

THIRTY-SEVENTH ORDINARY SESSION

In re REDA

Judgment No. 280

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the United Nations Food and Agriculture Organization (FAO) drawn up by Mr. Khalil Reda on 9 September 1975, the FAO's reply of 18 December 1975, the complainant's rejoinder of 22 January 1976 and the FAO's surrejoinder of 24 February 1976;

Considering Article II, paragraphs 1 and 5, of the Statute of the Tribunal, Article VIII, paragraph 3, of the FAO Constitution, FAO Staff Regulations 301.042, 301.043 and 301.044 and FAO Staff Rules 302.4102 and 303.112;

Having examined the documents in the dossier, the oral proceedings requested by the complainant having been disallowed by the Tribunal;

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

A. The complainant joined the staff of the FAO on 21 April 1961 at grade P.4. He had a series of assignments as expert to Ecuador, Chile and Algeria and his appointment ended in February 1965 on the expiry of his final contract. He was re-engaged in 1967 at grade P.5 and posted in turn to Kuwait, the Lebanon and Iran. On 1 February 1973 he was promoted to grade D.1 and posted to Kuwait as project manager until the end of his appointment in June 1975.

B. On 28 April 1971 the FAO announced a vacancy for an agricultural planning economist at grade P.5 in the Regional Office for the Near East in Cairo. The complainant applied, but without success. The successful applicant declined the post, however, another notice of vacancy was published on 28 March 1972, and the complainant applied again. This time he apparently heard that the chief of the division concerned, Mr. Bachman, had assessed the candidates on behalf of the Selection Committee and stated that the complainant was qualified for the post. The FAO then had to make financial savings, however, and the post was "frozen". The post was then "unfrozen"; on 24 November 1972 the FAO published a third notice of vacancy and the complainant again applied. The director of the division responsible for assessing the applicants, Mr. Pawley, told Mr. Nour, Assistant Director-General for Near Eastern Affairs, that, though better qualified than the others, the complainant lacked experience in some fields. Mr. Pawley therefore suggested publishing yet another notice of vacancy.

C. In a minute of 6 February 1973 which he regarded as an "appeal" the complainant asked Mr. Pennison, Assistant Director-General for Administration and Finance, to reconsider before publishing another notice of vacancy, since he felt he had the qualifications and experience required. In reply he was told that an "appeal" was premature since no administrative decision had yet been taken to fill the post. On Mr. Pawley's advice a fourth notice of vacancy was published on 26 March 1974. Another applicant was successful, and the complainant appealed to the Director-General and then to the Appeals Committee. The Committee reported to the Director-General on 9 June 1975. The majority of its members held that there had been no decision harmful to the complainant and that the administrative procedures had been properly applied. After studying the Committee's report the Director-General told the complainant by letter of 24 June 1975 that he dismissed the appeal. The complainant now impugns that decision.

D. The complainant contends that the appointment of someone else to the vacancy constituted improper exercise, tantamount to abuse, of the Director-General's discretionary authority. His application was not examined objectively and was rejected because of Mr. Nour's animosity. The procedure was therefore flawed. Considering that he has a "right" to a post and that the decision he impugns was taken for personal reasons of no relevance to the FAO's requirements and interests - which in his view constitutes abuse of authority - the complainant asks the Tribunal to quash the decision which the FAO took in filling the vacancy for an agricultural planning economist in the Regional office in Cairo.

E. The FAO maintains that the complainant never had any "right" to be chosen for the post inasmuch as no such right can be inferred from the Staff Regulations and Staff Rules in force, nor indeed from any statement which may have led the complainant to expect the appointment. He has not proved that the choice of another candidate was due to improper application of the selection or appointment procedures, that Mr. Nour was prejudiced against him or that any such prejudice influenced the Director-General in his decision to appoint someone else. The FAO therefore asks the Tribunal to dismiss the complaint.

CONSIDERATIONS:

As to the receivability of the complaint:

1. According to Article II, paragraph 1, of its Statute the Tribunal may hear complaints lodged by officials subject to its jurisdiction alleging non-observance of the terms of their appointment or the staff regulations. The present complaint fulfils those requirements and is therefore receivable. It is immaterial that the complainant left the service of the Organization in 1975 since he is contesting decisions taken earlier. Moreover, there is no need to consider whether, as the Organization contends, a staff member has no right to be appointed to a particular post even if he is qualified for it. To be receivable a complaint need only, as in the present case, allege breach of provisions or principles applicable to the staff.

As to the Tribunal's power of review:

2. The complainant takes the Director-General to task for not appointing him to a post for which he had applied, a P.5 post for an agricultural planning economist in the Regional Office for the Near East. The impugned decision, which relates to staff recruitment, falls within the Director-General's discretion. Hence the Tribunal will interfere only if that decision was taken without authority, or violates a rule of form or procedure, or is based on an error of fact or of law, or if essential facts have not been taken into consideration, or if it is tainted with abuse of authority, or if a clearly mistaken conclusion has been drawn from the facts.

In the present case the Tribunal can exercise its power of review in the light of the documents produced in the proceedings. There is therefore no need to hear witnesses, as the complainant has asked.

As to the lawfulness of the impugned decision:

3. The complainant's arguments are based on three kinds of allegation: procedural irregularities, abuse of authority and the drawing of clearly mistaken conclusions from the facts.

4. As regards the alleged procedural irregularities, the complainant contends that the Organization held four competitions to fill the vacancy and refused to communicate the Selection Committee file to the Appeals Committee. For the following reasons these objections are unfounded.

It is true that the Organization held four competitions - on 28 April 1971, 28 March 1972, 24 November 1972 and 26 March 1973. In justification it explains that the candidate offered the appointment in the first competition did not accept, that no suitable candidate applied in the second competition, that the third competition was no more successful, that after the fourth it selected a candidate who withdrew, and that finally it chose a staff member who had not applied but possessed the necessary qualifications. The complainant contends that the sole purpose of this unusual series of competitions was to eliminate him. In other words, he alleges abuse of authority, and this argument will be examined below. Even if the argument were well founded, however, that would not mean that the competitions were tainted with any procedural flaw. In particular, the complainant does not rely upon any provision which prevented the Organization from holding further competitions in the circumstances described.

In this case the refusal to communicate the Selection Committee file to the Appeals Committee is beyond reproach. According to Staff Rule 303.112 the Appeals Committee is not required to express a view on a staff member's ability or, consequently, on the Selection Committee's assessment of a candidate. Hence in the present case the Appeals Committee could have asked to see the Selection Committee file only if the complainant had accused that Committee of infringing a procedural rule or the Director-General of disregarding the Committee's recommendations. Neither in the proceedings before the Appeals Committee nor indeed in any of the memoranda submitted to the Tribunal has the complainant made any such accusation.

5. The complainant contends that he was the victim of prejudice on the part of the Assistant Director-General who

was in charge of the Regional office in Cairo. There is no evidence to support any such suspicion in the file. In fact, so far from being the victim of prejudice, the complainant was actually promoted at the time the competitions were being held. Thus on 24 July 1972 the Organization offered him a programme appointment and from 1 February 1973 he was invited to manage a project in Kuwait, and was then appointed to grade D.1. In any event, contrary to what he originally imagined, his Egyptian nationality was no drawback, That is shown by the fact that in the last competition the Director-General first offered the appointment to an Egyptian, who nevertheless declined it. The staff member whom the complainant believed to be favoured by the Assistant Director-General was never selected to fill the vacancy.

6. Nor does it appear from the documents in the dossier that the Director-General drew clearly mistaken conclusions therefrom. It is true that after the second competition one staff member thought the complainant qualified for the vacancy. But that was only an opinion which did not bind the Selection Committee, far less the Director-General. Although another staff member also regarded the complainant as much more suitable than the other candidates, he still felt that none of them had the proper qualifications and in particular adequate experience in macro-economics. That opinion carries the greater weight in that it was upheld after the complainant had had a chance to challenge it. Lastly, there is nothing to suggest that the staff member finally appointed was unqualified. In particular, his ignorance of Arabic was no objection to his appointment, since knowledge of that language was not an essential requirement for the post.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Morellet, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 4 October 1976.

(Signed)

M. Letourneur
André Grisel
Devlin

Roland Morellet