

## TENTH ORDINARY SESSION

### *In re* CUNNINGHAM

#### Judgment No. 59

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the Food and Agriculture Organization of the United Nations drawn up by Mr. Reginald Edward Cunningham on 21 November 1961, the Organisation's reply of 18 December 1961, complainant's additional memorandum on receivability submitted on 29 January 1962 at the Tribunal's request, the Organisation's observations on said additional memorandum dated 12 March 1962, and complainant's further memorandum of 24 March 1962; the Organisation's note of 30 March 1962 on rules governing access to the Tribunal submitted by direction of the Tribunal and complainant's observations thereon dated 14 April 1962;

Considering Article VII of the Statute of the Tribunal, Article 6, paragraph 3 and Article 7, paragraph 1 of the Rules of Court, Article 301.112 of the FAO Staff Rules and Sections 331.51, 331.52 and 342.732 of the FAO Manual;

After examining the documents in the dossier, no oral proceedings having been either requested by the parties or ordered by the Tribunal;

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

A. Complainant, an Australian national born on 22 February 1900, was employed by the Food and Agriculture Organization of the United Nations from 22 March 1954 to 20 April 1957 as an Expanded Technical Assistance Programme Agricultural Officer (Range Development) in Pakistan.

B. In December 1955, complainant, as the result of an accident arising out of and in the course of his employment, suffered a fracture of the left ankle, for which in the course of the years 1956 and 1957 he received medical treatment in Pakistan, London and Rome.

C. While in Australia in 1958, Complainant suffered a second fracture to his left ankle which the Organisation accepted as being directly attributable to the result of complainant's accident in 1955 and for this second accident the Organisation accepted liability.

D. On 8 May 1959, the Complainant's case was submitted to the Director-General for transmission to the Advisory Committee on Compensation Claims of the Organisation in order that the said Committee might determine the measure of compensation to which the Complainant was entitled for the injuries sustained as the result of the said accidents.

E. Following a series of meetings of the said Advisory Committee, the last of which took place on 9 September 1960, the said Committee made its recommendations to the Director-General as to the measure of compensation which should be awarded to Complainant. Complainant was notified of the said recommendations and of their acceptance by the Director-General and, after an exchange of correspondence, the Complainant intimated that he was dissatisfied with the Committee's recommendations and by letter dated 20 December 1960 formally lodged an appeal with the Organisation's Appeal Committee for Compensation cases.

F. On 26 July 1961, the said Committee of the Organisation submitted to the Director-General its recommendations on Complainant's appeal and by letter dated 10 August 1961 addressed to Complainant by the Chief, Personnel Branch of the Organisation, the Complainant was advised inter alia of the recommendations of the Appeal Committee and the acceptance thereof by the Director-General and that "should you not accept the decision of the Director-General, you are entitled to take the matter to the International Labour Organisation's Tribunal, Geneva, within 90 days of receipt of this letter". In a letter to the Chief, Personnel Branch, dated 20 August 1961 the Complainant acknowledged receipt of the said letter of 10 August 1961.

G. On 2 November 1961, there was received in the Registry of the Tribunal a letter dated 25 October 1961 and post marked 31 October 1961 addressed to the "Chairman of the International Labour Organisation Tribunal, Geneva"

which was in the following terms:

"Dear Sir,

I wish to give formal notice of appeal against the Director-General of FAO Rome against his decision in awarding me COMPENSATION for an injury received while in service in Pakistan with FAO. I shall forward particulars and all relevant data concerning my appeal to you as soon as I can possibly have it prepared.

This notice is within the period of ninety days from the receipt of the letter from FAO advising me of the Director-General's decision.

Kindly acknowledge.

Yours faithfully,

R.E.G. Cunningham".

H. On 3 November 1961 the Registrar of the Tribunal addressed to the Complainant a letter in the following terms:

"Dear Sir,

I have to acknowledge the receipt on 2 November 1961, of your letter of 25 October 1961, by which you give formal notice of an appeal against a decision of the Director-General of the Food and Agriculture Organization.

I enclose herewith a copy of the Statute and Rules of Court of this Tribunal and would draw your special attention to Article 7, paragraph 1, of the Rules of Court which requires complaints to be drawn up on a prescribed form.

Your letter of 25 October does not fulfil the requirements of the Rules of Court and a proper complaint fulfilling those requirements should be drawn up on the form, eight copies of which are enclosed herewith. If this complaint is despatched prior to the expiry of the 90 days time limit provided for in Article VII, paragraph 2, of the Statute of the Tribunal, no difficulty will arise as to the application of those provisions. If, however, a complaint fulfilling the requirements of the Rules of Court is not so despatched, it will be for the Tribunal itself to consider whether your letter of 25 October can be considered as falling within the scope of Article 7, paragraph 4, of the Rules of Court, and whether a proper complaint submitted within one month of the date of receipt of the present letter would still be receivable. If you cannot despatch a proper complaint within the 90 days time limit, then subject of course to the foregoing reservation, it should be despatched within one month of the date of receipt of the present letter at the latest, as called for by Article 7, paragraph 4, of the Rules of Court.

Finally, I should indicate that as the Tribunal has no power to extend the time limit provided in Article VII of its Statute, if you cannot submit a full statement of facts and arguments together with supporting documents within that time limit, you should nevertheless submit within that time limit a complaint with a brief statement of your case and apply for leave to submit an additional statement at a later date. The President of the Tribunal will then rule on your application and if it is granted, set a time limit for the production of the additional statement and documents.

Yours faithfully,

Jacques Lemoine, Registrar."

### IN LAW

1. Complainant's letter of 25 October 1961, contained neither the grounds of his proposed claim nor any indication of the arguments upon which he proposed to support it, and cannot be accepted by the Tribunal as being a complaint fulfilling the requirements of Article VII, paragraph 2, of the Statute of the Tribunal.
2. The complaint despatched, according to postmark on 25 November 1961 was not despatched within 90 days of his receipt on 20 August 1961 of the decision of the Director-General of which Complainant complains.
3. It is not within the competence of the Tribunal to enlarge the period of 90 days which Article VII, paragraph 2,

of the Statute of the Tribunal lays down as the period within which a decision complained of can be appealed and the claim of 21 November 1961 must be dismissed as time-barred and irreceivable.

## DECISION

The complaint is dismissed as not receivable.

In witness of this judgment, delivered in public sitting on 2 May 1962 by the Right Hon. Lord Forster of Harraby, K.B.E., Q.C., President, Mr. Maxime Letourneur, Vice-President, and Mr. André Grisel, Judge, the aforementioned have hereunto subscribed their signatures, as well as myself, Lemoine, Registrar of the Tribunal.

Signatures:

Forster of Harraby  
M. Letourneur  
André Grisel  
Jacques Lemoine