

Registry's translation, the French text alone being authoritative.

## FIFTY-EIGHTH ORDINARY SESSION

In re LOROCH (No. 3)

Judgment No. 732

### THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed against the Food and Agriculture Organization of the United Nations (FAO) by Mr. Kim Joseph Lorocho on 6 May 1985 and corrected on 17 May, the FAO's reply of 19 July, the complainant's rejoinder of 23 August and the FAO's surrejoinder of 25 September 1985;

Considering Articles II, paragraph 5, and VII, paragraph 1, of the Statute of the Tribunal, FAO Staff Rules 303.131 and .138 and FAO Manual provision 331.51;

Having examined the written evidence, oral proceedings having been neither applied for by the parties nor ordered by the Tribunal;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The Tribunal ruled on the complainant's first two complaints in Judgments 297 and 620. In the latter, which it delivered on 5 June 1984, it ordered the FAO to pay him 20,000 United States dollars as damages and \$2,000 as costs. On 6 July the FAO sent him a cheque drawn on Citibank of New York. He sought to cash the cheque through his own bank, the Jyske Bank of Copenhagen. The Jyske Bank informed him, however, that Citibank had refused to honour the cheque and had returned it on 22 October with the annotation "No known account". On 8 November the complainant wrote to the Director-General of the FAO asking for another cheque for \$22,000, interest at 11 per cent a year from 6 July 1984, and \$20,000 as damages for moral and material injury. In his letter of 30 November the Director of the Financial Services Division replied that the FAO, which had had an account with Citibank for over twenty years, greatly regretted the mistake; it had instructed a bank in Rome to pay him the \$22,000. The sum was credited to him on 6 December 1984. On 17 December he wrote back repeating his claim to interest and damages. On 23 January 1985 the Director replied that the interest would be paid, but he said nothing of the claim to damages.

B. The complainant states that the dishonouring of the FAO's cheque caused him embarrassment and loss of credit at his own bank. In the business world in which he has been striving since 1974 to make a living such an occurrence is harmful to professional reputation, and the harm in this instance was not remedied by the payment of interest. Moreover, he suffered an attack of angina pectoris on hearing that the FAO's cheque had not been honoured. He claims \$10,000 as damages for injury to his "business, profession and reputation" and another \$10,000 as damages for "physical and emotional suffering". He is challenging what he sees as an implied final decision to reject the claim to damages in his letter of 8 November 1984.

C. The FAO submits that the complaint is irreceivable under Article VII(1) of the Statute of the Tribunal and FAO Manual provision 331.51, which allows appeal to the Tribunal only against "a final decision of the Director-General". The FAO never gave an express reply to the claim to damages the complainant made in his letters of 8 November and 17 December 1984, but its failure to do so implies no "final decision of the Director-General". FAO Staff Rule 303.1313 says that "if no reply is received within the applicable time-limit [ninety days] referred to in Staff Rule 303.1312, [staff members] may submit an appeal". The complainant failed to do so. Moreover, Rule 303.1311 reads: "Staff members may request the Director-General to take a final decision on their appeal..."

Besides, the complaint is devoid of merit and vexatious. First, the complainant has failed to show the injury he alleges. The dishonoured cheque was issued by the FAO, not by the complainant himself. He adduces no evidence to show he suffered an attack of angina. Secondly, the FAO was not in any way negligent or fraudulent and, not being to blame for any injury he may have suffered, is under no liability towards him.

D. The complainant rejoins, as to receivability, that his letter of 8 November 1984 to the Director-General, which he headed "Memorandum of appeal", constituted his appeal under Staff Rule 303.1313, and it is mistaken to

contend that the Director-General's failure to give an express answer cannot be construed as an implied final decision challengeable before the Tribunal.

As to the merits, he submits that, although the FAO's reputation was indeed impaired, the dishonouring of its cheque also affected his own. He reaffirms that he suffered an attack of angina. He presses his claims.

E. The FAO's surrejoinder observes that there is nothing new in the rejoinder which weakens the case it put in its reply and, in particular, that his comments on the appeals procedure betray a misunderstanding of how it works. As Rule 303.1311 makes plain, a reply to an appeal from the Director-General "shall constitute a final decision only if the appellant has received an express notification to that effect". Since the Director-General never gave an express notification that he had taken a final decision on the claim to damages, the complainant was obliged to pursue the procedure laid down in Rules 303.1313 and 303.138: he did not do so.

## CONSIDERATIONS:

The matter in dispute

1. By Judgment 620 of 5 June 1984 the Tribunal ordered the FAO to pay the complainant 20,000 United States dollars in damages and \$2,000 in costs.

In execution of that decision the FAO gave the complainant a cheque for \$22,000 dated 6 July 1984, drawn on Citibank of New York. The complainant instructed the Jyske Bank of Copenhagen to cash it. On 22 October 1984 it was returned to the Jyske Bank through the Chemical Bank of New York marked "No known account" by Citibank.

On 8 November 1984 the complainant informed the Organization of what had happened and asked them to issue another cheque for \$22,000 plus interest calculated at 11 per cent a year from 6 July 1984, the sum to be made payable to the Tyndall Bank at Douglas in the Isle of Man. He also claimed \$10,000 in damages for injury to his credit and \$10,000 in damages for physical and moral prejudice.

On 30 November 1984 the Director of the Financial Services Division wrote to tell him that the sum of \$22,000 had been paid into the Tyndall Bank and that he would decide on the question of interest once the cheque of 6 July had been returned. He did not mention the claim to damages.

On 17 December 1984 the complainant sent a photocopy of the cheque and repeated his claim to interest and damages. He said that he expected the Director-General's final decision on the claim to damages within 90 days, or not later than 7 February 1985.

On 23 January 1985 the Director of the Financial Services Division replied that he noted the sum of \$22,000 had been paid into the Tyndall account and asked to have the original cheque back since the mere photocopy did not enable the FAO to obtain from Citibank an explanation of its refusal to honour the cheque. The Director accepted the claim to interest but did not comment on the other demands.

On 6 May 1985 the complainant filed the present complaint seeking \$10,000 as material damages and another \$10,000 as moral damages. The FAO's main plea is that the complaint is irreceivable, its subsidiary plea that it is devoid of merit.

## Receivability

2. When there is difficulty over the execution of a judgment either side may as a rule seek the Tribunal's assistance and there is no need to go through the internal appeal procedure beforehand. But this complaint is not about execution as such but about the allegedly harmful consequences of the way in which the FAO executed Judgment 620. That is not a matter that is ordinarily connected with execution and it is therefore one that must go through the internal appeal procedure before it can come to the Tribunal. The complainant's claims are such that they will be receivable only if he has exhausted the internal means of redress at his disposal in accordance with Article VII(1) of the Statute of the Tribunal.

The complainant failed to exhaust the internal means of redress. According to FAO Staff Rule 303.1313 a staff member who wishes to appeal against the reply received from the Director-General, other than a reply constituting

a final decision, or if no reply is received, may submit an appeal to the Chairman of the Appeals Committee through its Secretary. Rule 303.1311 says that a reply from the Director-General shall constitute a final decision only if there is express notification to that effect. Since there had been no final decision within the meaning of that rule in this case the complainant was required to submit his claims to the Appeals Committee. He failed to do so, and his complaint is therefore irreceivable.

The merits

3. Subsidiarily, the complaint fails because it is devoid of merit. It would succeed only if the complainant had suffered injury and established a sufficient causal link between the Organization's act and the injury. The conditions are not fulfilled.

First, the injury to the complainant's credit is not proven. Even if doubt was cast on his good faith it was soon removed when the FAO paid \$22,000 to Tyndall. There is no medical or other evidence to support the allegations of physical and emotional suffering.

Secondly, there is no sufficient causal link between the Organization's act and the alleged injury. The circumstances that held up payment were not of a kind that might ordinarily be expected to cause the complainant material or moral injury.

The complainant's claim is the less sound in that the FAO has acknowledged his entitlement to interest.

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 the Lord Devlin, Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 17 March 1986.

André Grisel

Jacques Ducoux

Devlin

A.B. Gardner