

THIRTY-SECOND ORDINARY SESSION

***In re* REMONT**

Judgment No. 228

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the United Nations Food and Agriculture Organization (FAO) drawn up by Mr. Jean Emile Elie Gislain Rémont on 9 May 1973, the Organization's reply of 29 August 1973, the complainant's further memorandum of 27 December 1973 and the Organization's further memorandum of 23 January 1974;

Considering Article II, paragraph 5, of the Statute of the Tribunal and FAO Manual sections 311.331 and 331.332;

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. The complainant joined the staff of the FAO in June 1968 at grade P.5 and was sent to Haiti under successive contracts of which the last expired on 31 March 1971. On 12 March 1971 he was transferred at the same grade to Burundi on a contract expiring on 21 May 1971. This mission was later curtailed. On 20 April 1971 the Organization proposed to the complainant a mission to Tunisia expected to last fourteen months. The post in Tunisia was at grade P.4, whereas the complainant held a P.5 appointment which expired on 21 May 1971, when his mission to Burundi had been due to end. In extending the complainant's appointment from 21 May to 30 June 1971 the Organization decided that his grade should not be changed from P.5 to P.4 until 1 June 1971 and that the change should be made in accordance with the provisions of Manual section 311.331. As the Organization admits, it was not until the eve of his departure for Tunisia that the complainant heard that his post there was at the P.4 grade. He therefore wrote a minute stating his reservations and agreeing only provisionally to the P.4 grade pending the outcome of the procedure for upgrading the post in Tunisia to grade P.5.

B. The Plant Production and Protection Division (AGP Division) started the procedure to enable the complainant to keep his P.5 grade after 1 June 1971. It advised giving the complainant higher responsibilities to justify the upgrading of the P.4 post in Tunisia to P.5. The steps taken by the AGP Division to submit the question of the complainant's grade for examination to the Establishments Committee, the competent internal body, were suspended after the Agricultural Services Division (AGS Division) raised objections. Meanwhile, on 1 June 1971, the complainant's grade had been changed from P.5 to P.4. His appointment was extended from 30 June to 31 August 1971 and again to 31 December 1971, when he left the FAO. The Organization explains that the period of the complainant's appointment under both contracts was limited because his reservations about his grade still held good and doubts remained about his qualifications for his post. His post in Tunisia finally remained unchanged at grade P.4.

C. Having unsuccessfully tried to obtain an interview with FAO officials in Rome to discuss his case, the complainant appealed to the FAO Appeals Committee. Having examined his complaint and studied the documents submitted by the parties and hearing evidence from the complainant and several witnesses, the Committee reported to the Director-General on 15 January 1973. It rejected the complainant's claim for reinstatement and his claim for compensation *ex aequo et bono*. The majority held that the matter of the complainant's grade had not been dealt with in full conformity with FAO practice in such cases and recommended the Director-General to consider granting him grade P.5 retroactively to cover the full period of his mission in Tunisia. Having examined the Appeals Committee's report, the Director-General informed the complainant by letter of 9 February 1973 that he accepted the Committee's recommendations on his claims for reinstatement and compensation *ex aequo et bono*, but could not endorse the recommendation regarding his grade. The complainant is impugning the Director-General's decision of 9 February 1973.

D. The complainant, who was appointed at grade P.5, contends that the FAO made promises which it did not keep

and that as a consequence he was led to accept a mission "by promises which turned out to be false only when he was already on mission". He believes that the FAO acted contrary to good faith: the general principle of law that the parties to a contract should act in good faith meant that the FAO should have neither engendered nor encouraged his belief that he would go on mission at grade P.5 and should have informed him plainly of the rejection of his claim and so enabled him to act advisedly. In his view the defendant Organization "disregarded those basic principles".

E. In his claims for relief the complainant asks for reinstatement in the FAO with retroactive effect to 1 January 1972. Since his work performance on his various missions gave satisfaction he feels that the drastic termination on 31 December 1971 of his contractual relations with the Organization was due to circumstances beyond his control and that he should not have suffered on their account. He believes that it was his insistence on the fulfilment of promises and "what is regarded as obstinacy in seeking justice" which induced the FAO to terminate his contract on 31 December 1971, six months before its normal date of expiry, since his mission to Tunis had originally been intended to last fourteen months. If he is not reinstated, he therefore considers that the Organization should pay him the following amounts:

- (a) US\$280, plus interest from 1 June 1971, corresponding to the difference in salary between P.4, step 12, and P.5, step 4;
- (b) US\$7,640, plus interest from 1 March 1972, corresponding to five months' salary at grade P.5, step 4;
- (c) US\$1,560, plus interest from 1 June 1972, corresponding to one month's salary at grade P.5, step 5; and
- (d) US\$30,000, plus interest, as compensation ex aequo et bono.

In making the last claim he stresses the gravity of the moral prejudice which he has suffered from "unfair treatment" by the FAO: that treatment interrupted his career and ruined his economic prospects, and fair compensation is therefore due.

F. In its reply the Organization points out that when the complainant accepted the post in Tunisia in April 1971 and expressed reservations about the Organization's intention not to keep him at grade P.5 beyond 1 June 1971 it did not enter into any contractual commitment or make any promise to keep him at the P.5 grade. According to the Organization, when he left for Tunisia he knew full well that a decision authorising his retention of his grade could be taken only after administrative procedures had been followed and that such a decision depended in the first instance on a positive recommendation by the establishments Committee. The Organization maintains that quite clearly nothing had yet been done to remove his reservations about his grading in Tunisia, when he was reduced from grade P.5, step 3, to P.4, step 12, with effect from 1 June 1971 and that that administrative measure was duly notified to him. Furthermore, when informed of the extensions of his contract, from 30 June to 31 August 1971 and from 31 August to 31 December 1971, he was told that his grade was P.4, step 12. In the Organization's view the complainant cannot therefore claim that the extension of his contract committed it to maintaining him at grade P.5 or gave him any reason to imagine that it accepted the conditions which he had set before leaving for Tunisia. The Organization maintains that it never gave the complainant reason to believe that he would keep his P.5 grade; on the contrary, he was kept duly informed of the course of the grading procedure. Though free to resign or to decline extension of his contract at the P.4 grade, he preferred to continue work for as long as he thought he stood a chance of obtaining the P.5 grade in his post in Tunisia. The Organization points out that since he left the FAO on the expiry of his fixed-term contract he cannot claim that his appointment was terminated in breach of its terms: he is therefore not entitled to reinstatement.

G. In conclusion the Organization asks the Tribunal to dismiss as unfounded the complainant's claims for reinstatement with retroactive effect to 1 January 1972 and for payment of the sums listed in the complaint.

CONSIDERATIONS:

As to the request for public hearings and the calling of witnesses:

1. The facts of the case are clearly established and are not indeed contested. But the interpretation which may be put on them is open to discussion, and the written proceedings have enabled both parties to discuss fully the legal questions involved. Public hearings and the calling of witnesses therefore appear unnecessary.

As to the lawfulness of the impugned decision:

2. On the expiry of his appointment at grade P.5 to a post in Burundi, in April 1971 the complainant was offered a mission to Tunisia for fourteen months. Before deciding whether to accept the offer he was told that the appointment would be at grade P.4. He accepted the offer subject to a formal condition that steps would be taken to have the post regraded at P.5, and he left to take up his post at grade P.4.

Mr. Pichel, the Director of Operations, Plant Production and Protection Division (AGP Division), of which the complainant was a member, immediately started the prescribed procedure for the regrading. But the Agricultural Services Division (AGS Division), which was in charge of the Tunisian project, was opposed to the regrading.

The complainant had been kept informed of the action taken and the opposition to the regrading and had met Mr. Carpenter, the head of the AGS Division, who expressed that opposition. He was informed in plain terms in a letter of 7 September 1971 that his appointment would continue to be at grade P.4 and that any extension he received would be at that grade.

3. It appears from the documents in the dossier that, as he had promised the complainant, the Director of the AGP Division made earnest efforts, with the full consent of the manager of the project in Tunisia, to have the complainant's post upgraded to P.5. He thus scrupulously fulfilled his promise to the complainant. Although Mr. Carpenter opposed the upgrading, in doing so he was merely exercising his authority as chief of division, and his opposition cannot be criticised by the Tribunal unless it was based on considerations foreign to the Organization's interests. That is not proved.

Secondly, the appointment in Tunisia offered to the complainant was a new one and quite distinct from those he had previously held. His appointment at a lower grade cannot be assimilated to downgrading in the absence of any special circumstances.

Thirdly, the Organization had told the complainant quite plainly from the outset that the upgrading of his post in Tunisia to P.5 would entail first completing a certain procedure, including the consultation of the Establishments Committee, but it could not promise and had in fact never promised any positive outcome. The Organization kept the complainant informed of the steps taken under the procedure and of developments. Early in September 1971 Mr. Pichel told him that his appointment would continue to be at grade P.4 and advised him to accept any other post he might be offered; he thus behaved with perfect correctness and even with helpfulness towards the complainant. The latter cannot therefore properly contend that the Organization showed bad faith towards him.

Fourthly, although the complainant received several short appointments which ran only until 31 December 1971, instead of the fourteen-month appointment originally proposed, he himself asked that the procedure should be started for upgrading his post. He thus compelled the Organization to grant him only provisional appointments until that procedure was completed and to release him on the expiry of the final provisional appointment on the rejection of his claim for regrading, since he was unwilling to accept a P.4 appointment. Moreover, the procedure followed its course without undue delay, contrary to what the complainant maintains.

4. It appears from the foregoing that the impugned decision is not tainted with any irregularity.

As to the claim for compensation:

5. Since the Organization has committed no impropriety, the claim for compensation should be dismissed.

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

Updated by PFR. Approved by CC. Last update: 7 July 2000.