

EIGHTH ORDINARY SESSION

In re GIUFFRIDA

Judgment No. 47

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the Food and Agriculture Organization of the United Nations drawn up by Miss Marie-José Giuffrida on 20 August 1959 and the Organisation's reply of 27 October 1959;

Considering Staff Rule 302.4082 of the Organisation;

Having heard Mr. Jacques Mercier, counsel for complainant and Mr. Georges St. Pol, agent of the Organisation, in public sitting on 12 September 1960;

Considering that the pertinent facts at issue are the following:

A. Complainant was born in Malta of an Italian father and an English mother. In 1940, as a result of the war, her father was expelled from Malta, complainant continuing to reside there. In January 1951 complainant made inquiries as to the possibility of obtaining a post in FAO and completed a personal history form in which she indicated her nationality as British. In the spring of 1951 she left Malta to join her family in Rome and to seek employment there. In June 1951 complainant made further inquiries of FAO and was informed that under the policy of the organisation at that time posts in the general service category were only open to persons not coming from abroad.

B. In August 1951, complainant submitted an application for employment. The personal history form completed on this occasion stated that her nationality at birth was British and her then present nationality Italian and contained the mention that in Malta she was regarded as a British subject, having been born there, whereas in Italy she was regarded as an Italian citizen, her father being Italian. From September 1951, she was employed by FAO on a series of temporary appointments, receiving an indefinite appointment in 1952 as a bilingual stenographer in the English and French languages.

C. In 1952, the Staff Rules of FAO were supplemented by the inclusion of a Rule 302.4082 containing express provisions for the determination, for the purpose of the Staff Regulations and Rules, of the nationality of an official possessing more than one nationality.

D. In 1957, as a result of the Staff Association having concerned itself with the general problem of the classification of officials in the general service category, complainant requested that her status be reconsidered and that she be regarded as non-local, which would entitle her to certain advantages not enjoyed by locally-recruited officials. In reply to her request, the administration informed complainant that the original decision taken regarding her classification could not be altered.

E. In October 1958, complainant referred her case to the Director-General, requesting that she be granted non-local status and basing her request on the grounds that she was of British nationality, that she held a British passport and had retained her legal residence in Malta. On 1 December 1958, the Director-General notified complainant that he could not approve this request, and complainant referred her case to the Appeals Committee. The Appeals Committee recommended to the Director-General that he reverse his previous decision and reclassify complainant as non-local, with effect from the date of his decision.

F. On 20 May 1959, the Director-General notified complainant that he was unable to follow the recommendation of the Appeals Committee and that he had decided to maintain her classification as local. On 20 August 1959, complainant lodged her appeal against this decision with the Administrative Tribunal, praying the Tribunal to rescind the Director-General's decisions of 1 December 1958 and 20 May 1959 and to declare in consequence that her nationality be considered as British under Staff Rule 302.4082 and that she be entitled to the benefits conferred upon non-local officials in the general service category.

IN LAW

1. Complainant requests that the Director-General's decisions taken in her case be rescinded on the grounds that they violated both in form and in substance the applicable Staff Rules and Regulations and that her classification be reconsidered in accordance with Staff Rule 302.4082.

2. Staff Rule 302.4082 provides that when a staff member has been legally accorded nationality status by more than one State, the staff member's nationality for the purposes of the Staff Regulations and the Staff Rules shall be the nationality of the State with which the staff member is, in the opinion of the Director of Administration, most closely associated, due regard being taken of the Staff member's representations.

As regards the propriety of the procedure which preceded the decision impugned

3. The evidence shows that complainant's case was re-examined in 1958 and 1959 in the light of the provisions contained in Staff Rule 302.4082, and that this re-examination led to the decisions of the Director-General of 1 December 1958 and 20 May 1959. Such re-examination was made upon complainant's own request and she cannot contend that the decisions in question were taken without her being able to make "representations" within the meaning of the Staff Rule.

As regards the substance of the decision impugned

4. While Staff Rule 302.4082 provides criteria on which, for administrative purposes, the operative nationality of an official is to be determined where the official possesses more than one nationality, the Rule requires the Director-General to decide, on the basis of these criteria, the nationality to be attributed and consequently leaves to him the power of appreciation as to that State with which complainant is to be considered as being most closely associated.

5. Consequently, having regard to the terms of Rule 302.4082, while the Tribunal remains competent to review any decision of the Director-General taken in accordance with the above-mentioned Rule, in so far as it may be tainted by an error in law or based upon materially incorrect facts or if essential material elements have been left out of account or if obviously wrong conclusions have been drawn therefrom, the Tribunal shall not substitute its own opinion for that of the Director-General.

6. When the Director-General made his decision that it was with Italy that complainant was most closely associated and that thereafter her nationality would be considered as Italian for the purposes of FAO, he took mainly into account the fact that this official, whose father was Italian, took up residence in Rome with her parents before her appointment by the Organisation; that in the personal history form which she completed at the time of her appointment, in 1951, she indicated her then present nationality as Italian and that from 1951 to 1957 she did not protest against her classification as local.

7. In so deciding, the Director-General did not base his decision on grounds tainted by error in law or on materially incorrect facts, nor did he leave essential material elements out of account or draw manifestly incorrect conclusions from the facts. Consequently his decision is correct as regards those matters over which the judicial control of the Tribunal may be exercised. The Director-General's own appreciation based on these facts, is not, as stated above, subject to the control of the Tribunal. Therefore, complainant's claim must fail.

DECISION

The complaint is dismissed.

In witness of this judgment, delivered in public sitting on 23 September 1960 by the Right Hon. Lord Forster of Harraby, K.B.E., Q.C.; President, Mr. Maxime Letourneur, Vice-President, and Mr. André Grisel, Judge, the aforementioned have hereunto subscribed their signatures, as well as myself, Lemoine, Registrar of the Tribunal.

Signatures:

Forster of Harraby
M. Letourneur
André Grisel
Jacques Lemoine

