

## THIRTY-SECOND ORDINARY SESSION

### *In re* TUFTE

#### **Judgment No. 227**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the United Nations Food and Agriculture Organization (FAO ) drawn up by Mr. Svein Tufte on 10 May 1973, the Organization's reply of 27 July 1973 and the complainant's rejoinder of 2 October 1973;

Considering Article II, paragraph 5, of the Statute of the Tribunal, and FAO Manual sections 301.012, 301.112, 303.131, 303.221, 303.222, 311.421 and 311.422;

Having examined the documents in the dossier, the oral proceedings requested by the complainant having been disallowed by the Tribunal;

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

A. Mr. Tufte joined the staff of the FAO on 1 January 1967 at grade P.3 as an Organization and Methods officer in the Management Services Division at headquarters in Rome. His appointment had originally been advertised as permanent but for budgetary reasons was made fixed-term. He was offered a three-year contract on his post, which he accepted and signed. In the autumn of 1969 he unsuccessfully applied for P.4 posts in his own and other FAO divisions. He then expressed doubts about the impartiality of the methods of selecting candidates. Shortly afterwards, in November 1969, he asked for the conversion of his fixed-term appointment, which was to expire on 31 December, into a permanent one. His supervisor questioned his powers of judgment and the appointment was extended for only one year. A new chief was then appointed to his branch. In October 1970 he again asked for the conversion of his appointment into a permanent one and the upgrading of his post. The new chief, like his predecessor, was not happy about the complainant's work performance and, among other things, took exception to his making improper allegations outside the branch. In talks with his supervisors the complainant allegedly cast aspersions on their integrity and they recommended finding him other work in the Organization. On 10 December 1970 he was offered a post in Algeria, which he accepted the next day. But, pending the receipt of clearance from the Algerian Government, at the end of January 1971 he was sent to Togo for a short spell. In the meantime, because of unfavourable reports by his former supervisor in Rome, his annual increment was withheld for three months. A favourable report on him then arrived from Togo and he received the increment on 1 April. On 13 April 1971 he started work in Algeria on a contract expiring on 31 March 1972. On 30 September 1971 he wired to Rome announcing his intention of resigning with effect from 1 November 1971 if by then he had not been offered a suitable position at headquarters. On 12 October 1971 the Organization replied by telegram inviting him to apply for a headquarters post in the ordinary way and informing him that, unless he did so and unless he notified the FAO to the contrary, his resignation would take effect on 1 November 1971 as he had asked. The complainant confirmed his resignation on 14 October 1971.

B. On 30 October 1971 the complainant appealed to the Director-General asking for reinstatement in a suitable position or, failing that, compensation. The Director-General dismissed his appeal on 23 November 1971 on the grounds that his separation had given rise to no legitimate grievance since he had voluntarily resigned. On 28 November the complainant appealed to the FAO Appeals Committee stating that the Director-General's reply of 23 November did not touch on the heart of the matter or go into the real problems of his case. The Appeals Committee held his appeal to be unfounded and recommended neither reinstatement nor compensation. The Director-General accordingly dismissed the appeal and so informed the complainant by letter of 16 February 1973, which confirmed the telegram of 12 October 1971 accepting his resignation.

C. The complainant believes that the FAO treated him unfairly in that it gave him a fixed-term appointment instead of a permanent one, appointed him to a P.4 post, later gave him a one-year appointment instead of a permanent one, and withheld his annual increment. In his complaint to the Tribunal he impugns the Director-General's

decision of 16 February 1973 and asks the Tribunal: (a) to order his reinstatement in the FAO in a permanent post with functions and grading corresponding to his present qualifications and level; or (b) failing that, to award compensation amounting to US\$125,000.

D. In its reply the Organization argues that the complainant may properly impugn only the decision to accept his resignation, since his allegations of unfair treatment, mentioned in the previous paragraph, relate to events which occurred between 1966 and 1971, are immaterial and afford no grounds for complaint. As appears from FAO Manual Sections 311.421 and 311.422, he had no right to ask, as he did in his telegram of 30 September 1971, for assignment to a post and duty station of his choice, particularly since he had accepted shortly before an assignment to Algeria which had not yet expired. Finally, the Organization points out that the complainant resigned of his own free will and accord and that since his resignation was accepted he cannot expect reinstatement or compensation. The decision of 12 October 1971, which the Director-General upheld on 16 February 1973, fully complied with the Staff Regulations and other relevant provisions governing the complainant's employment. The Organization therefore prays that the complaint be dismissed.

#### CONSIDERATIONS:

As to the claim for reinstatement:

On 30 September 1971 the complainant notified his intention to resign on 1 November if he did not obtain a suitable post at the headquarters of the Organization by that date. On 12 October the Organization replied inviting him to submit applications in the usual way but saying that in the absence of a notification to the contrary it accepted his resignation. On 14 October the complainant confirmed his resignation. He thus deprived himself of the right to reinstatement in the Organization in his former post or in any other. If he wishes to return his only course of action is to apply for a vacancy in accordance with the prescribed procedure. Any other course would be warranted only if he had acted otherwise than of his own free will. There is, however, no evidence that this was so.

As to the claim for compensation:

As it is free from illegality, the decision not to reinstate the complainant does not entitle him to any compensation. Nor do the circumstances of his employment, which it appears from the dossier were not contrary to the Staff Regulations and Staff Rules. The decisions taken with regard to the complainant, before the impugned decision, came into force and may therefore be deemed to have conformed to the relevant provisions. The complainant cannot properly allege in support of his claim for compensation that these decisions caused him prejudice.

#### 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 6 May 1974.

(Signed)

M. Letourneur  
André Grisel  
Devlin

Roland Morellet