date of entry into force of that decision was set at 1 January 1971 merely for the sake of administrative convenience. In November 1970 she acquired the right to advancement to the new step 12. The Administration interpreted the relevant text too rigidly and restrictively in refusing her an advantage which she would automatically have enjoyed had she been promoted one month later.

D. The Organization replies that the FAO Council did not specify any date for the entry into force of its decision to create the new steps but left it to the Director-General to determine. Administrative Circular No. 71/3 of 5 January 1971, which announced the entry into force of that decision, did not give it retroactive effect but in fact stated that it took effect from 1 January 1971. Moreover, contrary to what the complainant contends, she would not have advanced automatically to step 12 since a staff member is entitled to a higher step only if his performance has been satisfactory and at the end of the period covered by the annual report. Finally, since other staff members were in the same position as the complainant, the Director-General could not meet her claim without discriminating against those others.

E. The Organization therefore prays that the complaint be dismissed.

CONSIDERATIONS:

It is clear that the Organization has acted strictly in accordance with the regulations as they were on 1 December 1970, the date when the complainant was promoted to grade G.6. It is clear also that it would have been for the personal benefit of the complainant if the promotion had been delayed until after the change in the regulations had taken effect on 1 January 1971. The Appeals Committee considered that by delaying the promotion until 2 January 1971 an "equitable solution" would be provided, and recommended accordingly. The Director-General, however, considered that the object of the change in the regulations was to benefit those who were unlikely to receive promotion; on this view the complainant has no reason to be dissatisfied if she does not receive both the promotion and the benefit of the change. The decision is one which falls within the discretion of the Director-General and the Tribunal can see no grounds for interfering with it.

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, Morellet, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 14 May 1973.

M. Letourneur  
André Grisel  
Devlin

Roland Morellet