

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

FORTY-NINTH ORDINARY SESSION

Judgment No. 542

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the Food and Agriculture Organization of the United Nations (FAO) by Mr. R. R. F. on 12 January 1982, the FAO's reply of 19 March, the complainant's rejoinder of 30 April and the FAO's surrejoinder of 3 June 1982;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written evidence and disallowed the complainant's application for oral proceedings;

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

A. On 2 February 1979 the complainant signed a personal history form for the FAO. Under point 23, headed "Legal convictions", he wrote: "None in any federal country I worked in, neither in my own country (Belgium)". In another form signed on 31 January 1980 the entry read: "No police record or [sic] in any federal country I have visited or worked in". On 30 April 1980 the FAO offered him an appointment and on 11 May he signed it. He was to serve from 1 September 1980 to 31 December 1982 as manager of a project in Cape Verde. The FAO then discovered that in 1975 he had been convicted and sentenced to imprisonment in the State of Maxyland (United States). The forms concluded: "I certify that the statements made by me ... are true, complete, and correct to the best of my knowledge and belief. I understand that any false statements or any required information withheld from this form may provide grounds for the withdrawal of any offer of appointment or dismissal if an appointment has been accepted." On 15 July 1980 the FAO sent the complainant a telegram cancelling the appointment. He protested in telegrams and by letter, but the cancellation was confirmed on 21 August. He appealed. In its report of 4 June 1981 the Appeals Committee held that the FAO had been right to cancel but ought to have read the forms more carefully; the Committee therefore recommended refunding the expenses he had incurred in expectation of his appointment. By a letter of 16 October, which is the decision impugned, the Deputy Director-General informed him that the Director-General confirmed the cancellation and rejected the recommendation.

B. The complainant alleges abuse of the Director-General's authority. As the Appeals Committee held, the entry in the forms ought to have alerted the FAO, which was grossly negligent. Moreover, the cancellation was prompted by a disclosure by an unsuccessful applicant for the appointment. Before taking the drastic step of cancellation the FAO should therefore have invited the complainant to state his views. The purpose of the entry in the forms was to avoid a falsehood and yet draw attention to a highly confidential matter which he did not want to become common knowledge. Under a general principle of law he has the right to respect for his private life. The FAO has never established that doubt was cast on his fitness for the appointment. The final clause of the form allows discretion in the matter, and in the circumstances cancellation was unjustified, and in any event a disproportionate penalty. The expenditure he incurred in expectation of the appointment was wasted. He has lost the prospect of a career in an international organisation and of rehabilitation, his family has suffered further anguish, and he has been caused difficulties with his employers in Belgium. He invites the Tribunal to quash the decision of 16 October 1981 and to award him 159,522 Belgian francs as damages for material injury and 1.5 million Belgian francs - equivalent to ten months' salary as project manager - for moral injury, and costs.

C. In its reply the FAO denies abuse of authority. It cancelled the appointment not because of the complainant's conviction but because he said nothing of it under point 23 of the personal history form of 2 February 1979 and alleged under point 20 that he had worked in the World Bank from 1974 to 1976, although he had been arrested on 2 March 1975. The form is the main source of information on an applicant and must be filled up in good faith, with no wilful omissions. If the applicant does not show as much honesty as that, his fitness for international service, and especially for a senior post, is in doubt. Only those in charge of recruitment would read the form, and it is precisely they who are entitled to know the whole truth. The complainant could properly have got round his difficulty in other ways. As for the respect he claims for his private life, once he agreed to fill up the forms he was

bound to do so truthfully: his answers were not a matter for his own discretion. He cannot blame the consequences of his own dissimulation on negligence on the FAO's part. The FAO relied correctly on the final clause of the forms: the party to a contract who has been misled by the other may resile from it. The FAO committed no wrong and is not liable for the material and moral injury the complainant may have brought upon himself.

D. The complainant develops his arguments in his rejoinder. The form he signed in January 1980 superseded that of February 1979 and the only accusation he need answer is that of wilful omission. The alleged wrong does not justify cancellation unless, but for the wrong, the FAO would not have concluded the contract, and it would hardly have refused to do so simply because it knew of his conviction. Had he not filled in the form, no contract would have been considered. His professional fitness and good faith have never been in doubt. The employer's right to information is limited and he was free to decide what aspects of his private life not to divulge. He claims reinstatement or an equivalent post and, subsidiarily, damages for material and moral injury. The latter being aggravated by allegations in the FAO's reply, he increases his claim to 4 million Belgian francs, a sum equivalent to 28 months' salary.

E. In its surrejoinder the FAO observes that the complainant cannot treat the form of February 1979 as superseded when he himself appended it to the complaint. His bad faith was evident from his wilfully mistaken answer to a question in the form. The Director-General was entitled to conclude that he was unfit for a senior appointment and, in the exercise of his discretion, to cancel it. The FAO maintains the arguments in its reply and again invites the Tribunal to dismiss the complaint as unfounded.

CONSIDERATIONS:

1. On 11 May 1980 the complainant signed a contract with the Food and Agriculture Organization for employment for a period of 28 months starting on 1 September 1980 as director of a forestry project in Cape Verde. Before he took up duty, however, the Organization cancelled the appointment by a telegram of 15 July 1980, which was confirmed on 21 August.

The reason for the FAO's change of mind was given as "contradictions" and "inaccuracies" in a personal history form signed by the complainant. Before making an appointment, even for a short mission, the FAO asks an applicant to fill up a personal history form containing information on such matters as his family situation, qualifications and experience and also covering more personal matters.

The complainant's statement was couched in such ambiguous terms that it was clearly calculated to mislead. It nearly succeeded since the FAO did not become aware of his intention until the contract had been signed.

The form concluded: "I certify that the statements made by me in reply to the above questions are true, complete, and correct ... I understand that any false statements or any required information withheld from this form may provide grounds for the withdrawal of any offer of appointment or dismissal if an appointment has been accepted". Underneath these words appeared the complainant's signature.

2. The complainant was seriously at fault, and it is no excuse to retort that the mis-statement concerned his private life. The Tribunal holds that it was not wrong to solicit such information. In technical assistance missions the FAO puts its own reputation at stake, and the mission the complainant was to carry out and the grade he was to hold made it quite reasonable for the Organization to ascertain fully not only the applicant's professional competence but also his character. In any event, if there were questions in the form he felt entitled not to answer, he ought to have withheld replies to the questions he found indiscreet and not sought to veil the truth with ambiguous language.

In mitigation of the complainant's fault the Appeals Committee took the view that the official who read his personal history form ought to have been alerted by the obscurity, and it held that the FAO's oversight had caused him definite prejudice.

The Tribunal does not agree. Someone who tries to conceal an awkward truth, even with skilful phrasing, may not defend the ruse by accusing the reader of an oversight.

The Tribunal accordingly holds that the complainant's attitude warranted the FAO's imposing the penalty provided for in the letter of appointment.

3. But the form did not require the FAO to cancel the appointment: the Director-General has discretion in the

matter.

It is established that the FAO terminated the complainant's appointment without warning of the action that might be taken against him, although it never said the matter was urgent.

The general principle of law is that an administration may not impose a penalty on anyone before giving him an opportunity to comment on the charges against him, and the procedure which followed the original decision to cancel the appointment did not retroactively remedy the original error. Because of the FAO's failure to respect the complainant's right to a hearing the decision is unlawful.

In the circumstances the FAO cannot reappoint the complainant, and settlement must take the form of damages. But the Tribunal will not make the complainant whole, since it will take account of the fault on both sides. The complainant being at serious fault, the Tribunal will award only token damages, which it sets at 1,000 United States dollars. It also awards 1,000 dollars towards costs.

4. The Tribunal believes that in the circumstances there is no reason to grant the complainant's application for oral proceedings. If what he is seeking is that the judgment should not be made public or at least should not mention his name, he fails under the rule that any judicial decision must be made public unless there is an express provision authorising secrecy on certain grounds. There is no such provision in the Statute of the Tribunal.

DECISION:

For the above reasons,

1. The FAO shall pay the complainant damages amounting to 1,000 United States dollars.
2. He is awarded 1,000 dollars towards costs.
3. His other claims are dismissed.

In witness of this judgment by Mr. André Grisel, President, Mr. Jacques Ducoux, Vice-President, and the Right Honourable Sir William Douglas, P.C., Deputy Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Allan Gardner, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 18 November 1982.

(Signed)

André Grisel

Jacques Ducoux

William Douglas

A.B. Gardner