

THIRTY-THIRD ORDINARY SESSION

In re GEORGE

Judgment No. 237

THB ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the United Nations Food and Agriculture Organization (FAO) drawn up by Mr. John Ellis George on 13 August 1973 and brought into conformity with the Rules of Court on 2 December 1973, the Organization's reply of 22 February 1974, the complainant's rejoinder of 15 April 1974 and the Organization's surrejoinder of 30 May 1974;

Considering Article II, paragraph 5, of the Statute of the Tribunal, and FAO Manual section 330;

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 entered the service of the Organization as a driver on 1 January 1971 on a fixed-term appointment at grade G. 2, step 1, to expire on 30 June 1971. He was assigned to a project based in New Delhi. His appointment was extended from 1 July to 31 December 1971 and then from 1 January to 30 June 1972. His employment was nevertheless terminated on 1 May 1972.

B. By wire of 2 February 1972 Dr. Ragheb, the New Delhi project manager, informed the Director of the Personnel Division at headquarters that on his return from a duty trip on 31 January 1972 the complainant had used an official motor car, of which he was the driver, without permission; when he had reported for work next morning the engine had been badly damaged and his breath had smelt strongly of alcohol. Dr. Ragheb said that he had told the complainant to take three weeks' leave pending instructions from headquarters. In reply to Dr. Ragheb's wire of 2 February 1972, in which he had, among other things, recommended dismissing the complainant, the Director of the Personnel Division authorised suspension but forbade taking any decision on dismissal until Dr. Ragheb had reported in full. Dr. Ragheb sent his report by letter of 3 March 1972. After studying Dr. Ragheb's and the complainant's versions of the incident, which had taken place in Agra on 31 January and 1 February 1972, the Organization decided to dismiss the complainant for unsatisfactory service. He was informed of the decision on 27 April 1972. On 4 May 1972 he lodged an appeal with the Director-General. Since his and Dr. Ragheb's versions of the facts differed, before taking a final decision the Organization preferred to consult Mr. Hutton, the FAO representative in India. After investigation, Mr. Hutton informed headquarters that the complainant had indeed used an official motor car without permission and had come back drunk with a damaged vehicle. He held that the complainant's dismissal was warranted. On 15 June 1972 the complainant was informed that his appeal was refused. He then lodged an appeal with the FAO Appeals Committee. In its report of 4 May 1973 the Appeals Committee found sufficient proof of the allegations against the complainant and held his dismissal to be warranted. It recommended paying him *em gratia* compensation for his alleged loss of personal belongings left in the motor car (wallet, driving licence, identity card, etc.). By a letter of 22 May 1973 the Director-General informed the complainant of his acceptance of the Appeals Committee's recommendation to dismiss the appeal and of his decision to pay him \$100 in compensation for his alleged losses. It is the Director-General's decision of 22 May 1973 which the complainant is now impugning.

C. Dr. Ragheb's version of the facts is as follows. Dr. Ragheb and the complainant arrived at the Hotel Laurie in Agra at about 6 p.m. on 31 January 1972 from Bichpuri. Dr. Ragheb ordered the complainant to park the motor car in the hotel car park. Mr. Manpal Singh, an Indian civil servant was present and told the complainant where to park the car. On their arrival in Agra the motor car was in perfect running order. At about 8.30 p.m. Dr. Ragheb saw the car leave the hotel car park. He went to make sure and found that the car was no longer in the park. The next day the complainant was standing by the car, of which the engine had been badly damaged. Dr. Ragheb asked the complainant why he had used the car the evening before. The complainant first replied that he had taken it to go for dinner. He later said that the engine had broken down and that he had wanted to show the car to a mechanic, with whom he had stayed until 3 a.m. While he was giving these explanations, Dr. Ragheb and the two Indian civil servants with him noticed that the complainant's breath smelt strongly of alcohol. The complainant disobeyed an

order to take his personal belongings out of the car and said that Dr. Ragheb had no right to confiscate the car keys and lock the doors. Dr. Ragheb reported to the police and asked that the complainant should undergo a blood test. When Dr. Ragheb came back with a policeman the complainant had disappeared.

D. The complainant's version of the facts is as follows. A defect in the engine of the motor car had become apparent during the official trip because, on Dr. Ragheb's orders, they had taken a short cut to Bichpuri over a road not fit to drive on. During the drive the complainant drew Dr. Ragheb's attention to the knocking of the engine. On their arrival in Agra Dr. Ragheb asked him to have the motor car checked by a mechanic. The complainant found a mechanic and with his help pushed the car some two hundred metres from the car park and left it under a street lamp where the mechanic could look at the engine. On being told that the engine could not be mended the complainant went off to look for Dr. Ragheb but did not find him in his hotel room. With the mechanic's help he then pushed the car back to the car park. He denies having been ever under the influence of alcohol and maintains that he lost some personal belongings which had been locked up in the car.

E. In his claim for relief the complainant asks the Tribunal to order his reinstatement in the FAO and to award him damages for the moral and material prejudice that he has suffered.

F. The Organization asks that the complaint be dismissed on the grounds that the allegations against the complainant have been proved and his dismissal was therefore warranted.

CONSIDERATIONS:

The serious misconduct with which the complainant was charged occurred while he was the driver of a car for the use of Dr. Ragheb, the Kew Delhi project manager; it consisted of:

1. taking the car from the hotel parking space, where it should have remained from 6 p.m. on 31 January 1972 till 9 a.m. on 1 February, for a purpose of his own and returning it in a damaged condition; and
2. reporting for duty at 9 a.m. on 1 February in an intoxicated condition.

On the first charge it is not disputed that the engine of the car was in fact damaged. The evidence of the repairers shows that the damage was due to failure of oil pressure and that it would have been preceded by heavy knocking in the engine and by the lighting up of the oil pressure warning indicator. It is also not disputed that the car was absent from the parking place for part of the night .

The complainant's explanation is that the damage occurred during the journey to the hotel, that Dr. Ragheb instructed the complainant to have it repaired, that the complainant found a mechanic and that the two of them pushed the car about two hundred metres to a street light where they could examine it and that, having ascertained that it could not be repaired on the spot, they pushed it back again. Dr. Ragheb's evidence that the first part of this story is false is corroborated by that of Mr. Manpal Singh, who was present when the car arrived at the hotel; he heard Dr. Ragheb's instructions to the complainant to park the car and to return in the morning, nothing being said about repairing it. As to the second point, the complainant's story is without corroboration. He has never identified the mechanic and the story does not account satisfactorily for the recorded mileage.

The Tribunal accepts the evidence of Dr. Ragheb and concludes that in the circumstances the complainant's misconduct justified his dismissal under the regulations.

On the second charge Dr. Ragheb's evidence is that when the complainant reported in the morning "a strong smell of liquor was coming on his breath... indicating that he was still under intoxication". This evidence is corroborated by Mr. Singh and Mr. Tripathi. There is, however, no evidence that the complainant was unfit for duty and he was in fact quite capable of giving a coherent explanation, albeit a false one, of the damage to the car. To come on duty smelling of alcohol is reprehensible but does not amount to misconduct serious enough to justify dismissal. On this point the Tribunal concludes that this charge is not made out, but, since the first charge is by itself sufficient to justify dismissal, this conclusion is immaterial.

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 21 October 1974.

M. Letourneur
André Grisel
Devlin

Roland Morellet