

In re CORREDOIRA-FILIPPINI

Judgment No. 312

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the United Nations Food and Agriculture Organization (FAO) drawn up by Mrs. Amanda Corredoira-Filippini on 13 October 1975 and brought into conformity with the Rules of Court on 20 October 1975, the FAO's reply of 2 February 1976, the complainant's rejoinder of 9 April 1976, the FAO's surrejoinder of 11 June 1976, the complainant's further memoranda of 24 June and 16 July 1976 and the FAO's reply thereto of 11 February 1977;

Considering Article II, paragraph 5, of the Statute of the Tribunal, FAO Staff Regulation 301.042, FAO Staff Rules 302.4091, 302.4093 and 302.907 and the Director-General's Bulletin (No. 72/36) of 31 July 1972;

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. On 19 October 1970 the complainant joined the staff of the FAO on a fixed-term three-year appointment at grade P.1 as a "language training officer" for Spanish. She left the FAO against her will on 18 October 1973 on the expiry of her appointment.

B. Because of the FAO's financial difficulties the post she had held till then was first "frozen" and then abolished. After her departure she unsuccessfully applied for several vacancies. On 18 December 1973 she wrote to the Assistant Director-General, Administration and Finance Department, asking him to consider her case and consider whether there had been full compliance with the Director-General's Bulletin of 31 July 1972, No. 72/36, on the measures entailed by the FAO's financial difficulties and whether in her case the Director-General had kept his repeated assurances of satisfactory and humane settlement of problems of staff members affected by the financial crisis. In his reply of 15 February 1974 the Assistant Director-General told her that Bulletin No. 72/36 had been complied with in that she had been given two months' notice, and that the FAO's attempts to find her another post had proved of no avail.

C. The complainant appealed to the FAO Appeals Committee on the grounds that the decision not to renew her appointment had been unwarranted and had been prompted by the hostility of her supervisors, particularly her immediate supervisor, Miss Conlon. In its report of 16 April 1975 the Committee said that despite the financial situation it was not convinced of the need to abolish the complainant's post. It then expressed the view that the Administration's decision not to renew her appointment, though not in itself contrary to the rules, had undoubtedly been prompted by the misrepresentations of her supervisors, whose relations with her did not afford her the safeguards of impartiality needed in such circumstances. The Committee therefore recommended that she should be given employment in the FAO and preferential consideration for appointment to any vacancy in her former service or, failing that, to some other post compatible with her training and experience.

D. After considering the Committee's report the Director-General informed the complainant by letter of 24 July 1975 that, though willing to consider applications she made for any vacancy suited to her qualifications, he could not concur with the Committee's recommendation for giving her priority in appointment to a vacancy in her former service: the FAO could not promise her preference over other applicants, the non-renewal of her appointment having been quite regular and not motivated by any prejudice against her. That is the decision she now impugns.

E. The complainant asks the Tribunal to declare that she lost her expectations of renewal of her appointment because misleading advice was given to the FAO, that the Director-General's decision should therefore be rescinded as null and void and that the FAO is vicariously liable for the prejudice she suffered owing to its agents' unlawful action; and to order the FAO to pay her damages amounting to one-and-a-half years' salary which at present corresponds to the grade and step she held in October 1973, plus interest at 8 per cent a year, and 60,000

Belgian francs towards costs.

F. The Organization asks the Tribunal to dismiss the complaint. It contends that the Director-General's authority to take the impugned decision is beyond dispute that decision is not tainted with any formal or procedural flaw and the rules laid down in Bulletin 72/36 were fully respected. It has yet to be proved that the decision was not based on objective assessment of all the relevant facts. The complainant's allegations of prejudice are not borne out by any evidence and are pure speculation and conjecture. She has not proved that mistaken conclusions were drawn from the dossier or that authority was exercised for any purpose but to serve the FAO's interests. The Staff Rules provide for the automatic expiry of fixed-term appointments and state that such appointments do not give rise to any expectancy of their renewal. The complainant's claim to preferential consideration for reinstatement cannot be accepted, but the Organisation is willing to consider favourably any application she may make for a vacancy, should any arise.

CONSIDERATIONS:

A decision as to whether or not to renew a fixed-term appointment falls within the Director-General's discretionary authority. Hence the Tribunal will quash the decision only if 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 the decision is tainted with abuse of authority, or if a clearly mistaken conclusion has been drawn from the facts.

The complainant held a fixed-term appointment with the FAO which expired on 18 October 1973. She had no right to its renewal and indeed was not granted a new appointment.

Moreover, the allegedly misleading advice given to the Director-General about the complainant's abilities and qualifications can have played no part in the impugned decision, which was taken for budgetary reasons cogently explained by the Organization in the course of the proceedings. In the circumstances, the Appeals Committee's finding that she was assiduous, able and wholly commendable and that her retention in employment would have served the FAO's interests was no reason for the Director-General, who bears sole responsibility for the smooth running of the Organization, not to exercise his authority and, on the expiry of the complainant's appointment, either refuse her a new appointment - and that is what he did - or conclude a new contract with her or with someone who had different linguistic skills.

It appears from the documents in the dossier that on all these points the appraisals made and the decisions taken by the Director-General are tainted with none of the above-mentioned flaws which entitle the Tribunal to interfere.

In particular the Director-General did not act unlawfully in abolishing the Spanish-language post held by the complainant up to 18 October 1973, creating a new English-language post and preserving a French-language post. He made an appraisal of fact which, on these points, must prevail.

On the Appeals Committee's recommendation the Director-General tried to find another post in which the complainant might be reinstated. He committed no abuse of authority in trying to find such a post among those for which the complainant was qualified and not giving priority to the unit in which she had worked.

It appears from the foregoing that the impugned decision is not tainted with any irregularity and that the complainant's claims for compensation are therefore unfounded.

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 June 1977.

(Signed)

M. Letourneur
André Grisel
Devlin

Roland Morellet

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