

FIFTY-SECOND ORDINARY SESSION

In re POLACCHI

Judgment No. 606

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the Food and Agriculture Organization of the United Nations (FAO) by Mrs. Wanda Polacchi on 28 May 1983 and corrected on 8 June, the FAO's reply of 26 July, the complainant's rejoinder of 6 September and the FAO's surrejoinder of 4 November 1983;

Considering Article II, paragraph 5, of the Statute of the Tribunal, FAO Staff Regulations 301.012 and 111 and Appendix D to FAO Manual section 280;

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. The complainant, an Italian citizen, joined the FAO in 1957 at grade G.3. In 1960 she was promoted to G.5 and in 1971 to grade G.6 on the same post. Since 1960 she has worked as a research clerk and assistant in a branch of the Nutrition Division which, under various names, has been in charge of work on the subject of food composition. For this purpose the branch had formerly a grade P.4 post for a "nutrition officer", but the last incumbent was transferred elsewhere with the post in August 1979. On 11 February 1981 the complainant wrote to the Director of the Division saying that she was doing the nutrition officer's work and ought to be promoted to the Professional category. The Director refused her claim on 9 March and said that her post description would be revised but any work not pertaining to the G.6 grade would be given to someone else. On 13 March she appealed to the Director-General against the decision to reassign duties "I have been performing for years rather than reclassify my post". On 10 June the Assistant Director-General for Administration and Finance replied on the Director-General's behalf rejecting her claims. On 9 July 1981 she appealed to the Appeals Committee. In its report of 7 April 1982 the Committee recommended rejecting her appeal but carrying out a "desk audit" of her post and considering suitable "recognition" of her "high standard of work". On 25 June 1982 the Deputy Director-General conveyed the Director-General's decision: he observed that none of her duties had in fact been reassigned; the desk audit would be done and the question of regrading her post settled later. The results of the audit went to the Establishments Subcommittee set up under Appendix D to Manual section 280 (Classification and allocation of posts). The Subcommittee recommended no regrading of the post and the Deputy Director-General informed the complainant by a letter of 28 February 1983 -- the decision impugned -- that that recommendation was accepted.

B. The complainant submits that because of computerisation she has been able to do and has done the nutrition officer's work as well as her own since at least 1979. The Division Director himself acknowledged in his minute of 9 March 1981 that some of her duties might warrant a higher grade and that her post description should be revised. The desk audit revealed that her duties included the collection and analysis of data, work normally assigned to Professional category posts and that she was able to work largely on her own. It is mistaken to say that computerisation made the nutrition officer redundant: a computer would be more likely to take over G.6 work than the duties of someone of almost senior Professional grade. By letting her continue to perform the work the FAO gave her at the very least a reasonable expectation of a higher grade and salary. The decision shows defects which warrant setting it aside. The complainant invites the Tribunal to do so and to order reclassification of her post at P.2 with effect from 1 September 1979, or award her compensation for carrying out greater responsibilities over the years, and damages for moral prejudice. She also claims costs.

C. In its reply the FAO submits that the complainant's functions have never been those of a Professional category official and that she has misinterpreted its statements and position. Computerisation made the nutrition officer's work unnecessary, his post was shifted to another branch in 1979, and the complainant cannot therefore be performing his duties. She misreads the Division Director's minute of 9 March 1981: all he acknowledged was that the nature of her work had changed because of the use of computers. In fact her duties changed because the work of the whole branch did, not because the nutrition officer had left. The reason why none of her duties was

reassigned was that none was thought to warrant a Professional grade. That she needs little supervision does not entitle her to such a grade. The desk audit was correctly carried out in accordance with the prescribed procedure and by qualified people and it confirmed that her post was properly graded. The impugned decision was taken on objective review of all the relevant facts and in line with the rules on grading, and it shows no substantive or formal defect which would warrant setting it aside.

D. In her rejoinder the complainant, developing her case, contends that the challenged decision was based on the wrong assumption that she had not performed the P.4 nutrition officer's duties since 1979. In support of this contention she explains in detail the nature of her work. She discusses statements in the reply which she interprets as supporting her case. The desk audit was carried out by the Administration itself and is, in her view, not objective. Mistaken conclusions were drawn from the evidence in that computers could not conceivably have done away with the analytical work of a Professional official.

E. In its surrejoinder the FAO again affirms that the complaint is devoid of merit. It points out what it regards as the misunderstandings of its position which the rejoinder betrays. It submits that after the nutrition officer left the complainant's duties were much the same as before, except that she had greater freedom from supervision and the computer relieved her of some manual tasks. The analysis of data is indeed Professional grade work, but is now done by a computer programmer. The complainant simply does not have the scientific qualifications to do Professional grade work on food composition. Although desk audits are done in the Organization that does not mean they cannot be objective. Only for certain specific reasons will the Tribunal substitute its own assessment in the matter of grading and no such reason exists in this case. The nutrition officer's post became redundant only in respect of those duties which related to food composition: it was not abolished, but moved to a unit where it was needed.

CONSIDERATIONS:

The complainant, who has been in the service of the Organization for 27 years, has spent the last 24 of them as a research clerk in a branch of the Nutrition Division, the first 11 at grade G.5 and the rest of them at her present grade of G.6. She worked under the Nutrition Officer, who held the rank of P.4. On 31 August 1979 this officer was transferred and was not replaced. The complainant felt that the additional work which fell upon her justified her promotion from the General Service to the Professional category. The attitude of the Organization was in effect that the Nutrition Officer had been replaced by a computer and that there was no longer any need for a Professional officer at the top. Consequently, the complainant's application, made on 11 February 1981 to her Divisional Director, was unsympathetically received. He agreed that her work had changed and said that he intended to revise the post description. But this would not lead, he said, to any reclassification of her post, any work above the G.6 level would be reassigned. The Appeals Committee did not find this attitude altogether attractive. They referred to the high praise which the complainant had earned for the excellence of her work and recommended on 7 April 1982, first, that a desk audit should be carried out and, secondly, that, regardless of the outcome of the audit, the complainant's high standard of work should receive some suitable recognition. The Director-General accepted the first, but not the second, of these recommendations. An audit report was made and submitted to the Establishments Subcommittee, who on the basis of the report advised the Director-General that the classification should not be altered. On 28 February 1983 the Deputy Director-General decided to accept this recommendation and against this decision the appeal is brought.

There are no rigid rules for determining whether a post properly belongs to the Professional or the General Service categories. It depends upon the presence or absence of factors which only the expert, or at least the knowledgeable knows how to weigh. It is a question to be decided by experience rather than by rule. Those who conduct the desk audit have the necessary experience. The final decision falls within the discretion of the Director-General and the Tribunal will not interfere with it unless he acted on the basis of a wrong principle, or based his decision on a mistake concerning the facts or the law or failed to take into account essential facts or deduced from the documents in the case conclusions which were clearly not correct. The complainant's argument in the dossier, after citing this principle correctly, asserts that "any one of the above-mentioned grounds can be invoked in order to declare null and void the decision impugned". She does not, however, direct her argument to any of these grounds, but addresses the Tribunal as if it were a body with a full power of review and qualified to replace the views of experts with its own conclusions. It is impossible, as well as impermissible, for the Tribunal to do this. To succeed, it is necessary for the complainant to show that the Director-General's conclusion is flawed in one or other of the ways described above. If there is such a flaw, the argument in the dossier does not identify or discuss it and the Tribunal does not perceive it.

DECISION:

For the above reasons,

The complaint is dismissed.

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

Delivered in public sitting in Geneva on 12 April 1984.

(Signed)

André Grisel

Jacques Ducoux

Devlin

A.B. Gardner