

## SIXTY-NINTH SESSION

### *In re* GELMINI

#### Judgment 1048

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs. Maria Luisa Gelmini against the Food and Agriculture Organization of the United Nations (FAO) on 5 December 1989 and corrected on 19 December, the FAO's reply of 9 February 1990, the complainant's rejoinder of 5 March and the Organization's surrejoinder of 26 April 1990;

Considering Article II, paragraph 5, of the Statute of the Tribunal, FAO Staff Rules 303.1311, .1313 and .26 and FAO Manual paragraphs 314.65, .651 and .656;

Having examined the written evidence and disallowed the complainant's application for the hearing of witnesses;

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

A. The complainant, an Italian born in 1935, joined the FAO at headquarters in Rome in 1961 as a shorthand-typist at grade G.3. She got a continuing appointment in 1962 and promotion to G.4 in 1966 and to G.5 in 1969. Being unhappy with an assignment at headquarters, she was transferred in 1983 as an administrative clerk to the FAO's Regional Office for Asia and the Pacific in Bangkok. There she took umbrage at many things and in February 1985 asked for a transfer. She served for a year in Chad but objected again on several grounds and was transferred to Nairobi in October 1986. Soon she was pleading difficulties there and by December she wanted to go back to headquarters. In February 1987 she was transferred there and assigned to a temporary clerical assistance pool (TCA). From 1 February to 6 May 1988 she was temporarily employed as a clerk in the Field Programme Development Division (DDF).

On 5 May 1988 her supervisor, the Executive Officer of DDF, filled up a standard form appraising her performance since 1 February. Among other things he rated her knowledge of French "marginal" and expressed "reservations" about her "general conduct", referring to her "unequal performance" in earlier assignments.

On 24 May she wrote him a memorandum objecting to those comments and asking him for copies of all reports on her performance in earlier assignments. He confirmed his comments in a memorandum of 26 May and added that he had "been told" that she "had been perusing" files relating to field offices she had been assigned to. She wrote to him again on 1 June demanding the production of the reports, a request she repeated in a minute of 10 June to the Director of the Personnel Division. On 14 July the Executive Officer sent her copies of comments made about her by her supervisor in Chad on 19 March 1986 and by her supervisor in Kenya on 21 November 1986.

On 16 August 1988 she appealed to the Director-General under Staff Rule 303.1311 against the appraisal of 5 May, describing it as "persecution and mental torture". A letter of 12 September 1988 informed her that the Director-General had rejected her appeal, and on 10 October she appealed to the Appeals Committee under Rule 303.1313. In its report of 8 June 1988 the Committee held that the appraisal was in line with practice and the terms of her appointment and showed no prejudice or improper motive; it recommended rejecting her appeal but trying to find her suitable G.5 work. By a letter of 28 August 1989, the decision she impugns, the Director-General rejected her appeal.

B. The complainant describes her career and how the dispute arose. She alleges that the fight for her rights began in 1977, when she was harassed after her election to the executive committee of a staff union. She believes that the Organization set a "death trap" for her in 1981 by moving her from a permanent post to one of limited duration. Officials at headquarters and in Bangkok sought to force her "surrender". She recounts at length the professional, financial and personal difficulties her assignments in the field caused her. Her transfers to Chad and to Kenya had the malicious purpose of driving her to "further surrender". Her field service will cost her a reduction in "separation" benefit when she leaves. The Executive Officer stood in the way of her transfer to a G.6 post in the Sudan she applied for in 1987, and she is now doing G.2 work in TCA despite vast experience of administrative matters at headquarters and in the field and a long and satisfactory record of service.

She submits that appraisals of performance must be made by proper criteria and that qualifications may be assessed only against the requirements of the work. There was no reason why the Executive Officer should have rated her French at all since she hardly needed it in her work, and his explanations are implausible and ambiguous anyway. Nor has he ever explained his "reservations" about her general conduct, which are inconsistent with the rest of his report, particularly with his comment that she maintained "good work relations". The two texts he sent her were not appraisal reports at all and, though they had been written in 1986, she saw them for the first time on 14 July 1988. His insinuation about her snooping in files was unfounded. She objects in detail to his comments and to others' acceptance of them and makes a comparative analysis of the parties' submissions in the course of the dispute. The Director-General's endorsement of the Appeals Committee's report has caused her irreparable professional injury. She is constantly slighted and under stress.

She claims the withdrawal of the appraisal, a "stable, suitable and satisfactory post" and the reckoning of her three years and six months' field service for the purpose of determining her entitlement to the "separation" benefit.

C. In its reply the FAO gives its own account of the complainant's career and of the dispute.

The Executive Officer's appraisal of her shows no fatal flaw. He described her performance as satisfactory on the whole and praised her for taking an interest and doing useful work. Her main quarrel is with his rating of her French and comments on her general conduct.

The rating came within the scope of his appraisal. Though a knowledge of English was essential a knowledge of French was desirable; indeed she used it often enough for him to be able to assess her fluency. Her work was concerned with the procurement of supplies in French-speaking countries, among others, and, as she admits, she had occasion to draft in French. Her supervisor's mother tongue was French, his ability to assess her is not in dispute and his assessment is in itself unexceptionable.

As for her general conduct, she had been found looking at personnel files and photocopying texts that had nothing to do with her work. Her duties in DDF required her to show discretion and gain her supervisor's confidence. Since she failed to do so his reservations were warranted.

Her claim to a suitable assignment is reasonable and her placement in TCA unsatisfactory. But the Organization is not at fault. Her reputation for being awkward has hampered its genuine efforts since 1982 to place her. Several divisions have been approached but have all turned her down. There are not many G.5 posts available for an administrative clerk. The FAO incurred expense in trying her out, to no avail, in three duty stations in the field. She would be easier to place if she would learn word-processing, but she will not, though all notices of General Service vacancies now require ability and willingness to use word-processors.

Her case being unfounded, she is not entitled to any moral damages.

FAO Manual paragraph 314.65 provides for paying General Service staff "separation" benefit when they leave and the amount is equal to one month's final net salary for each year of service. But 314.651 says that it is due only to staff "whose salaries are based on the Headquarters salary scale". So the period of the complainant's field service cannot count towards her benefit.

D. In her rejoinder the complainant denies that she has a reputation for being awkward or is unwilling to learn word-

processing. Her attitude to work is flexible and positive. A durable assignment is long overdue.

She points out what she sees as inaccuracies in the FAO's version of the facts and adds what she believes to be necessary clarification. She annotates its submissions and comments on many issues of fact and of law they raise. She refers to the pleas in her original brief in the belief that they already answer most of the FAO's arguments, and she presses her claims.

E. In its surrejoinder the Organization submits that the complainant's rejoinder raises no new issues. It observes that she does not deny its efforts to find her a more suitable post - and indeed it acknowledges her claim to such a post to be reasonable - but it reaffirms that it failed very largely because of her own refusal to learn word-processing and of her off-putting reputation. It says it will continue to look for another assignment for her. It describes the unfavourable response to the Personnel Division's proposals to place her.

## CONSIDERATIONS:

1. The complainant, who joined the Organization in 1961, is now in the temporary clerical assistance pool (TCA). Towards the end of a short-term assignment, from February to May 1988, to the Administrative Unit of the Field Programme Development Division (DDF) her supervisor completed on 5 May the standard report form for appraisal of her performance in that period.

In a memorandum of 24 May the complainant took objection to two matters in his report. One was his assessment under A ("knowledge of languages") of her knowledge of French. The other was a reference under J ("Remarks") to aspects of her general conduct, which read in part:

"Mrs. Gelmini having worked in three Representations with unequal performance there are reports on her performance in various files. These files are all restricted to staff working in the Admin. Unit and DDFO. In this context it is not advisable that Mrs. Gelmini has access to confidential material relating to herself by working in the Admin. Unit."

The other remarks under J praised her work and are not at issue. She also asked that the reports on her performance referred to in the remarks be shown to her in accordance with Staff Rule 303.26 ("Service evaluation reports"). On 14 July 1988 two documents - letters from the FAO's Representatives in Chad and Kenya - were given to her in answer to that request.

2. The internal appeal procedure having been completed, the Director-General notified his final decision to her in a letter dated 28 August 1989. In accordance with the recommendation by the Appeals Committee, he confirmed his view that the performance appraisal form had been completed correctly and in line with established practice and that rating her knowledge of French had been within her supervisor's "scope of judgment", as had been his remarks about her "unauthorised perusal of the confidential files and the reservations on future employment". The Director-General rejected her appeal but added that, as the Committee had suggested, her memorandum of 24 May 1988 had been attached to the appraisal. That is the decision she impugns.

3. She asks the Tribunal to order the FAO:

(a) to withdraw the performance appraisal report;

(b) to find a "stable, suitable and satisfactory post" for her;

(c) to pay her damages for moral injury; and

(d) to restore her "entitlement to the separation scheme" for the period from August 1983 to January 1987 "lost" during her service in the field.

The language rating

4. English and French are two of the official languages of the Organization. Though neither was mentioned in the description of her duties, it is obvious that she had to work in one of them. In practice she used English and her competence in English was found satisfactory. But knowledge of a second official language was a desirable qualification, and she did have occasion to use French in the course of her duties. So making an evaluation of her knowledge of French was also relevant and proper.

Moreover, her supervisor's mother tongue being French, he had both the opportunity and the competence to pass judgment on her knowledge of that language, and there is no evidence to suggest that in doing so he acted from any improper motive. So there is no reason to interfere with his actual evaluation.

The remarks on general conduct

5. The remarks the complainant takes exception to are based on the allegation by the Organization that she had looked at a file which was unrelated to her work and which contained an evaluation by her supervisor of her application for a post in the Office of the FAO's Representative in the Sudan. There is a further allegation that she was seen perusing other files relating to Offices of Representatives in which she had served and that she had taken

photocopies.

There is no doubt that the complainant did look at an evaluation by her supervisor of her application for a post, since she quoted it to him. So the comment by her supervisor that it was not advisable to let her have access to confidential material was based on his own experience during the period of evaluation.

6. The other matter the complainant refers to is the reference to "unequal performance" in three field offices. There were no reports appraising her performance in her three field assignments. The two letters which were produced are not performance appraisal reports as such. The one of 19 March 1986 from the Representative in Chad is complimentary to her, and though he asked for her recall the grounds for his request were unrelated to her performance. The letter of 21 November 1986 from the Representative in Kenya, which was sent along with her own request for transfer, does contain uncomplimentary comments: he said that her attitude to work was not conducive to the smooth running of the office, that she had made no attempt to find lodging and that he could not afford to carry a "passenger" and would be grateful if she was removed at once.

This is an appeal against the complainant's performance appraisal report for the period from February to May 1988. Although the comment on her earlier "unequal performance" would have had to be altered if factually incorrect, the two letters from the Representatives in Chad and Kenya do reveal unequal performance - which is not the same thing as unsatisfactory performance - and the comment is correct insofar as it relates to facts. Insofar as it is an evaluation and recommendation it is based on facts which the Tribunal is satisfied are true. There being no evidence that the supervisor acted from any improper motive, there is no reason why he should withdraw any of his remarks, and the complainant's reservations are adequately recorded by appending her memorandum of 24 May 1988 to the report, as the Director-General agreed to do.

The other claims

7. The complainant's application for an order to the Organization to find a suitable post for her is a matter that falls outside the Tribunal's competence. Besides, what the complaint impugns is the Director-General's decision of 28 August 1989, that decision does not cover the matter of finding her a suitable post and her claim is therefore irreceivable.

8. Since there is no reason to order that the performance appraisal report be withdrawn, she can have no claim to moral damages.

9. Her claim to reinstatement of her entitlement to benefit under the "separation scheme" for the period "lost" during her service in the field is not sustainable. She does not dispute that Manual paragraph 314.656 applies. It provides:

"If a General Service staff member is transferred to a post the salary for which is paid on a salary scale other than the Headquarters one, the period of service in such post shall not be taken into account in determining the amount of the separation payment ...."

When the complainant was serving in Thailand, Chad and Kenya her salary was not based on the headquarters scale and so the period of her service in those countries was not to be taken into consideration for the purpose of the separation scheme.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, Tun Mohamed Suffian, Vice-President, and Miss Mella Carroll, Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 26 June 1990.

Jacques Ducoux

Mohamed Suffian  
Mella Carroll  
A.B. Gardner

Updated by PFR. Approved by CC. Last update: 7 July 2000.