

SEVENTY-NINTH SESSION

In re WASSEF (No. 6)

Judgment 1455

THE ADMINISTRATIVE TRIBUNAL,

Considering the sixth complaint filed by Mr. Maher Nabih Wassef-Gerges against the Food and Agriculture Organization of the United Nations (FAO) on 19 November 1994, the FAO's reply of 29 December 1994 and the complainant's letters of 18 January and 21 February 1995 informing the Registrar of the Tribunal that he did not wish to file a rejoinder;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, which neither party has applied for;

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

A. Disputes that the complainant has with the FAO are recounted, under A, in Judgment 1401 and in Judgments 1452, 1453 and 1454 also delivered this day.

On 2 September 1994 he appealed to the Director-General alleging, among other things, that the Administration and the Appeals Committee had failed to comply with the rules on internal appeal.

On 27 October 1994 the Deputy Director-General replied that since his appeal did not challenge any decision it was irreceivable.

B. The complainant puts forward once again the arguments he made in earlier complaints and in particular his allegations that the FAO's appeals procedure is unlawful and its staff are being swindled.

He asks the Tribunal to declare the internal appeal procedure "null and void"; award him 3 million United States dollars in damages under several heads of injury; treat the award of such damages as a duty inherent in "international loyalty to the whole United Nations family of organizations"; and grant him \$1,500 in costs.

C. In its reply the FAO submits that his complaint is irreceivable because he is not impugning a final decision. He has failed to observe the requirement in Article VII(1) of the Tribunal's Statute and in FAO Manual section 332.222 that the internal means of redress be exhausted. Since Article VII(3) applies only where the Administration fails to take a decision it affords him no grounds for appeal.

CONSIDERATIONS:

1. On 2 September 1994 the complainant sent a letter of appeal to the Director-General of the Organization by fax and a copy of it by registered post. The letter asked for a final decision on allegations by him of failure by the Administration and the FAO Appeals Committee to observe the material rules, breach of Article VII of the Tribunal's Statute and denial of his "rights and entitlements for invoking the Conciliation Procedures and ... for proposals re improvements in the internal redress procedure".

2. The Deputy Director-General replied on the Director-General's behalf in a letter dated 27 October 1994, which the complainant received on 5 November, rejecting his appeal and refusing his request for a final decision. The letter said that if he wished to appeal to the Appeals Committee he might do so within sixty days from the date of receipt and that the decision was not a final one.

3. The complainant made no such appeal to the Appeals Committee but instead lodged this complaint with the Tribunal on 19 November 1994.

4. The inference to be drawn from the way in which he puts his case is that he is assuming the failure to take a final decision within sixty days of his letter of 2 September 1994 to be rejection of his claims under Article VII(3)

of the Tribunal's Statute. That provision reads:

"Where the Administration fails to take a decision upon any claim of an official within sixty days from the notification of the claim to it, the person concerned may have recourse to the Tribunal and his complaint shall be receivable in the same manner as a complaint against a final decision. The period of ninety days provided for by the last preceding paragraph shall run from the expiration of the sixty days allowed for the taking of the decision by the Administration."

5. For its part the Organization relies on Article VII(1), which provides:

"A complaint shall not be receivable unless the decision impugned is a final decision and the person concerned has exhausted such other means of resisting it as are open to him under the applicable Staff Regulations."

6. As the Tribunal has declared, for example in Judgment 532 (in re Devisme) under 3, Article VII(3) cannot be looked at in isolation:

"To infer a decision to dismiss where no final decision has been taken within the sixty days would greatly broaden the scope of Article VII(3), particularly when the organisation's rules establish an appeal body but do not set time limits for its reports. In such case Article VII(3), which is presumably to be treated as covering the exception, would in fact become the rule. Moreover, to broaden the scope of paragraph 3 would unduly restrict that of paragraph 1, which requires the complainant to exhaust the internal means of redress."

7. According to FAO Staff Rule 303.1312 the time limit for reply to a letter of appeal is ninety days "if the staff member has requested the Director-General to render a final decision". Moreover, Rule 303.1313 says:

"If staff members wish to appeal against the reply received from the Director-General, other than a reply constituting a final decision, or if no reply is received within the applicable time limit referred to in Staff Rule 303.1312, they may submit an appeal, in a Memorandum of Appeal, to the Chairman of the Appeals Committee ..."

In this case the Deputy Director-General's reply to the complainant's letter of 2 September 1994 was dated 27 October 1994 and it was therefore within the time limit. But the complainant failed to submit an appeal to the Appeals Committee under Rule 303.1313. He has therefore failed to exhaust the internal means of redress and there is no final decision for him to impugn. Article VII(3) does not apply. His complaint fails because it is irreceivable.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Sir William Douglas, President of the Tribunal, Mr. Michel Gentot, Vice-President, and Miss. Mella Carroll, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 6 July 1995.

William Douglas
Michel Gentot
Mella Carroll
A.B. Gardner