

## FORTY-SIXTH ORDINARY SESSION

### *In re* GAVELL

#### Judgment No. 454

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the United Nations Food and Agriculture Organization (FAO) by Mr. Stefan F. Gavell on 5 September 1979 and the FAO's reply of 6 May 1980;

Considering Article II, paragraph 5, of the Statute of the Tribunal and FAO Staff Rule 302.3151 and FAO Manual provision 309.82;

Having examined the written evidence, 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. On 31 January 1978 the complainant, who is a United States citizen, retired after nearly thirty-one years' service with the FAO. He asked the United Nations Joint Staff Pension Fund to commute one-third of his pension entitlements into a lump sum, that being allowed under Article 29 of the Fund Regulations. Payment of the lump sum was made on 24 March 1978. United States tax was levied on it. In Judgment No. 237 (*in re* Powell) the United Nations Administrative Tribunal held to be lawful the United Nations' practice of repaying to retired staff members the amount of United States tax paid by them on the lump sum. Accordingly, on 3 March 1979 the complainant applied to the FAO for reimbursement of the tax which he had paid. On 14 June 1979 the Assistant Director-General, Administration and Finance, wrote to inform him that he was not entitled to reimbursement. The complainant asked either that the matter should be referred to the FAO Appeals Committee or that he should be authorised to appeal directly to the Tribunal. On 5 October 1979 the Deputy Director-General upheld the decision refusing reimbursement and authorised him to file a complaint directly with the Tribunal. The complainant is impugning the decision of 5 October 1979.

B. The complainant contends that the decision is discriminatory against him on the grounds that pensioners who hold other nationalities do not have tax levied on the lump sum and that the decision constitutes a breach of the principle of equality between members of the international civil service, and in particular the principle whereby there should be equal pay for equal work. He takes the view that the lump sum is a form of postponed salary and that any tax levied on it should be reimbursed, as are any taxes levied on the salaries of serving officials. Since the United Nations does reimburse tax paid, the impugned decision constitutes a breach of the common system of the United Nations and the specialised agencies, the purpose of which is to ensure equal treatment for all international civil servants. The Pension Fund Regulations apply to all officials employed in the common system, and all officials should be treated alike in the payment of benefits as they are in the payment of contributions.

C. In his claims for relief the complainant asks the Tribunal to order the FAO to reimburse "the United States income taxes paid or due on the one-third lump sum received from the UN Pension Fund with interest plus the costs of litigation".

D. In its reply the FAO observes that the judgment of the United Nations Administrative Tribunal affords the only legal basis for the complaint. That judgment merely confirmed the legality of the United Nations' practice of reimbursing tax levied on the one-third lump-sum benefit. The FAO has never reimbursed such tax. It is quite clear from Judgment No. 237 mentioned above that it applies only to United Nations officials. However desirable the common system may be, each agency is governed by its own rules and is under no duty to grant its officials any more favourable treatment granted by the United Nations or any of the other agencies. Since Judgment No. 237 was delivered Resolution No. 34/165 of the United Nations General Assembly has done away with the practice of reimbursing tax in respect of staff engaged by the United Nations from 1 January 1980. United Nations practice is thus now in line with that of the specialised agencies. FAO Staff Rule 302.3151 provides for the repayment of taxes on income received from the FAO by "staff members", and Manual provision 309.82 states that Pension Fund benefits are "considered to be non-FAO derived income". That is long-standing FAO practice. It is mistaken to contend that the lump sum is a form of postponed salary, since payment is made, not by the FAO, but by the

Pension Fund. The complainant was no longer a member of the FAO staff when he received payment. Any discrimination there may be between him and pensioners of other nationalities is due entirely to United States tax policy and has nothing to do with the FAO. Since a pensioner is no longer a member of the staff, there is no merit in the complainant's argument that there is breach of the principle of equality between staff members and of the principle requiring equal pay for equal work. Lastly, taxation is not the only factor which affects the amount of pensions. There are others, such as the cost of living and currency fluctuations, all factors must be taken together, and tax cannot be treated in isolation. The FAO therefore asks the Tribunal to dismiss the complaint as unfounded.

#### CONSIDERATIONS:

The question in this case is whether a citizen of the United States, who has been employed by an international organisation and who on retirement has elected to take part of the pension due to him from the United Nations Pension Fund in the form of a lump sum, is entitled to be reimbursed by the organisation the tax levied by the Government of the United States on the lump-sum payment. The complainant on 5 September 1979 put forward his claim that he was so entitled and the issues and arguments that he raised are summarised in paragraph B above. On 6 May 1980 the Organization replied denying the complaint and supporting their denial with the arguments summarised under paragraph D. Meanwhile, on 8 December 1980 the Tribunal considered and rejected in Judgment No. 426 a similar claim, raising the same issues and arguments, made against the World Health Organization. The complainant has not elected to file a rejoinder distinguishing on any point the reasoning and conclusions in Judgment No. 426.

#### DECISION:

The complaint is dismissed.

In witness of this Judgment by Mr. André Grisel, 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, Allan Gardner, Assistant Registrar of the Tribunal.

Delivered in public sitting in Geneva on 14 May 1981.

André Grisel  
Devlin  
H. Armbruster

A.B. Gardner