

THIRTY-SEVENTH ORDINARY SESSION

In re HELEAN

Judgment No 281

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the United Nations Food and Agriculture Organisation (FAO) drawn up by Mr. William Brindley Helean on 25 August 1975 and brought into conformity with the Rules of Court on 15 September 1975, the FAO's reply of 18 December 1975, the complainant's rejoinder of 29 January 1976 and the FAO's surrejoinder of 4 March 1976;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

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. The complainant joined the staff of the FAO on 1 September 1965 at grade P.4. He still holds that grade, on an appointment of indefinite duration, and is employed in the Regional Bureau for Africa, Field Liaison Division. For some two years before joining the FAO he served as Deputy Resident Representative and later as acting Resident Representative of the United Nations in Liberia.

B. On 30 April 1974 an internal competition was announced to fill a P.5 vacancy for a senior field programme officer in the Africa Bureau, the complainant's service. He and fourteen others applied. On 16 September 1974 the Director of the Field Liaison Division gave the Special Inter-Departmental Selection Committee (SISCO) his views on the applicants and his recommendations for filling the vacancy. SISCO met on 7 October 1974 and endorsed the Director's recommendation for appointing a Mr. Zaoui, who, like the complainant, was a P.4 official in the Africa Bureau.

C. On 8 October 1974 the complainant appealed against that decision to the Director-General. On the Director-General's behalf the Assistant Director-General for Administration and Finance replied that he could not accede to the appeal since the selection procedures for filling vacancies had been fully complied with and the decision to appoint someone else had been in line with the rules. On 31 October 1974 the complainant appealed to the FAO Appeals Committee. In its report of 25 May 1975 the Committee found that the Organization had had no improper grounds for appointing another applicant and that no procedural impropriety could be established. It recommended the Director-General to dismiss the appeal. The Director-General accepted the recommendation and so informed the complainant by letter of 17 June 1975 the complainant is now impugning that decision.

D. The complainant maintains that he was the best candidate for the post, as was borne out by the fact that several times he had been asked to take over from the head of the service during the latter's absence. He believes that the choice of a candidate with less seniority smacks of favouritism and discrimination and he seeks to bear that out by alleging pressure to increase the quota of African staff in senior posts (the successful applicant comes from a North African country). In his claims for relief he asks the Tribunal to award him compensation in the form of promotion to grade P.5 or of other compensation adjudged appropriate in the circumstances.

E. The FAO denies that nationality had anything to do with the choice of the successful candidate and that there was favouritism or discrimination. It sees no valid grounds for challenging the decision. The choice of a candidate falls within the Director-General's discretionary authority, and the selection procedures for filling vacancies were observed and properly applied the FAO therefore asks the Tribunal to dismiss the complaint.

CONSIDERATIONS:

The complainant was one of fifteen candidates for a post in the Organisation and the decision appealed against is one in which the Director-General appointed a candidate other than the complainant. Such a decision falls within the discretionary authority of the Director-General and accordingly the Tribunal has only a limited power of

review. The Tribunal will not interfere with such a decision unless it was taken without authority, or violates a rule of form or procedure, or is based on an error of fact or of law, or if essential facts have not been taken into consideration, or if it is tainted with abuse of authority, or if a clearly mistaken conclusion has been drawn from the facts. It appears from the documents in the dossier that the decision impugned does not fall within any of these categories and accordingly the complaint must 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 4 October 1976.

M. Letourneur
André Grisel
Devlin

Roland Morellet