

FORTIETH ORDINARY SESSION

In re HAYWARD

Judgment No. 336

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the United Nations Food and Agriculture Organization (FAO) by Mr. Lionel Alan Walter Hayward on 26 November 1976, the FAO's reply of 8 July 1977, the complainant's rejoinder of 27 July 1977 and the FAO's surrejoinder of 9 September 1977;

Considering Article II, paragraph 5, and Article VII, paragraphs 1 and 3, of the Statute of the Tribunal, FAO Staff Regulation 301.111 and FAO Staff Rules 302.3122 and 303.131;

Having examined the documents in the dossier and disallowed the complainant's application for oral proceedings;

Considering that the material facts of the case are as follows:

A. On 16 December 1975 the FAO told the complainant that his appointment would end on 16 January 1976. The Government of Malta, a member State, had informed the FAO that the complainant owed £17,500 in tax to the inland revenue of Malta and in accordance with Staff Rule 302.3122 the FAO withheld the complainant's termination entitlements, which amounted to some \$9,670. The complainant denies that he owes tax to the inland revenue of Malta.

B. In his complaint, which is dated 26 November 1976 and postmarked 1 December, the complainant asks the Tribunal to order the FAO to pay him:

(a) the sum of \$9,766 in termination entitlements;

(b) interest on that sum at the rate of 10 per cent a year from 16 January 1976, the date on which his appointment ended; and

(c) \$5,000 as compensation for the prejudice he has suffered.

C. At the end of 1976, as it had informed the Maltese Government, the FAO released the sums due to the complainant and told him that he would be paid his termination entitlements and a sum of about \$1,000 representing the balance of salary due, plus interest at 5 per cent. The complainant did not agree to that rate of interest. The FAO refused his claim for payment of interest at 10 per cent.

D. Having received the sums mentioned in paragraph C, apart from the 5 per cent interest, which he returned to the FAO, by letter of 14 April 1977 to the Registrar of the Tribunal the complainant said that he waived claim (a) but confirmed claims (b) and (c) as set out in paragraph B above.

E. The FAO contends that the complaint is irreceivable under Article VII, paragraph 1, of the Statute of the Tribunal on the grounds that the internal means of redress have not been exhausted. It therefore asks the Tribunal to dismiss the complaint.

CONSIDERATIONS:

The complainant filed a complaint with the Tribunal on 26 November 1976. The Organization objects to it as irreceivable in that the complainant had not, as required by paragraph 1 of Article VII, exhausted such other means of resisting the decision impugned as were open to him under the applicable Staff Regulations. The complainant replies that the complaint is receivable under paragraph 3 of Article VII in that a claim was notified to the Administration by letter dated 30 July 1976 and the Administration failed to take a decision upon it within sixty days.

Paragraph 3 of Article VII does not require a claim to be made in any particular form. There must however be a

clear indication that the Administration is being asked to take a decision; a letter whose object is to initiate a discussion will not do. The letter of 30 July 1976 is not included in the dossier; from references to it made by the parties it would appear to come into the latter category rather than the former. But in any event on 10 November 1976 the complainant wrote to the Organization in terms which showed that he wished to discuss and settle his claim. The interview was granted and an appointment made "to discuss your problems". The interview never took place: before the date proposed the complainant changed his mind and on 26 November filed his complaint with the Tribunal.

It is true that, assuming the letter of 30 July 1976 to constitute a claim requiring a decision, by the end of September sixty days had elapsed without a decision being given. But a complainant is not thereby obliged to treat silence as an adverse decision. He may prefer to continue or to resume the correspondence in the hope of obtaining a favourable decision. If he continues or reopens the case in this way, he must wait for another period of sixty days' silence before he can treat his claim as rejected.

Since the complainant has not obtained a final decision within the meaning of Article VII, the complaint is irreceivable.

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 8 May 1978.

(Signed)

M. Letourneur
André Grisel
Devlin

Roland Morellet