

**A. and others**

*v.*

**FAO**

**125th Session**

**Judgment No. 3931**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaints filed by Ms A. A., Mrs J. A., Mr J. A., Ms P. A., Ms R. A., Mr H. B., Mr P. B., Mr S. B., Ms P. C., Mr . P. D., Mr C. D'C., Mr S. D., Mrs D. D., Mr N. D., Mr A. G., Mr K. G., Mrs N. G. J., Ms H. Kr., Ms A. J., Ms S. K., Ms S. Y. K., Mr A. K., Mr S. K., Mr G. M., Mr R. M., Mr P. M., Mr S. N., Ms P. P., Mr U. P., Mr R. R., Ms D. R., Mr R. S., Mrs C. S. A., Mr P. S., Mr R. S., Mr C. S., Ms M. S., Mr J. S., Ms R. S., Mr A. S. and Mr N. A. T. against the Food and Agriculture Organization of the United Nations (FAO) on 22 June 2015 and corrected on 24 July, the FAO's reply of 26 November 2015, corrected on 4 January 2016, the complainants' rejoinder of 14 April, corrected on 29 April, the FAO's surrejoinder of 19 August 2016, the complainants' additional submissions of 11 July 2017 and the FAO's final comments of 26 July 2017;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to hold oral proceedings, for which none of the parties has applied;

Considering that the facts of the case may be summed up as follows:

The complainants contest the decision to apply new salary scales in New Dehli (India) as from 1 November 2014, which show a salary

freeze for staff members already in service and a lower salary for new staff.

A comprehensive salary survey was carried out by the United Nations Office of Human Resources Management (UN/OHRM) in New Delhi in 2013. The changes to the salary scales applicable in New Delhi were embodied in an Administrative Order issued by the United Nations on 1 October 2014. That decision was communicated to all Heads of UN agencies in New Delhi on 29 October 2014, and to staff of the World Food Programme (WFP), which is an autonomous joint subsidiary programme of the United Nations and the FAO, on 1 December 2014. They were informed that two salary scales would apply. The salary of those hired on or before 31 October 2014 was frozen and they would continue to receive their salary and within-grade increment as per the United Nations salary scale of 1 July 2012. Staff members appointed on or after 1 November 2014 would receive the salary stated on the revised United Nations salary scale, which entered into force on 1 November 2014. This new salary scale showed that salaries were reduced by 19.4 per cent for staff members in the National Professional Officer (NPO) category and 13.4 per cent for those in the General Service (GS) category.

In December 2014 the complainants, who were staff members of the WFP, filed an appeal with the Executive Director of the WFP against the Administrative Order of 1 October 2014. The complainants were recruited prior to 31 October 2014 and held a position in the GS category or in the NPO category.

On 24 March 2015 the Executive Director of the WFP rejected the appeals. She concluded that available evidence did not show that the process followed in establishing the contested salary scales was improper. Given the exceptional circumstances of the case, she informed the complainants that she had asked the Director-General of the FAO to agree with her position and to communicate to them a final decision with respect to their appeals.

On the same day, or a few days later, the Director-General of the FAO communicated to each complainant that he agreed with the decision of the Executive Director of the WFP. He added that his letter

constituted a final decision that they could appeal directly to the Tribunal if they so wished. That is the decision each complainant impugns before the Tribunal.

The complainants ask the Tribunal to quash the decision of the FAO's Director-General confirming the introduction of the salary scales resulting from the 2013 comprehensive salary survey, as reflected in the complainants' salaries paid by the WFP since November 2014. They also ask the Tribunal to order the "re-determination of salaries", the payment of interim salary adjustments corresponding to the amounts that would have been due if the impugned decision had not been adopted, and the payment of any sum that may be due to them as a consequence of the requested "re-determination" of salaries. They also seek compensation for any financial and non-financial losses that they may have faced due to the implementation of the impugned salary survey result. They further claim costs "not limited to legal and administrative costs".

The FAO asks the Tribunal to dismiss the complaints as irreceivable *ratione materiae* for failure to identify an administrative decision that falls within the Tribunal's competence, and subsidiarily as unfounded.

### CONSIDERATIONS

1. These complaints concern a decision to change the salary scales applicable to the GS staff and NPOs located in New Delhi. The changes were based on the results of a salary survey by UN/OHRM of salaries in New Delhi undertaken in 2013. The decision was embodied in an Administrative Order in Dossier 2-1, New Delhi, dated 1 October 2014. The complainants claimed that the contested decision was illegal on a number of bases including alleged material flaws in the survey methodology. They each maintained an internal appeal in a Memorandum of Appeal, in a common form, dated 24 December 2014. The subject matter of the appeal was identified as the "Administrative order received on 1 October 2014 vide Dossier 2-1 New Delhi" and incidentally the survey itself. On 24 March 2015, the Executive

Director of the WFP informed the complainants that their respective appeals were rejected, though he asked the Director-General of the FAO to confirm that he agreed with her position. This occurred and the Director-General added in his letter of confirmation of March 2015 that the letter constituted a final decision and the staff member concerned could appeal directly to this Tribunal.

2. There are 41 complainants. In the complainants' common brief, they raise the same issues of fact and law and seek the same redress. Accordingly, their complaints are joined and will be the subject of a single judgment.

3. In its reply, the FAO challenges the receivability of the complaints. The result of the impugned decision was that the salaries of staff who had been recruited before 1 November 2014 would be frozen and staff recruited after that date would receive salaries under a new salary scale. All the complainants were recruited before 1 November 2014. An aspect of the Organization's argument is that the freezing of salaries results in the continued payment of pre-existing salaries with no injurious effect. However, an argument to the same effect in relation to a salary freeze was rejected by the Tribunal in Judgment 3740, consideration 11. It is unnecessary to repeat the analysis that, with one important qualification, is apt to apply in the present case. The qualification is this. In the case leading to Judgment 3740 the complainants lodged internal appeals against "the individual administrative decisions to apply to [each complainant] the statutory decision consisting of the revision of the remuneration of the [General Service category] Staff stationed in Rome" as reflected in their respective February 2013 pay slips. Challenging a pay slip is an orthodox and accepted mechanism whereby an individual staff member can challenge a general decision as and when it is implemented in a way that affects or is likely to affect that individual staff member.

4. In the present case, the complainants' causes of action are not based on pay slips. They seek to challenge the general decision embodied in the Administrative Order of 1 October 2014 vide

Dossier 2-1 New Delhi. They cannot do so. The distinction between challenging a general decision and challenging the implementation of the general decision as applied to an individual staff member is not a barren technical point to frustrate individual staff members from pursuing their rights or protecting their interests. It is a distinction rooted in the nature and extent of the jurisdiction of the Tribunal conferred by the Tribunal's Statute. The Tribunal must act within the limits established by the Statute. There are many statements in the Tribunal's case law about the nature of this jurisdiction and its limits. One example of a comparatively recent discussion of those limits and how they arise from the Statute is found in Judgment 3642, consideration 11. As the Tribunal observed in Judgment 3760, consideration 6: "[t]he jurisdiction of the Tribunal is, under the Statute construed as a whole, concerned with the vindication or enforcement of individual rights (see, for example, Judgment 3642, under 11)."

5. The complainants seek to avoid a conclusion that the complaints are irreceivable by pointing to the relief sought in the Tribunal and commentary in paragraphs 85 and 86 of the brief which referred to the complainants' salaries. In the present case the subject matter of the complaints is determined by the subject matter of the internal appeals. On a fair reading of the Memorandum of Appeal of 24 December 2014, it is the decision in the Administrative Order that is challenged and not a pay slip reflecting the implementation of that order.

6. The complaints are irreceivable and should be dismissed.

#### DECISION

For the above reasons,  
The complaints are dismissed.

In witness of this judgment, adopted on 6 November 2017, Mr Giuseppe Barbagallo, President of the Tribunal, Ms Dolores M. Hansen, Judge, and Mr Michael F. Moore, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 24 January 2018.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

MICHAEL F. MOORE

DRAŽEN PETROVIĆ