

***In re* CONNOLLY-BATTISTI (No. 4)**

**Judgment No. 294**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the United Nations Food and Agriculture Organization (FAO) drawn up by Mrs. Norah Connolly-Battisti on 22 December 1975, the FAO's reply of 3 November 1976, the complainant's rejoinder of 9 December 1976 and the FAO's surrejoinder of 23 February 1977;

Considering the applications to intervene filed by

Mr. Carlo Bianchi,  
Mr. Richard Patrick Bowen,  
Mrs. Elena Lamanna-Bernardini,  
Mr. Bruno Vicini,  
Mrs. Margaret Elizabeth Vyle;

Considering Article II, paragraph 5, of the Statute of the Tribunal, FAO General Rule XXXVIII.4, FAO Manual Sections 308.411 and 308(Appendix F) and Appendices III and IV to the FAO Staff Regulations;

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 30 August 1954. She holds a post as a research assistant at grade G.6, step XII.

B. At its 66th (June 1975) Session the FAO Council decided to adopt a new revised salary scale for General Service category officials, to take effect from 1 February 1975. Three additional steps were accordingly added to the salary scale for grade G.6 and a step increment was to be granted every two years. Staff members with a record of at least two years' satisfactory service at G.6, step XI - the highest step in that grade before the revision of the scale - at once received an "incremental" step, and the complainant, who had been at step XI since September 1968, was one of them.

C. The complainant took the view that, having served for seven years at step XI, she ought to have been granted three additional steps; in obtaining only one she had fared no better than staff members who had served for only two years at that step; and by "wiping out" in this way several years of her period of service the Administration had granted her a lower salary and hence a smaller pension than those she was entitled to. On 25 August 1975 she therefore made an appeal to the Director-General, who dismissed it in a letter of 23 September.

D. In September and October 1975 the complainant went before the FAO Appeals Committee, which heard her case in March 1976. It held that, because of her seniority at grade G.6, step XI, and for other reasons she ought to be given three steps and advanced to step XIV. It therefore made a recommendation to that effect to the Director-General. By letter of 15 April 1976 the Director-General told the complainant that he did not feel bound by the Committee's recommendation and upheld his decision to grant her only one step.

E. The complainant contends that what the FAO Council decided was not that the Director-General should grant the staff members concerned only one additional step and discount their seniority at step XI of grade G.6. In her opinion, that is even contrary to the spirit of the Council's decision. In granting such staff members only one incremental step the Administration in effect discounted their greater seniority and reduced their ultimate pension rights and repatriation and termination benefits. The complainant therefore asks the Tribunal to order the Organization to grant her, with effect from 1 February 1975, the salary and pensionable remuneration pertaining to grade G.6, step XIV. The interveners ask that they be granted the step to which they would have been entitled had account been taken of their seniority at grade G.6, step XI.

F. The FAO replies that the Director-General's decision to grant an incremental step to staff members who had

been at grade G.6, step XI, for two years or more by 1 February 1975 was the most favourable decision consistent with existing rules and cannot give rise to any claim for further increments. The impugned decision is entirely consistent with the terms of the Council's decision. The complainant has failed to demonstrate any breach of the terms and conditions of her employment or of any applicable Staff Regulation, Staff Rule or Manual Section. She is therefore not entitled to further step increases which would put her at step XIV with effect from the date of introduction of the new salary scale. The FAO therefore asks the Tribunal to dismiss the complaint.

#### CONSIDERATIONS:

1. The within-grade salary increment is a feature of the salary structure of many international organisations and in the FAO it is defined in Manual Section 308.411 as an increase in pay from one step to the next higher step within an established grade, on the basis of satisfactory service during a qualifying period: in so far as the length of the period is material in this case, it is two years. This definition must be considered in the light of well-established practice. If it were looked at entirely by itself it might perhaps be thought that the movement from a lower to a higher step was a promotion dependent on individual merit, a selection to be made from those who had become eligible for promotion by service at the lower step for the qualifying period or more. In practice, however, the qualifying period is virtually a fixed period and an officer whose increment was withheld otherwise than on the grounds of unsatisfactory service would be recognised as having cause for complaint. While grades are distinguishable from one another by a difference in the nature of the duties performed and in the degree of responsibility undertaken, steps within grades are not similarly distinguishable. In fact, the increment is simply a way of rewarding seniority and the accumulated experience that goes with it, and the number of an officer's step is simply a convenient way of describing the salary level to which he has attained. It is plain from the matters recorded in paragraph 3 below that, whatever the origin of the increment, it is now simply part of a salary scale.
2. The complainant joined the Organization on 13 August 1954. In September 1968 she reached step XI in grade G.6 and by 1 September 1970 had served for a further two years at that step. At that time there was no higher step in any grade so the complainant remained at the same salary level. In 1971 the Council at its 55th Session approved the addition of three steps, XII, XIII and XIV, in all grades except grade G.6. So the complainant still remained at the same salary level. It is not disputed that at all material times her service was satisfactory.
3. In May 1975 a General Service Salary Board, set up under a methodology agreed between management and staff, presented to the Finance Committee a revised salary schedule, based upon the methodology, as appropriate for introduction as of 1 February 1975. The Board's accompanying recommendation stated that the basic aim was to establish the framework for the bulk of the secretarial and clerical posts, i.e. the span from the minimum for the beginner to the maximum for the very experienced clerk. The Board drew attention to the fact that in accordance with the methodology the new scale provided for the addition of three seniority steps to the G.6 grade to bring it into line with the other five grades. The Finance Committee recommended to the Council that the Board's recommendation should be accepted. At its session in June 1975 the Council approved this recommendation and decided that "a revised General Service salary schedule as given in Appendix H to this report be introduced with effect from 1 February 1975".
4. The question in this case is about the effect of this decision upon the complainant. By 1 February 1975 she had spent six years and five months at step XI, i.e. approximately four- and-a-half years over the qualifying period. One way of looking at this is to say that she had spent four-and-a-half years marking time because there was then no way forward. The decision opened the way and entitled her to go forward on to step XII but without getting any benefit from the fact that she had spent six-and-a-half years qualifying instead of the prescribed two. The complainant contends that this way of looking at the matter is unrealistic and unfair. It is unrealistic because it treats her service in grade G.6 as a series of qualifying periods instead of as a span. It is unfair because it means that an officer who on 1 February 1975 had served just two years at step XI would be put on an equality with her although she was in fact four-and-a-half years senior.
5. The Director-General's approach to the problem was to treat the Council's decision as substituting Appendix H for the existing Appendix, i.e. as substituting the new salary scale with three additional steps in grade G.6 for the old scale. Manual Section 308.411 then had to be applied to the new scale in the same way as to the old. He could not advance the complainant to step XIII or above without nullifying the qualifying period between two steps. The Organization adds in its reply that, if the Council had intended that the new scale should be applied retroactively to staff members at step XI, it would have said so specifically.

6. In the opinion of the Tribunal this is not the correct approach. It is unnecessary to determine whether the Council's decision automatically amended the Rule to which the old salary schedule was attached or whether it should more correctly be regarded as an instruction to the Director-General to take the necessary formal steps to effect the introduction of the new schedule. Whichever it be, it is not to be expected that the Council would itself consider and provide in detail for all the implications of the change. The Council's function in relation to the staff is to settle or approve fundamental conditions of service and basic rights, duties and obligations; see General Rule XXXVIII.4 and Staff Regulation 301. This is done by Regulations laying down "broad principles" to be supplemented by Rules (of which Manual Section 308.411 is one) which the Director-General has power to make and amend. He was therefore in error in supposing that he had no power to do otherwise than apply Manual Section 308.411 literally to the new situation.

7. It is, however, not merely a question of what the Director-General is at liberty to do. He is under an obligation to use his powers so as to ensure that an amendment authorised by the Council does not in its application result in inequality of treatment which the Council cannot be supposed to have intended. It is of course inevitable that, if a salary scale has a maximum figure, there can be no further reward for length of service after the maximum has been reached. Whether this is fair or not (and clearly one of the objects of the new salary scale was to fix a span that would as far as possible eliminate it), it is the same for all. But when a halt has been made and thereafter progress has been resumed, it will not be the same for all. Staff members will be differently affected according to the length of the halt and from this point of view the length of the halt is bound to be arbitrary. There were doubtless good administrative reasons in 1971 for not extending the scale in grade G.6 as in the other grades, but the consequence is that, when it was extended, the complainant was less well treated than others who had been moving forward while she was stationary. It is not at all a question of retroactivity. The complainant has lost forever the increments which she would have got between 1 September 1970 and 1 February 1975 if the change had been made retroactive to the former date. The point relates to the period of her service after 1 February 1975. The change that came into force on that date confers an advantage on all staff members in grade G.6, but it is an advantage that is substantially less for the complainant and interveners than it is for the others.

8. Manual Section 308.411 is not framed to cover a situation arising from the sudden creation of three additional steps. The Director-General was right in thinking that the Rule could not be interpreted in a way that would equalise the effect of the change. Where he was wrong was in thinking that he had neither the power nor the duty to equalise the effect of the change by some other means consistent with the principle that the object of the salary scale is to reward length of service and experience. In short the change, as changes frequently do, required some transitional provision to cover exceptional cases and it was the duty of the Director-General to make such provision.

9. The Organization contends that the complainant has failed to demonstrate any breach of her conditions of employment or of any Staff Regulation. The answer to this is that the principle of equality of treatment is an implied condition of the employment and the introduction of an amendment which fails to observe it is a breach of that condition.

#### DECISION:

For these reasons,

The appeal is allowed, the decision of the Director-General of 15 April 1976 is quashed and it is ordered that the Director-General take such steps as are necessary to ensure that:

1. The complainant is treated as if on 1 February 1975 she had been at step XIV in grade G.6 for a period of five months, and
2. Each intervener is treated in the same way in accordance with his or her length of service in the grade and contingent upon certification of satisfactory service in the usual manner.

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 June 1977.

André Grisel  
Devlin  
Roland Morellet

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