

FORTY-SIXTH ORDINARY SESSION

In re PINI

Judgment No. 455

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the Food and Agriculture Organization of the United Nations (FAO) by Mr. Arturo Pini on 12 August 1980, the FAO's reply of 11 November, the complainant's rejoinder of 18 December 1980 and the FAO's surrejoinder of 25 February 1981;

Considering Article II, paragraph 5, of the Statute of the Tribunal, FAO Staff Regulation 301.0913, FAO Staff Rule 303.112 and FAO Manual section 331.241;

Having examined the written evidence and disallowed the complainant's application for oral proceedings;

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

- A. From 1974 the complainant held short-term appointments in the Printing Unit of the Publications Division of the FAO. He obtained a two-year appointment in the unit up to 31 October 1977, subject to one year's probation. The probation period was extended by six months to 30 April 1977. On 14 April the Director of the Personnel Division informed him that his appointment would terminate on 20 April and that he would receive one month's salary in lieu of notice. Although the complainant appealed to the Director-General on 18 April, his appointment terminated on 20 April. The Assistant Director-General, Administration and Finance, informed him that his appeal would be fully examined and that he would be paid a further month's salary. Review of the appeal having been completed, the Assistant Director-General upheld the challenged decision on 7 June. The complainant appealed to the Appeals Committee on 16 June 1977. The Committee met on 7 November 1978, 22 June 1979 and 11 March 1980. On 22 April 1980 it recommended dismissing the appeal. The Director-General endorsed that recommendation and so informed the complainant on 14 May 1980, and that is the decision he impugns.
- B. The complainant maintains that his supervisor was hostile and prejudiced towards him because he repeatedly protested against the poor working conditions in the Printing Unit and called, to no avail, for an investigation. Nothing was done in response to the petitions made by other staff members in support of his demands. On 18 April 1977 he chained himself to one of the printing machines by way of protest. On the next day he went to the Office of the Union of General Service Staff, known as the "Unione sindacale". The Director-General ordered his removal and, without waiting for an answer, called in the Italian police, who, the complainant states, forced their way in, smashed equipment and manhandled staff representatives and others. The review of his appeal by the Appeals Committee took three years and at the Committee's third meeting its chairman was not the same as at its first two. As in his submissions to the Committee, he is contending that the decision is tainted with the obvious errors of fact which preceded it. In particular, the findings of the inquiry carried out by the Assistant Director-General were based on subjective information, since there was no objective item of evidence in the Printing Unit which gave any idea of the industriousness, output and efficiency of the various members of the Unit.
- C. In his claims for relief the complainant asks the Tribunal to order: (1) his reinstatement in his post, (2) confirmation of his appointment, and (3) payment of his salary and allowances up to the date of reinstatement.
- D. In its reply the FAO states that the complainant's performance began to deteriorate towards the end of 1975. The Printing Officer expressed dissatisfaction, at first orally and then, on 22 January 1976, in writing, with his low output and lack of respect for discipline. In carrying out his inquiry the Assistant Director-General, Administration and Finance, heard evidence given by six members of the Printing Unit appointed by the complainant's representatives and fully reviewed the reports on his work performance. The Assistant Director-General found that the Division Director's conclusions were correct and that, like the complainant's first-level supervisor, his other supervisors were dissatisfied with his performance. His allegations of prejudice and discrimination do not match what he said in his submissions to the Appeals Committee and are unsubstantiated. The change in the chairmanship of the Appeals Committee at its third sitting was in accordance with Manual section 331.241 which provides that where the chairman is not available - in this instance he was indisposed - one of the alternate chairmen shall replace him. It is untrue to say that the Committee was competent only to review issues of law, not allegations of

prejudice: Staff Rule 303.112, which relates to questions of efficiency, states that the Committee shall consider "evidence that the decision has been motivated by prejudice or by some other extraneous factor". That is what the Appeals Committee did: it rejected the charges of prejudice after hearing the complainant and his counsel, the Assistant Director-General, Administration and Finance, and four of the complainant's supervisors, including his immediate supervisors. The complainant is relying solely on the evidence of his colleagues, but such evidence is of doubtful value - especially because of staff solidarity - in assessing a staff member's performance. The impugned decision was based on Staff Regulation 301.0913, which reads: "In the case of staff members serving a probationary period ... the Director-General may at any time terminate the appointment, on finding that such action would be in the interests of the Organization". The Director-General's exercise of his discretion was not tainted with any of the flaws which entitle the Tribunal to interfere, and his decision complied with the rules. It followed careful consideration of all the essential facts and was not based on incorrect statements of fact or taken on illegal grounds. The conclusions drawn from the dossier were clearly justified. The decision was not motivated by prejudice or any other extraneous factors, and the complainant has not established any valid grounds for the relief he claims.

E. In his rejoinder the complainant describes it as absurd to treat a staff member as a probationer when he has served for three years in the same unit. He concedes that the Director-General may terminate an appointment in the Organization's interests, but here the only criticism that may be made against him is that he tried to get improvements in working conditions in the Printing Unit, in other words, he was himself serving the Organization's interests, and the reason given for the decision is therefore mistaken. He has asked his colleagues to give evidence, not on his own work performance, but on his work attitudes. It is not true to say that his other supervisors shared the dissatisfaction of his immediate supervisor. At the Appeals Committee hearings one of them, in reply to a question about his attitude, said: "Mr. Pini used to do more or less what all the other people of the Unit did, but he was on probationary period". That means that the FAO victimises those who engaged in trade union activities and gets rid of them if they are on probation. The assessment of his performance and output, for example in the inquiry, was neither objective nor efficient. The witnesses heard by the Appeals Committee were all on the administration's side. He still maintains that his foreman discriminated against him, especially in the matter of overtime. Since his departure the better working conditions he was asking for - with active support from the Unione sindacale - have been introduced. For example noise has been reduced. It was when he complained about the noise of the machines that his supervisor alleged that his output was declining. The FAO has used him as a scapegoat: it eventually made the improvements he wanted, but only after dismissing him.

F. In its surrejoinder the FAO maintains that the complainant's staff union activities had nothing to do with the decision. He did not make any such allegation to the Director-General or to the Appeals Committee and he does not substantiate it in his complaint. His criticisms of the inquiry are also unfounded. The official who carried it out took great care to compare his performance with that of staff members performing similar duties and took random samples of his daily work sheets and those of six others. The Appeals Committee recognised that the inquiry had been objective. He failed to demonstrate from the work sheets that his productivity was not inferior to that of his colleagues. To show that all his supervisors were dissatisfied with his performance the FAO appends several items of evidence to its surrejoinder. It says that it has great difficulty in tracing the incident over overtime, which was of slight importance and in any event affords no evidence of prejudice against him since he had his appointment twice extended thereafter. As for the noise, he did not complain about it until 18 December 1975, when his supervisor criticised him for the deterioration in his performance. Tests showed that the noise in the printing shop was generally below the maximum admissible by international labour standards. Lastly, as to improvements in working conditions, the complainant contributed only "marginally" to putting into effect recommendations made long before, in January 1976, on work organisation, planning, space and working conditions. There was therefore neither prejudice nor discrimination on the part of his first-level supervisor who was in favour of the extensions of his appointment.

CONSIDERATIONS:

1. After a number of short-term appointments as a printing helper in the Publications Division the complainant was on 1 November 1975 given a fixed-term appointment for two years subject to a probationary period of one year. One of the persons recommending him for this promotion was the group chief, Mr. Gentile. Almost at once his supervisors noted what they described as a change in attitude towards his work. There is no doubt that about this time the complainant became, rightly or wrongly, dissatisfied with the working conditions in his unit. In a discussion on 18 December 1975 with the Printing Officer, Mrs. Capozza, and Mr. Gentile, he attributed the slowing down of his work, about which they were complaining, to this dissatisfaction. They complained also of

absence without leave from his unit, of prolonged and repeated arguments about assignments and of adverse comments on the methods of supervision. On 22 January 1976 Mrs. Capozza warned him in writing of the possibility of disciplinary measures.

2. The probationary period being about to end on 31 October 1976, a review was made on 27 September by the Acting Director of the complainant's Division who recorded a slight improvement in punctuality but none in productivity or work discipline. He recommended the extension of the period until 30 April 1977 with a clear indication, which the complainant was shown, that without substantial improvement his appointment would be terminated. On 23 February the Division Director, Mr. Savary, reported that there had been no improvement and recommended termination. This was approved by the Director-General on 28 March.

3. This decision created dissatisfaction in the Staff Union to whose executive the complainant had been co-opted on 16 February. The Union maintained that the complainant's colleagues all took a favourable view of his work. In consequence, Mr. Skoufis, an Assistant Director-General, undertook a special investigation in which he interviewed six colleagues selected by the Union, he also commissioned an analysis of the work sheets. On 7 June Mr. Skoufis reported against the complainant. In his report he did not comment on the evidence of the six colleagues (which presumably supported the complainant) but evidently he did not prefer it to the conclusions of the supervisors, Mr. Gentile and Mr. Nardi, which they said they had checked by inquiries made to those who worked near the complainant. The analysis was made by Mr. Kell from the Personnel Department who compared the work records of the complainant with those of six other persons with whom he worked. The analysis showed an average productive index of 218 with a figure for the complainant of 163; the highest figure in the index was 261 and the lowest, apart from the complainant's, 190.

4. The complainant appealed to the Appeals Committee, where he was accompanied by counsel. He challenged in detail Mr. Kell's report and the conclusions drawn by Mr. Skoufis. He alleged that his supervisors were prejudiced in that they misunderstood his attitude to his job; they must have interpreted his criticisms of working conditions as an unwillingness to follow instructions. In addition to this evidence the Committee heard Mr. Skoufis and Mr. Kell and also the complainant's supervisors, Mr. Gentile and Mr. Nardi. The Committee found no evidence of prejudice and approved Mr. Kell's report. They made a unanimous recommendation that the appeal should be rejected.

5. In accordance with this recommendation the complainant's appointment was terminated under Staff Rule 301.0913, which provides that the Director-General may at any time terminate the appointment of a staff member who is serving a probationary period if in his opinion it would be in the interests of the Organization to do so. A decision under this regulation is discretionary and leaves the Tribunal with only a limited power of review. Where, as in this case, there is ample evidence to support the conclusion that the complainant's work was unsatisfactory that is an end of the matter; it is not open to the Tribunal to reassess the evidence as the complainant requests.

DECISION:

For the above reasons,

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