

FORTY-THIRD ORDINARY SESSION

In re CONNOLLY-BATTISTI (No. 7)

Judgment No. 403

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the United Nations Food and Agriculture Organization (FAO) by Mrs. Norah Connolly-Battisti on 21 June 1978, the FAO's reply of 27 October, the complainant's rejoinder of 1 December, the FAO's surrejoinder of 1 March 1979, the FAO's additional statement dated 6 February 1980 filed at the Tribunal's request and the complainant's comments of 14 March 1980;

Considering Article II, paragraph 5, of the Statute of the Tribunal and FAO Staff Regulations 301.0121, 301.08 and 301.111, Staff Rule 303.112 and Manual sections 330.212, 330.311, 602.332 and 602.9011;

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 research assistant in the Statistics Division (ESS) of the FAO, is Chairman of the Non-Local Association (NLA) of the General Service category of FAO staff. On 15 September 1975 the Director of Administration, Finance and Personnel (AFP) wrote her a minute refusing to deduct NLA dues from the payroll on the grounds that the NLA had no standing in the FAO. He said: "The Non-Local Association is not a recognized representative body. I must therefore repeat that you are not a recognized staff representative. You may not devote working time hours to the conduct of Non-Local Association matters; nor may you use official stationery for NLA correspondence." On 19 September the complainant wrote to the Director-General claiming for the NLA the same rights as were granted to the three other FAO staff associations (the Association of Professional Staff, the Field Staff Association and the Unione Sindacale (the local General Service staff union)). On 1 October she again asked for official recognition of the NLA. On 28 October the Director of AFP sent a reply confirming his earlier statements. He cited Staff Regulation 301.08 and took the complainant to task for asking for payroll deduction forms after he had informed her that deductions of NLA dues could not be made. The complainant protested against what she took to be intimidation of a staff representative. On 30 December the Director accordingly sent her another memorandum pointing out that all along he had been addressing her as an FAO staff member: "On behalf of the Director-General I now warn you formally that any further occasions on which you disregard the instructions referred to above will result in severe disciplinary action being taken against you. Specifically, and to ensure that there is no misunderstanding, you are hereby instructed:

1. To devote your entire working time to your duties as Research Clerk G.6 in ESS, including any overtime work which may be required of you, or to such other duties as you may be assigned, unless you have sought and obtained prior permission from your supervisor to do otherwise.
2. To obtain the specific prior agreement of your immediate supervisor should you have reason to request absence from your place of work for any purpose.
3. To cease using FAO stationery in connection with your activities in the Non-Local Association."

B. On 8 January 1976 the complainant wrote in protest to the Director-General. She pointed out that there had been no complaint from her supervisors about her work, attendance or conduct and that the memorandum from the Director of AFP was therefore an act of intimidation. She asked the Director-General, in accordance with Staff Regulation 301.111, to order the removal of "the uncalled for instructions and the formal warning of severe disciplinary action". On 29 January the Director-General answered that the NLA had been "advised on a number of occasions that as a non-recognized body" it might not enjoy facilities extended to recognised staff bodies, including time off, and that the instructions of the Director of AFP were "fully justified" and not intimidatory.

C. On 6 February 1976 the complainant lodged an appeal. In its report the Appeals Committee observed that a warning should be made on the basis of facts established by the division concerned (the warnings to the

complainant had come, not from her Division, but from the Director of AFP) and should be previously discussed with the staff member in accordance with Manual section 330.311. Despite that impropriety the Committee concluded that since no disciplinary action had followed, since the warnings had not been placed in her personal file and since further action on them had therefore been precluded, there were no grounds for the appeal and it should be dismissed. On 3 April 1978 the Director-General informed the complainant that he endorsed that recommendation.

D. The complainant contends that the FAO is resolved to abolish the non-local category, to which some 800 staff members belong. That accounts for its attitude towards the NLA and the purely gratuitous attack on her as its Chairman. Since she has never been in breach of any of her professional duties and her supervisors have made no observations or complaints about her work, the action taken by the Director of AFP was obviously prompted by a desire to persecute her and through her to weaken the NLA. The Director-General has given the NLA de facto recognition in accordance with Staff Regulation 301.08, which lays down the principles of freedom of association. It is especially hard to understand why he should refuse to have any dealings with the NLA in negotiations on conditions of employment and to grant it proper material facilities: it does not overlap or compete with the three other staff associations since its members are drawn from a large and separate category of staff. In her view the FAO's attitude, which is the real cause of the persecution she is suffering, is at variance with the general principles of trade union law and is therefore a very serious matter. That is why she lodged an internal appeal and is now appealing to the Tribunal. The Appeals Committee's recommendation and so also the decision of 3 April 1978, which she impugns, are illogical in that they declare that there are no grounds for the appeal and yet go on to dismiss it. Moreover, the Appeals Committee committed several irregularities of procedure and its conclusions were therefore wrong. In particular, under Staff Rule 303.112 an Appeals Committee shall not consider a staff member's efficiency, and yet the Committee questioned her about the quality and quantity of her work. Lastly, the Committee's report and all the appeals papers were put in her personal file.

E. The complainant asks the Tribunal: (1) to instruct the Director-General to withdraw from her the letters of Mr. Thomasson, the Director of AFP, dated 15 September and 30 December 1975, the Director-General's letter of 29 January 1976 and his letter of 3 April 1978 rejecting her appeal, which should also be withdrawn from her personal confidential file; and (2) to instruct the Organization to withdraw the threat of severe disciplinary action.

F. The FAO contends that what is in dispute is not the non-recognition of the NLA. Recognition was finally refused by a decision of 25 February 1976, which the complainant failed to challenge in time. Staff Regulation 301.0121 states that the whole time of staff members shall be at the disposal of the Director-General. Yet the complainant devoted some of her time to the NLA. Since May 1975 the leaders of the NLA had been warned about that, and the reminder sent to the complainant on 15 September 1975 by the Director of AFP was therefore only reasonable. It was even more reasonable, in view of her obvious disobedience, that he should send her a warning on 30 December 1975. Manual section 602.9011 states that official stationery may not be used for unofficial correspondence. The other three associations have their own stationery. Whatever the complainant may feel about the matter, she ought to have obeyed the instructions. In any event the reminder and the warning did not constitute disciplinary action within the meaning of the Staff Rules, let alone persecution or intimidation. If a staff member's conduct is open to reproach, his supervisors and the Personnel Division are bound to tell him so and ask him to mend his ways. The FAO rejects every single one of the complainant's allegations of irregularity in the Appeals Committee proceedings. In particular, it contends that the Committee may determine the facts by hearing any witnesses it pleases and on any subject it pleases. Lastly, the items which the complainant wants to have withdrawn were never put in her personal file. They are to be found only in "subject matter files" of the Personnel Division, and the complainant's file now contains only a sealed envelope marked "confidential" and containing papers relating to the internal appeal, which is recorded in that way. The complainant's claims for relief are therefore groundless and the FAO invites the Tribunal to dismiss them.

G. In her rejoinder the complainant maintains that the non-recognition of the NLA is the nub of the case. It is unwarranted and the attacks on her are the consequence. It is not true to say that no internal appeal was lodged against non-recognition. She herself filed an appeal after 15 September 1975, but the Appeals Committee recommended dismissal on the grounds that it was not competent. She states again that she has seen in her personal file the items she wants withdrawn. They ought to have been removed and filed elsewhere. She contends that she has never used official FAO stationery for NLA business; what she wrote were office memoranda, which according to Manual section 602.332, are supposed to be used for all routine communications. Never before 15 September 1975 was she warned that she could not devote working hours to the NLA. The refusal to recognise the NLA compelled its members to lodge an internal appeal under the internal procedure since there was no other way

of getting a hearing, and the Staff Rules say that work on such appeals may be done in office hours. How can the business of the NLA be distinguished from work on appeals affecting the Association? Lastly, the complainant relies on Judgment No. 87 in re Di Giuliomaria, which laid down the principle of freedom of association, and on the reasoning in paragraph 22 of Judgment No. 274 in re Connolly-Battisti (No. 2). She therefore presses her claims for relief in their entirety.

H. In its surrejoinder the FAO observes, among other things, that the complainant adduces not a shred of proof in support of her contentions. It affirms that it never opened any "special file" about her and that the relevant documents were put in subject matter files. The judgments which the complainant cites related to the exercise of the right to organise. That right is fully respected in regard to the NLA, and the judgments therefore have no bearing on the present case.

I. By a letter dated 17 December 1979 and addressed to the defendant Organization in accordance with Article 9.2 of the Rules of Court the Tribunal invited the Organization to file an additional statement giving its views on the relevance, if any, of the principles of freedom of association to the issues in the case. The FAO replied in a detailed memorandum dated 6 February 1980. In that memorandum it observes that the decision not to recognise the NLA was communicated to the complainant in January 1975 and confirmed on 27 June 1975. The complainant does not impugn that decision. The FAO does believe, however, that it exercised its discretionary authority correctly in deciding not to recognise the NLA as a partner in negotiations. Manual section 301.081 embodies the principles of freedom of association and pluralist trade unionism, but Manual section 301.082 leaves the Director-General discretion to decide whether any group of staff is sufficiently large and distinct and has aims sufficiently consistent with the FAO's objectives for him to be able to recognise it, although that is not a complete list of the criteria for recognition. The reasons for not recognising the NLA are the following: to have multiple staff representation is in the interests neither of the FAO nor of the staff; the NLA represents only a section of the staff belonging to a particular category and, if only for practical reasons, the FAO finds it unsatisfactory to carry on negotiations for a single category with two staff union groups. The staff members concerned are in any case free to join the majority staff association for that category, which has shown that it defends their special interests effectively. The decision not to recognise the NLA constitutes no breach whatever of the principles of freedom of association, particularly those embodied in international labour Conventions Nos. 87 and 98. Lastly, as regards the bearing which the decision has on the use of FAO stationery for staff association correspondence and time off for staff association activities, the FAO points out that no staff association, whether recognised or not, may use FAO stationery, that staff associations are granted time off only when they have been recognised and that, although the complainant has refused to discuss the matter of the other staff association facilities with the FAO until the NLA has been recognised, the FAO has provided ample office space for the NLA to hold meetings and elections outside office hours.

J. In her reply to the FAO's memorandum the complainant observes that, as the FAO concedes, the grant of facilities for staff association representatives is the corollary of recognition. Her complaint impugns sanctions which were imposed on her on the sole grounds that the NLA is not recognised and by implication it also impugns the decision not to recognise the NLA. The decisions on non-recognition mentioned by the FAO were taken by the former Director-General, and the new Director-General too had to take a decision on the matter, but did so only after the complaint had been lodged. The real reason for non-recognition of the NLA is that the Administration wants to do exactly what it likes about expatriate General Service category staff, without consulting or negotiating with their representatives. At present it is attempting to take away the right of women staff members married to Italians to be repatriated. Yet the NLA did meet the requirements for recognition. The decision not to recognise it is therefore arbitrary and discriminatory. It is not true to say that the other staff union representing the General Service category, which is recognised, can defend the interests of non-local staff since such staff have quite different interests. The complainant utterly disagrees with the interpretation which the FAO puts on the principles of freedom of association, as set out, for example, in ILO Conventions Nos. 87 and 98. The Committee on Freedom of Association of the Governing Body of the International Labour Office has affirmed that any trade union has the right to negotiate the terms of employment of its members with the employer. The outcome of the recognition procedure is to prevent workers from joining a staff union of their own free choice. Where a staff union is not recognised and is therefore denied facilities for carrying on activities, that is a breach of freedom of association. As for the matter of FAO stationery, the complainant appends to her memorandum letters written on FAO paper by other FAO staff associations. She also points out that the recognised staff associations receive \$10,000 a year from the FAO as a contribution towards their stationery and printing costs.

CONSIDERATIONS:

1. The complainant is and was at all material times the Chairman of the Non-Local Staff Association, hereinafter referred to as the NLA, which is an association comprising about one-third or more of the General Service staff of the Organization. The decision she impugns is the rejection by the Director-General on 3 April 1978 of her request for the withdrawal of a memorandum dated 30 December 1975 in which she was instructed

(1) unless with the permission of her supervisor to devote her entire working time to her duties; and

(2) to cease using FAO stationery in connection with her activities in the NLA

and formally warned that any further occasions on which she disregarded these instructions would result in severe disciplinary action being taken against her.

2. In MS 330.212 a formal warning is equated with a written reprimand, and it is declared not to be a disciplinary measure. Nevertheless, where as here it is expressed as a warning against the repetition of an offence, the Director-General must be satisfied that the offence alleged was in fact committed. The decision to warn is one over which the Tribunal exercises only a limited power of review, that is to say, the Tribunal will not interfere unless the measure 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 it is tainted with abuse of authority, or if a clearly mistaken conclusion has been drawn from the facts.

3. The warning was not given because the complainant had been neglecting her duties out of idleness or truancy. It was given because she was devoting some part of the working day to the affairs of the NLA. The Organization, in common with all others, recognises the right of the staff in accordance with the principle of freedom of association "to organize for the purpose of safeguarding and promoting its interests"; MS 301.081. Nor is it disputed that it is for the staff to organise itself and not for the Director-General to organise it. It is however generally accepted that the existence of a good and efficient staff association is essential to good staff relations and so is a concern of the Administration. All organisations therefore have in their regulations a section similar to the FAO's Article VIII in which the ways of maintaining contact between the Administration and the staff association are described. What is not described in the regulations are the facilities which, because of the Administration's interest in the efficient working of the staff association, it is now customary for the Administration to guarantee or provide. The most important of these is permission for the chairman and other officers of the association to take "time off" within reasonable limits for the association's work. There are numerous other facilities, such as the provision of office space, and one which is greatly valued, the collection of subscriptions to the association by the deduction, with the member's consent, of his or her dues from the salary cheque.

4. In the complainant's view the present dispute uncovers a vital point in this sensitive area. It may be put in this way. Can a Director-General say to his staff: "You can organise yourselves in any way you like, but if you do not organise yourselves in the way I like, I shall withdraw the facilities upon which you have now come to depend". The Organization does not see it in this light at all. There is in the FAO a distinction between what the Organization calls recognised and unrecognised associations. Freedom of association is of course acknowledged, but there is, it is said, a distinction between a recognised and an acknowledged association. Three months before giving the warning, Mr. Thomasson, Director of Personnel, wrote to the complainant on 15 September:

"I would like to take this opportunity of reminding you that the Non-Local Association is not a recognized staff representative body. I must therefore repeat that you are not a recognized staff representative. You may not devote working time to the conduct of Non-Local Association matters; nor may you use official stationery for NLA correspondence. Your Division Director and immediate supervisor have been advised of this."

The Organization's case is that the complainant proceeded to treat with contempt this obviously legitimate order and so his now been properly warned.

5. The distinction between the recognised and unrecognised association must now be examined. Until 23 September 1974 there was in the FAO a single Staff Association with four constituent bodies representing different interests. One body represented staff serving in the regional offices and in the field. The other three represented staff at headquarters, one for the Professional staff and two for the General Service staff. There were two categories of General Service staff, those recruited locally who were all or mostly Italian, and those recruited from abroad; there was then and had been for some time past a significant difference in their terms of service and therefore in their interests. These two bodies were roughly equal in number, each containing 700 or 800 members. In April

1974 it became clear that the four constituent bodies wished to separate. The Administration expressed itself as "responsive", but made it clear that in its view the right to organise did not automatically carry with it the right to bargain with the management nor the right to use the facilities of the employer or the use of working time: for such rights to be made operative in practice, it would be necessary to decide which bodies from among those who might exercise the right to organise were to be recognised by the management for the purpose of bargaining.

6. In November 1974 Article VIII of the Staff Regulations was amended to cover this development. The relevant sections now read:

301.081 In accordance with the principle that the staff has the right to organize for the purpose of safeguarding and promoting its interests, one or more representative staff bodies recognized by the Director-General shall maintain continuous contact with and negotiate with the Director-General with respect to the terms and conditions of employment of the staff and general staff welfare ...

301.084 The Director-General, in deciding whether to recognize any group as a representative staff body, shall take into account whether:

(a) such body represents a sufficiently large number of staff members or a sufficiently distinct group of staff; and...

The four bodies formed themselves into separate associations each with its own statute. By Article 6 of its statute the NLA declared that its membership should be open to all non-local General Service staff. The other General Service association, known as the UGS, although at that time it had few if any non-local members, declared itself by Article 6 of its statute to be open to all in the General Service category employed at headquarters.

7. On 2 December 1974 Mr. Goodall, the Staff Relations Officer, wrote to the chairmen of the four associations inviting them to put forward their claims for recognition. On 29 January 1975 the Director-General granted recognition to three of the associations but refused it to the NLA on the ground that it did not constitute a sufficiently distinct group.

He pointed out

- (a) that the claims overlapped since the UGS claimed representation for the whole General Service category;
- (b) that if both bodies had been recognised, he would have been placed in the unacceptable position of having to consult and negotiate with two groups on all matters of concern to the General Service staff;
- (c) that the conditions of service were now, with one exception, the same for both categories; and
- (d) that the Council had decided that no new recruits should be given non-local status.

8. Manifestly the situation thus created was for the members of the NLA a very painful one for which the Director-General did not propose any alleviation. They must either apply for membership of the UGS or lose the right to negotiate on terms of employment and General Service welfare. There is no evidence of any hostility between the UGS and the NLA, but its leaders were not their leaders; the bonds of loyalty and devotion - for there is no doubt that the complainant was a vigorous and inspiring leader who, as indeed her many complaints testify, fought hard for her side - would have to be broken and forged anew. This would be so even if the members were convinced that they had no separate interests, whereas it was because the groups wished each to pursue their separate interests that the old association had been dissolved. The result is that the NLA has adopted a completely intransigent attitude. It has refused to accept the Director-General's decision and has refused the Administration's offers to discuss facilities, presumably those which the Administration considered to be appropriate for an unrecognised but acknowledged association. As a result during 1973 it was stripped of virtually all the customary facilities and, as we have seen, if the instruction of 15 September was intended literally, the use of any office time was then finally denied. Nevertheless the NLA has continued to function. It claims to have maintained its membership and it is a fact that even now out of a total UGS membership of 811 only 56 are non-local.

9. All this has led to bitterness. The complainant herself has not been backward in denouncing the actions of the Administration as unacceptable, discriminatory, repressive, provocative, etc. It may be that this image of defiance

which she has projected on to the scene as a whole has led the Administration, because they did not examine the image carefully enough in relation to the narrow issue in this complaint, into the errors of appreciation and procedure which will be recorded below. In relation to the narrow issue the complainant has a case that cannot be brushed aside. It is not too easy to ascertain from the dossier exactly what it is, because so much of her argument travels beyond the immediate issue. The Tribunal will endeavour to summarise it in the next paragraph.

10. The summary of the complainant's argument is as follows. The rule under which the Administration is acting is Staff Regulation 301.0121 which says: "The whole time of staff members shall be at the disposal of the Director-General". In the enforcement of this regulation the Director-General must not act arbitrarily. He must not discriminate between staff members, whether as individuals or as groups, except upon appropriate criteria. In dividing associations into "recognised" and "unrecognised" and in allowing time off to recognised staff representatives, he is acting upon a false criterion. There is no warranty for such a division in Staff Regulation 301.081. What this regulation does is to require the Director-General to maintain contact and negotiate with certain bodies which he selects for that limited purpose. Even if by implication the regulation prohibited him from contacting or negotiating with any other bodies "with respect to the terms and conditions of employment of the staff and general staff welfare", it would still leave those other bodies with representative work to do which could be time-consuming - individual cases, for example, and appeals about individual grievances. Even on general matters the fact that the Director-General does not wish to have two bodies with what he deems to be the same interests present in the negotiating room together does not discharge the representatives of the excluded body from the duty of ascertaining and formulating the views of their members and promoting their interests by urging those views where they can. It is quite wrong, the complainant insists, for Mr. Thomasson to say that she is not a recognised staff representative: she is a duly elected representative who on certain matters is denied a right of direct access. Once therefore the Director-General has recognised or acknowledged an association as organised for the purpose of safeguarding and promoting the interests of the whole or any part of the staff, the only criterion which he can apply, consistent with the staff's right to organise itself as it wishes, can be in relation to the time reasonably spent for that purpose. It is unnecessary for the Tribunal to express any view on the merits of this argument beyond saying that it is sufficient to show that while opposition to the Director-General's ruling on "time off" may be wrong, it is not perverse.

11. Mr. Thomasson's memorandum of 15 September 1975 had as its chief object the refusal of the NLA's request that its members' dues be deducted on the payroll. He asserted that the NLA had "no standing" within the Organization and said that payroll deductions were not appropriate "for other than officially recognized purposes". On 19 September the complainant wrote to the Director-General vehemently protesting against this: certainly it is difficult to see why the refusal of negotiating rights on general questions should lead to the refusal also of this convenience. In this letter the complainant did not refer to the instruction on working time quoted in paragraph 4 above. Her evidence, which on this point is uncontradicted, is that she always does all the work assigned to her and never absents herself without her supervisor's permission. Presumably she continued in this style after 15 September. While the memorandum of 15 September, if literally construed, is an absolute prohibition against the use of any working time, it is clear that Mr. Thomasson's intention was merely to ensure that her use of working time was not excessive. For on 17 September he sent a copy of the memorandum to the complainant's Division Director, Mr. Narain, saying: "I would be grateful if you would speak with Miss Connolly's supervisors and ensure that Miss Connolly does indeed devote a reasonable working day to her official duties and does not spend long hours on unrecognized staff activities as in the past". Mr. Narain did not treat this with any urgency and it was not until 28 October that he took any action. Meanwhile there was a further exchange of correspondence in which Mr. Thomasson continued to assert that the NLA "has no official status in the Organization for the purpose of staff representation" and the complainant to reply that "as a staff representative I am free to act in full liberty for the defence of the rights and interests of the staff".

12. The action taken by Mr. Narain was to request the complainant's supervisor, Mr. Morojele, and the Programming and Executive Officer, Mr. Battistini, on their return from annual leave to discuss the matter with the complainant. The meeting took place on 28 October. On 11 November Mr. Narain, who was not at the meeting, sent to Mr. Thomasson a report of it presumably based on reports from Mr. Morozele or Mr. Battistini or both

"A meeting between the three was held on 28 October. The purpose was to discuss with Miss Connolly on the basis of the contents of your memo an agreed upon work schedule for her in line with divisional work plan requirements. In the discussion Miss Connolly has informed that she is not entirely in agreement with the contents of your memo where it is indicated that she may not devote working time to the conduct of the Non-Local staff association matters and that she had already made representation to Management on this matter. Moreover, she informed that

she has also been requested by certain staff members, including two professional officers, to represent them at the Appeals Committee and this takes quite a bit of her time. She had indicated that for these reasons and also in view of the fact that during this period she was very much involved with the preparations for the elections of the Non-Local association she would be unable to devote any time to office work until the elections were over, i.e. until the 6th of November, and this was going to be reflected in her time reports. She also indicated that she will send a memo to the Division giving her reactions on the contents of your memo and also indicating the average amount of time she will be able to devote daily to office work after the elections are over. At the time of writing this memo, we have not received any written note from Miss Connolly on this matter."

The complainant disagrees with this report on one point. According to her, she did not say that she would be unable to devote any time to office work until the elections were over: she referred to the elections in response to a request from Mr. Battistini for an estimate of what time she thought she would need for representative work, saying that it would be better to give an answer after the elections.

13. On 30 December Mr. Thomasson issued the warning which the complainant now challenges and which has been summarised in paragraph 1 above. The reason for the warning was expressed as follows:

"The position you have taken that you and only you will decide how much time you will devote to your duties as a Research Clerk G6 in ESS and how much you will devote to other activities is totally unacceptable. This position which you have taken is described both in Mr. Narain's memo to me of 11 November subject - Non-Local Association - and copied to you and in your memo to me of 13 November. It is in direct contravention of the instructions contained in my memo of 15 September."

If the complainant's position is here correctly described, it is a defiance of authority which justifies the warning that follows. But is it correctly described? This depends on the two documents of 11 and 13 November to which Mr. Thomasson refers - first, as to what they say, and secondly, on whether the first, which is not the complainant's document, is correct.

14. It is clear from the report of 11 November that the interview of 28 October was friendly and constructive. The complainant said that she was "not entirely in agreement" with the memorandum of 15 September; and it is to be noted that if this memorandum is strictly interpreted as a total prohibition of "time off", this was subsequently qualified by the memorandum of 30 December itself as "time off without permission". This latter interpretation was in fact the basis of the meeting. At the beginning of the report the object of the meeting is stated as being to agree a work schedule and the meeting ended with an undertaking by the complainant to provide a memorandum "indicating the average amount of time she will be able to devote daily to office work". In between, the complainant is said to have indicated that "she would be unable to devote any time to office work until the elections were over", i.e. that she would be taking off a period of at least five consecutive working days. What does "indicate" mean - that she is asking for permission to take five days off, or that she was saying that she was deciding to take five days off, whether or not she got permission? It is incredible, it may be argued, that it was the former because of the extravagance of the request. But then is it not also incredible that, if those present had thought that she was seriously claiming to settle her working hours for herself, they would have let her go her own way, unwatched (there is no evidence of what time, if any, she actually took off for the elections) and unrebuked for two months? The report of 11 November certainly needed elucidation. The first step would be to find out, not what the complainant "indicated" but what words she actually used; this could be done by asking the three persons who were present at the meeting instead of relying upon a second-hand account of it. If Mr. Thomasson had done that, it would have emerged without contradiction that what the complainant said was quite different, quite sensible and avoided the acceptance of either incredibility. It was quite sensible because it was, as the complainant says, conceivable that she might not be re-elected Chairman; in any event it would be a matter on which to consult the new committee since it would be bound to affect their claims as representatives for "time off". But Mr. Thomasson proceeded without inquiry to put upon the report of the meeting the worst construction. In so doing it may well be that he was influenced by the complainant's non-conformity in general with the Director-General's policy. Indeed he gave as the other example of "the position which you have taken" the complainant's memorandum of 13 November in which she expresses her disagreement in general with "decisions taken on the status, terms and conditions and entitlements, etc. of the staff I represent".

15. On 8 January 1976 the complainant appealed to the Director-General against the memorandum of 30 December, saying that the allegations in it "are unfounded as my supervisor can confirm". She did not however contradict specifically any part of the report of 11 November. On 29 January the Director-General, without so far as appears

from the dossier making any further inquiry, upheld the memorandum. The complainant went to the Appeals Committee who took evidence from the complainant and her supervisor, Mr. Morojele, in the presence of a personnel officer who represented the Organization and was permitted to ask questions. The Committee found in favour of the complainant's version of the meeting of 28 October saying

"The appellant did spend appreciable time on the affairs of the NLA and in aiding colleagues (not only from her association) who were lodging appeals or contemplating doing so, and had several appeals of her own in the process of preparation or hearing. When asked by her Division at the time of the memorandum of the Director AFP to give a forward estimate of time to be so spent, she found difficulty in doing so pending the results of the NLA elections."

Neither in the record of this hearing nor anywhere in the dossier is there any evidence given to contradict the complainant's repeated assertion that she never took time off without the permission of her supervisor. The Director-General had this report before him when he gave the impugned decision. In drawing from it and from the other evidence in the case the conclusion that the complainant had taken the decision that she, and only she, would decide how much time she would devote to her duties and that she did not regard it as necessary to obtain the approval of her supervisor to absent herself from her place of work, the Director-General drew a conclusion that was clearly mistaken.

16. The memorandum of 30 December rebukes the complainant also for using official stationery for NLA correspondence. MS 602.332 says that inter-office memoranda should be used for routine communications within headquarters. The complainant has treated "routine communications" as covering correspondence between the NLA and the Personnel Division. The Administration considers that recognised associations "might be able to make out a case" for this (in fact they use their own specially printed stationery), but not apparently an unrecognised association. When the complainant challenged the instruction not to use "official stationery", she was referred to MS 602.9011 which states that "official correspondence must always be prepared on stationery bearing the FAO letter-head or emblem: such stationery may not be used for unofficial correspondence". Is the inter-office memorandum stationery of this sort? In response to a suggestion by the complainant to the Appeals Committee that this was a "petty issue", the Administration said: "The point is not the cost of the stationery but the fact that the use of the official letter-head can be construed as giving some official standing to the content of the correspondence". It seems unlikely that the use of inter-office memoranda within the Organization could mislead in this way. The view of the Appeals Committee on the true relationship between inter-office memoranda and official stationery might have been useful, but, not surprisingly, they did not think it worth while to express one. The Tribunal does not consider that the position is so clear or the offence, if there was one, so heinous as to call for a warning of severe disciplinary measures.

17. These conclusions make it unnecessary for the Tribunal to deal with the complainant's main case as it appears in the dossier. The case is made up of many and various allegations which are not connected as a lawyer would connect them for presentation. But running through them there is an identifiable thread. This is that the attempt to deny the complainant the use of office time, even for the assistance which she gives to individual staff members, should be considered in conjunction with all the other discriminatory measures, ranging from the withdrawal of almost essential facilities down to the petty affair of official stationery, as going far beyond the call for a bargaining unit which is the only lawful purpose of Staff Regulation 301.08; that all these measures must be considered together as part of a plan by the Director-General to starve the NLA and to harass its officers so that the members will be driven willy-nilly out of the association they have formed into one which they do not want to join; that such a plan is contrary to the principle of freedom of association and so taints with illegality each and every measure taken in pursuance of it. The Tribunal, having reached the clear conclusion that the impugned decision, looked at by itself and apart from any plan of which it may have formed part, is illegal, finds it superfluous to examine the decision in any larger context. The Tribunal has glanced at some aspects of the main case as showing the circumstances in which the impugned decision was taken: but on the merits, legal or factual, of the case as a whole, the Tribunal neither expresses nor implies any view.

18. By way of relief the complainant asks for the withdrawal from her file of four of the documents which are mentioned above and which she has criticised. There is a dispute about the appropriateness of this form of relief. The Tribunal considers that in this case the quashing of the decision will afford all the relief necessary.

DECISION:

For the above reasons,

1. It is declared that the request for the withdrawal of the memorandum of 30 December 1975 was justified.
2. The decision of the Director-General given on 3 April 1978 is quashed.

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.

André Grisel
Devlin
H. Armbruster

Bernard Spy