

Registry's translation, the French text alone being authoritative

FORTY-EIGHTH ORDINARY SESSION

In re HOUGHTON-WOLLNY

Judgment No. 481

THE ADMINISTRATIVE TRIBUNAL

Considering the complaint filed against the Food and Agriculture Organization of the United Nations (FAO) by Mrs. Mary Anne Elizabeth Houghton-Wollny on 13 March 1981 and brought into conformity with the Rules of Court on 23 April, the FAO's reply of 3 June, the complainant's rejoinder of 11 August and the FAO's surrejoinder of 15 September 1981;

Considering Article II, paragraph 5, of the Statute of the Tribunal, FAO Staff Rule 302.524 and Manual provision 308.52;

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 1 December 1978 the Chairman of the Non-Local Staff Association of the FAO (NLSA) informed the Director-General by letter of the intention of the NLSA to hold a demonstration at FAO headquarters in Rome in order to secure recognition by the Administration. On 5 December the Assistant Director-General for Administration and Finance sent a memorandum to the Chairman of the NLSA stating that any staff who absented themselves during working hours to take part in the demonstration would be considered to be on unauthorised absence and "appropriate administrative measures" might have to be considered. The demonstration took place on 6 December, and the complainant, a grade G.6 operations assistant, took part. In a memorandum of 8 January 1979 the chief of her division informed her that, in accordance with Staff Rule 302.524⁽¹⁾ and with past practice, her unauthorised absence would be treated as special leave without pay. Two hours' pay were accordingly deducted from her salary for February 1979. By a letter of 19 January 1979 she had appealed to the Director-General. By a letter of 5 February the Assistant Director-General for Administration and Finance rejected her appeal, and on 20 February she appealed to the Appeals Committee. In its report dated 21 October 1980 the Committee found that there had been no breach of any staff rule, no unequal treatment and no departure from earlier practice. It therefore recommended rejecting the appeal. By a letter of 9 December 1980 the Deputy Director-General informed the complainant that her appeal was rejected, and that is the decision she now impugns.

B. The complainant submits that the deduction from her salary suffered from formal and procedural defects. She never applied for special leave without pay and the reason given for the deduction was therefore wrong. The decision should not have come from the chief of her division, but from the competent Assistant Director-General or the Chief of Personnel. The calculation of the sum was wrong, for reasons set out in a memorandum of 10 January 1979 addressed by the Chairman of the NLSA to the Director-General and appended to the complaint. Not all staff members who took part in the demonstration had two hours' pay deducted, and the decision was therefore discriminatory. Besides, the demonstration was fully justified: there had been breach of an agreement concluded between the Director-General and the staff on 31 May 1974 recognising "the right to organise and negotiate with management" and of the policy endorsed by the FAO Council at its 63rd Session (1974) confirming "the right of all categories ... to organise and to negotiate with management". The complainant accordingly invites the Tribunal to order repayment of the sum deducted from her salary and to declare that she was not on special leave without pay on 6 December 1978 but taking part in a demonstration to secure recognition for the NLSA.

C. In its reply the FAO submits that the deduction from the complainant's pay was correctly made in accordance with Staff Rule 302.524 and with the principle, already affirmed by the Tribunal, that salary is generally payable only for services rendered. There was no formal defect: the reason for the deduction was correctly stated in the memorandum sent to the complainant by her division director, namely "unauthorised absence", which under the

rule was treated as "special leave without pay". Nor was there any procedural defect. In fact the decision emanated from the Assistant Director-General for Administration and Finance, who had announced in his memorandum of 5 December 1978 that participation in the demonstration would be considered "unauthorised and unjustified", words which showed that he envisaged action under Staff Rule 302.524. Whether the memorandum from the complainant's division director was a notification of the Assistant Director-General's decision or his own decision based on the policy declared by the Assistant Director-General, he was competent in the matter, a division director being responsible for ensuring attendance of his staff. The sum deducted was correctly calculated in accordance with Manual provision 308.52. It is also mistaken to allege that there was unequal treatment: a deduction was made from the salary of all staff members whose absence had been recorded by their division directors. The FAO therefore invites the Tribunal to dismiss the complaint as unfounded.

D. In her rejoinder the complainant repeats the facts and arguments set out in her complaint. In particular she contends that the demonstration was not covered by Staff Rule 302.524, first, because the authorisation of management is not a prerequisite for collective action, and secondly, because the FAO has failed to establish that the demonstration was "unjustified". It was the culmination of four years of attempts by the NLSA to secure recognition by the Administration. She again submits that not all staff members who took part suffered a deduction from salary: the FAO's reply is unsatisfactory on this point.

E. In its surrejoinder the FAO maintains that much of the rejoinder, being concerned with the question of recognition of the NLSA, is irrelevant to the point in dispute, and other arguments put forward by the complainant are inadequate. One point requires refuting, however: it was the complainant's unauthorised absence, rather than the demonstration, which was "unjustified". It is clear from the terms of appointment of staff members and the Staff Regulations and Rules that to refuse work is a breach of contractual obligations. The FAO cannot be required to treat as justified, within the meaning of Staff Rule 302.524, action which amounted to a deliberate breach of contract. Besides, she has failed to answer its argument that it was entitled to refuse to pay her for work she did not perform. In sum, the FAO maintains the conclusions set out in its reply.

CONSIDERATIONS:

The application of the Staff Rules

1. Under Staff Rule 302.524, on which the impugned decision is based, any unauthorised and unjustified absence from duty shall be charged to special leave without pay, independently of any disciplinary measure which may be taken under Chapter X. The complainant argues that the rule does not apply to her case because she did not need permission to take part in a demonstration and because the demonstration on 6 December 1978 was justified by its purpose, namely to secure recognition of the Non-Local Staff Association.

This reasoning is unsound. It is for the FAO Administration to determine whether or not an official needs permission to be absent from duty and whether to authorise participation in a staff demonstration during working hours. On 5 December 1978 the Assistant Director-General wrote a minute to the representative of the Non-Local Staff Association warning that the absence from duty of anyone who took part in the next day's demonstration would be treated as unauthorised and unjustified. He therefore kept within the bounds of his authority. As his minute made clear, the demonstration on 6 December came under Staff Rule 302.524, and the rule was correctly applied.

The competent authority

2. The complainant argues that the Director of her division was not competent to order the deduction from her salary, since such a decision falls to the Director-General or the Assistant Director-General. She fails, however, to prove any such abuse of authority. Moreover, the Director of her division merely carried out the instructions given on 5 December 1978 by the Assistant Director-General.

The deduction from salary

3. The complainant submits that the amount deducted from her salary was wrongly calculated under Manual provisions 308.521 and 522. She is mistaken. Under those provisions the monthly salary is 1/12 of the yearly salary, and the daily salary 1/360 of the yearly and 1/30 of the monthly salary. The complainant was on unauthorised leave for two hours, i.e. for one quarter of a normal working day. It was therefore right to deduct a

sum corresponding to 1/120 of her monthly salary.

Inequality of treatment

4. The complainant maintains that she did not receive the same treatment as others who, like herself, were absent from duty on 6 December 1978 but who have been paid their full salary, and as others who took part in demonstrations before without suffering any deduction from salary.

This plea also fails. First, the complainant has failed to establish that the FAO treated any differently those who demonstrated on 6 December. Secondly, either previous demonstrations were too short to afford grounds for deducting anything from salary, or else taking part in them did lead to such deduction.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President, Mr. Jacques Ducoux, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Allan Gardner, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 3 June 1982.

(Signed)

André Grisel

J. Ducoux

Devlin

A.B. Gardner

1. The Rule reads: "Any unauthorised and unjustified absence from duty shall be charged to special leave without pay..."