

FORTY-THIRD ORDINARY SESSION

***In re* AL-ZAND**

Judgment No. 389

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the United Nations Food and Agriculture Organization (FAO) by Mr. Osama A. Al-Zand on 1 May 1978, the FAO's reply of 25 August, the complainant's rejoinder of 7 September and the FAO's surrejoinder of 11 October 1978;

Considering Article II, paragraph 5, of the Statute of the Tribunal, FAO Staff Regulations 301.011 and 301.0913 and FAO Manual section 370.831(v);

Having examined the documents in the dossier, oral proceedings having been neither applied for by the parties nor ordered by the Tribunal;

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

A. The complainant, who is a citizen of Iraq, was appointed to the staff of the FAO on 20 June 1975 as a P.4 economist and sent out to Tunis to serve on a project for rural development. His contract was for a period of 33 months, including 12 months on probation. The project was being managed, not by an FAO official, but by a senior Tunisian official, Mr. Marrakchi, who was known as the "National Director". From the start the chief of project was dissatisfied with the complainant's services and on 11 March 1976 the FAO terminated his appointment after ten months, with effect from 10 April 1976, in accordance with Staff Regulation 301.0913, which states that the Director-General may terminate the appointment of a staff member serving a probationary period if it is in the Organization's interests. This decision was confirmed by the Director-General in a letter dated 9 June 1976.

B. On 5 April 1976 the complainant appealed to the Appeals Committee. The Committee held that the FAO had been wrong to wait for ten months before telling him that he was not suitable for his post. It found that neither the FAO Senior Agricultural Adviser nor the resident representative of the United Nations Development Programme (UNDP) had been informed or consulted about the complainant and that there appeared to have been interference in communications between him and his technical division; that added to the impression that the whole question had been dealt with secretly and on the basis of personal contacts, contrary to the principles of good management. The Committee nevertheless held that the FAO had not committed a breach of the Staff Regulations or Staff Rules. It therefore recommended dismissing the appeal; but, because the complainant's professional competence had never been called in question and he had been debarred on mistaken grounds from competing for a post in Cairo after his termination, it also recommended giving special consideration to offering him an appointment to any suitable post which fell vacant in future. On 13 March 1978 the Director-General informed the complainant that his appeal was dismissed.

C. The complainant contends that he was on excellent terms with the Tunisian and international staff of the project and enjoyed the full support of his technical branch, which was satisfied with his services. He blames his dismissal on Mr. Marrakchi who wanted to get rid of him and replace him with a friend of his own. The senior FAO official on the same project, he maintains, helped Mr. Marrakchi in repeated attempts to get headquarters to remove him. The Director-General was thus misinformed about him and based the decision on mistakes of fact. In particular, the Tunisian authorities never asked to have him withdrawn. Yet in an office memorandum of 3 March 1976 the Director of Personnel informed him that the reason why he could not be appointed to a vacancy in Cairo was that "his services have been unsatisfactory, and the Government of Tunisia has requested his immediate withdrawal". That memorandum was also mistaken, says the complainant, in that his services have never been described as unsatisfactory: the grounds given for the decision of 16 February 1976 to terminate his appointment were unsuitability for his assignment. The letter of 16 February 1976 states: "Mr. Al-Zand was summoned to Headquarters for discussions regarding his performance and it was ascertained that he was indeed lacking in the practical knowledge necessary for implementing the project objectives, and had great difficulty with French, which

made it difficult for him to communicate with his colleagues and counterpart personnel". Lastly, by giving in to Mr. Marrakchi the Director-General committed a breach of Staff Regulation 301.011, which states that the responsibilities of FAO staff members are "exclusively international" and laid him under a duty not to tolerate interference by a Tunisian official. The complainant asks the Tribunal to quash the impugned decision and to order payment of his salary and allowances until 31 March 1978, the correction of all defamatory misinformation and libellous reference to "unsatisfactory service" in the records of the FAO and compensation for damages to his reputation and career.

D. In its reply the FAO points out that the complainant does not deny the serious difficulties which arose between him and the National Director of the project. It dismisses his allegation that the National Director was prejudiced against him and contends that in any event the FAO was right to separate two men who did not get on and therefore to remove him. It was in the interests of the Organization - a consideration to which Staff Regulation 301.0913 refers, and on which the termination of appointment was based - to run the project properly. After the complainant left he was not replaced by a friend of the National Director: on that score the complainant's allegations are therefore groundless. Moreover, there is clear evidence that despite his excellent academic qualifications the complainant did have difficulty in carrying out his specific duties. His French was also inadequate. Thus he proved unsuitable for the post to show that the Tunisian authorities did indeed ask to have him removed, the FAO submits the text of a letter sent to the complainant and dated 7 May 1975 in answer to an enquiry from him and on the instructions of the head of the office of the Minister of Agriculture. The letter said that, although his professional qualifications were not in doubt, he "was not suited to the requirements of the project". The refusal of the post in Cairo was not based solely on the grounds mentioned by the complainant but on others as well; for example, he was not given the same priority as experts affected by the UNDP crisis. Lastly, the complainant misunderstands Staff Regulation 301.011. The fact that the Director-General chooses to consider information from a government does not mean that he is receiving instructions from an external source. Accordingly, the FAO asks the Tribunal to dismiss the complaint.

E. In his rejoinder the complainant says that the FAO's reply suggests that when he was summoned to Rome for discussions his technical division declared him unsuitable for his assignment. In fact the division expressed satisfaction with his performance, as is borne out by several items of evidence. Noting that the FAO refers to the letter dated 7 May 1975 as proving that the Tunisian authorities had asked for his withdrawal, the complainant points out that that letter was written and even signed by Mr. Marrakchi, who, he believes, intercepted his enquiry to the Minister and sent his own personal answer without letting either the Minister or the head of the Minister's office have a copy.

F. In its surrejoinder the FAO contends that the technical division did support the decision to withdraw the complainant from Tunisia. It refers to the items which the complainant himself cites in his rejoinder and maintains that in fact they show that the division was not wholly satisfied with his performance. The project adviser, who was the senior FAO official and the deputy of the National Director, also wanted him to leave. As for his performance, his dismissal was not based on Manual section 370.831(v) (unsuitability for a post or assignment) but on Staff Regulation 301.0913 (termination during probation in the interests of the Organization). Lastly, although the letter dated 7 May 1975 was signed by Mr. Marrakchi, it could not conceivably have been written without informing the Minister or the head of the Minister's office. After all, the first paragraph reads: "The Minister of Agriculture has forwarded to me your inquiry of 26 March 1976 and asked me to inform you that the decisions taken in your case were notified to and approved by the Ministry of Agriculture."

CONSIDERATIONS:

As to the review of the impugned decision:

1. On 20 June 1975 the complainant was given a P.4 appointment for a period of about 33 months, including 12 on probation. He was to work as an economist on a project for improving olive production in Tunisia.

On 11 March 1976 he was informed that, in accordance with Staff Regulation 301.0913, his appointment would be terminated with effect from 10 April 1976. That regulation states that the Director-General may at any time terminate the appointment of a staff member serving a probationary period if, in his opinion, such action would be in the interests of the Organization. The wording of the provision makes it clear that the Director-General enjoys wide discretionary authority.

Hence the Tribunal will quash the impugned decision, which is based on Staff Regulation 301.0913, only if it was taken without authority, or violated a rule of form or of procedure, or was based on a mistake of fact or of law or if essential facts were left out of account, or if the decision is tainted with abuse of authority, or if clearly mistaken conclusions were drawn from the facts.

As to the merits:

2. In a letter dated 9 June 1976 to the complainant the Director-General criticised him merely for his failure to establish satisfactory working relations with the National Director of the project and so to resolve differences which it was for him, as the junior officer, to overcome. In fact it appears from an office memorandum addressed on 16 February 1976 to the Director-General and approved by him that the Organization has other grounds for criticism of the complainant. That memorandum states, for example, that he was lacking in the practical knowledge necessary for implementing the project objectives and that his lack of proficiency in French made it difficult for him to communicate with his colleagues and counterpart personnel. It adds that the Tunisian Government had requested his immediate withdrawal so that the operation of the project would not be further prejudiced. Thus there were three reasons for the impugned decision: the complainant's failure to get on with the National Director of the project, his unsatisfactory performance and the request from the Tunisian Government. It appears from paragraph 3 below that his unsatisfactory performance affords adequate grounds for the decision, and there is no need to consider the other two reasons.

3. On 2 October 1975 the National Director of the project and an FAO staff member known as the project adviser sent to FAO headquarters the work programme submitted by the complainant. They expressed the view that the paper was too academic and failed to answer some questions they had raised. On 11 December 1975 they repeated their criticisms and said that the complainant was unable to do practical work and did not know French well enough, though they did not question his ability as a research worker or as a teacher. They asked that he should be transferred as soon as possible. On 29 January 1976 they urgently repeated their request and supported it with new arguments, and in a telex of 3 February 1976 they repeated it yet again.

Since those criticisms were made by the complainant's immediate supervisors, who were in a position to form an opinion about his work, they demanded attention, and the FAO did in fact pay attention to them. In December 1975 it summoned the complainant to headquarters. In November 1975 and in January 1976 FAO officials talked about his case to the National Director of the project. In the circumstances it was open to the Director-General, without exceeding or abusing his discretionary authority, to conclude that it would not be in the FAO's interests to continue to employ the complainant.

4. True, the complainant contends that he was the victim of prejudice on the part of the National Director of the project. His allegation is not, however, borne out by evidence which warrants setting aside the impugned decision. The reports which the complainant adduces as evidence are signed not only by the National Director but also by the project adviser, who is an FAO official. There is no reason to suppose that the latter lacked the courage to differ from the National Director. Nor are there any grounds for insinuating that the National Director wanted to replace the complainant with a friend of his own. The person who took over from the complainant in Tunis stayed for only one or two months and was not therefore really his successor.

It is immaterial that when the FAO appointed the complainant it was or ought to have been aware of his lack of proficiency in French. The fact that it put him on one year's probation shows that it did not regard itself as bound by any opinion it formed or may have formed at the time when it concluded the contract.

Nor did the FAO delay unduly before taking action. The National Director and the project adviser wrote to it in October 1975, and it was in February 1976 that it took the impugned decision, which it notified to the complainant in March. In other words it merely took time to think about the matter, and it cannot be held liable for that.

True, it is surprising that during a visit to Tunis in January 1976 a representative of the FAO refused the complainant's request for an interview. No explanation has been given for that attitude, but it does not taint the impugned decision with any flaw which entitles the Tribunal to interfere.

Lastly, the complainant is mistaken in relying on a letter in which an FAO official refers, not to his unsatisfactory performance, but to his "unsuitability". It appears from the context that the author of that letter considered the complainant to be "unsuitable" because he was not pragmatic or, in other words, because his performance was

unsatisfactory. "Unsuitable" here means "unsatisfactory".

5. Hence the complainant's inability to perform his duties satisfactorily, and that alone, affords sufficient reason for regarding the termination of his appointment as being in the FAO's interests. The decision must therefore be upheld and the complaint dismissed.

In any event, since the complainant failed to come up to the FAO's expectations during the probationary periods, he had no right to ask for a transfer to another post. Hence the refusal to assign him elsewhere was correct. Besides, insofar as that decision was taken on the grounds of his "unsatisfactory" performance it is warranted for a reason of act which the Tribunal will not question. It is immaterial that the decision also mentions a request from the Tunisian Government for the complainant's immediate withdrawal. Even if such a request had not been made, the FAO was not bound to find alternative employment for a staff member whose appointment was correctly terminated during the probationary period.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, Vice-President, the Right Honourable Lord Devlin, P.C., Judge, and Mr. Hubert Armbruster, Deputy Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Bernard Spy, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 24 April 1980.

(Signed)

André Grisel
Devlin
H. Armbruster

Bernard Spy