

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

FIFTY-FIFTH ORDINARY SESSION

In re BENHADJI

Judgment No. 648

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the Food and Agriculture Organization of the United Nations (FAO) by Mr. Abderrezak Benhadji on 23 April 1984 and corrected on 19 May, the FAO's reply of 25 July, the complainant's rejoinder of 29 September and the FAO's surrejoinder of 16 November 1984;

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

Having examined the written evidence, oral proceedings having been neither applied for by the parties nor ordered by the Tribunal;

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

A. The complainant, an Algerian citizen in the service of the Algerian Government, applied on 4 March 1983 for an appointment at grade P.4 for an expert under an FAO programme for stabilising sand dunes in Mauritania. Consent to his candidature was required and obtained from the Mauritanian Government. On 10 October the Algerian Government consented to his release. A personnel officer of the Forestry Department of the FAO wrote to him on 11 October to say that, though he could not yet be given a firm offer of the appointment since some matters still had to be settled, he would no doubt get one soon; in the meantime he should not do anything to prejudice his position. Appended was a form, signed by the personnel officer on 11 October, setting out the terms of appointment. He was authorised to visit headquarters in mid-October at the FAO's expense for a medical check-up and "technical discussions". He was in Rome from 19 to 27 October. On the 20th he signed the text setting out the terms of his appointment, including his position, grade, salary and other benefits and the period of the appointment. But on 18 November the personnel officer wrote to him again to say that for want of "the necessary internal and external agreements" the FAO could not offer him the appointment. He wrote to the Director-General on 22 February 1984 to object. By a letter of 22 March 1984, the impugned decision, the acting Director of the Personnel Division informed him that the Director-General confirmed the refusal to make an offer, for reasons which the confidential nature of the procedure did not allow him to reveal.

B. The complainant submits that, contrary to what the personnel officer wrote on 18 November 1983, all conditions for his appointment had been met: the competent FAO department agreed in May, the Selection Committee in June, the Mauritanian Government in September, and the medical service and the Algerian Government in October. That was why he was summoned to Rome and why on 20 October he was there asked to sign, and signed, a document which constituted a contract of appointment for one year. He did not go to Rome at his own demand, as the acting Director of Personnel mistakenly said in his letter of 22 March 1984. The head of the Forestry Department wanted him to come, the personnel officer made the arrangements for briefing, and his travel expenses were stated to be authorised "pending his assignment as expert". The real reasons for the cancellation of the contract have been hidden and since all the conditions for appointment were met must be improper. The existence of a contract is borne out by two FAO telexes about the terms of his appointment. He suffered material injury by refraining from accepting any other appointment because of his commitment to the FAO, and moral injury because of the sudden breach of contract. He invites the Tribunal to quash the Director-General's decision, award him damages equivalent to the salary and other benefits he would have received under the contract, damages for moral injury and any other compensation the Tribunal sees fit to award him.

C. The FAO replies that it neither concluded any contract with the complainant nor evinced any unconditional intent to do so. Signing the text setting out the terms of his appointment was just one step in the procedure and did not amount to any contract. All it meant was that, to speed up the procedure, the parties had agreed on what the terms would be if a contract were later concluded: each side was still free to withdraw. That is clear from the words above the complainant's signature on the form ⁽¹⁾: "I take note of the terms stated above, which will apply to the offer that may be made to me", and from the personnel officer's letter of 11 October: "You will no doubt soon

get an offer of appointment", and "If we send you an offer of appointment, we shall inform you..." The complainant did not go to Rome for briefing -- a term that applies only when there is a contract -- but for technical discussions, which are just another step in recruitment, and at his own request, because he happened to be in Rome and had to get medical clearance anyway. The two FAO telexes he cites were not addressed to him and are irrelevant. Before an offer could be made some conditions had to be met, and they were but there was another which was not, the FAO regarded it as especially important, and it was free to take that view. It is willing to inform the Tribunal of the reason if the Tribunal so wishes. It invites the Tribunal to dismiss the complaint.

D. The complainant presses his claims in his rejoinder. Signing the text of the terms of appointment showed agreement on the essential terms of the contract and the agreement was binding on both sides; otherwise what was the point of signing? There is no other text the parties ordinarily sign. The term "briefing", admittedly applicable only to an employee is actually used in his case in one of the two telexes he cites. The FAO has not yet revealed what essential matter still had to be settled for a contract to come into being, and it was facilely trying to get out of its obligations by stating yet another condition. Why were the two Governments concerned asked to give their consent to his appointment if there was some other obstacle? He believes he has been discredited in the eyes of those Governments.

E. In its surrejoinder the FAO challenges several points raised in the rejoinder and enlarges on its submissions that there was neither a contract nor an unqualified promise of one and that it is entitled, before making a firm offer of appointment, to consider the desirability of appointing the applicant, to obtain information about his professional career and private life from his references and from other reliable persons who may have been associated with him, and, if need be, to decide against making an offer.

CONSIDERATIONS:

1. The FAO advertised a post for an expert in popular communication on a project in Mauritania, and the complainant applied on 4 March 1983. His application was approved by a selection board in June 1983, by the Mauritanian Government on 7 September and by the Algerian Government on 10 October. A personnel officer of the Forestry Department of the FAO wrote to him on 11 October to say that he would no doubt soon be getting an offer of appointment; a form was appended setting out the terms of appointment, which he was asked to sign and return forthwith.

While in Geneva the complainant sought and obtained permission to go to FAO headquarters for "technical discussions".

He accordingly stayed in Rome from 19 to 27 October, and it was then that he had a medical check-up and, on the 20th, signed the form setting out the terms of appointment. The personnel officer himself had signed it on the 11th.

2. This is the text which the complainant believes to constitute a binding contract. His contention is that the personnel officer got him to sign the one-year contract -- and it covered also matters relating to pension and social security rights and so forth -- because the FAO had just received the Algerian Government's consent and medical clearance.

The FAO will have none of this, and it pleads in particular the terms of the personnel officer's letter of 11 October 1983 and the appended form.

3. The letter begins: "I am pleased to inform you that you will no doubt soon get an offer of appointment from the FAO. Information is given below on the nature and other particulars of the appointment, which is subject to the enclosed terms of appointment and the completion of certain formalities. Our purpose is to avoid delay should we later send you an offer you find acceptable."

The letter goes on: "The FAO cannot make a firm offer since several internal and external agreements are still required. Once these formalities are completed the FAO intends to send you an offer of appointment. We suggest that in the meantime you remain in your present employment and do nothing likely to cause you financial or other detriment before receiving confirmation from us, which will probably be by telegram."

The letter also contains clauses reading "if we send you an offer of appointment" and "if you wish to receive an offer of appointment on the terms and conditions set out in the appended 'Terms of appointment', would you please

sign the form and return it forthwith".

The letter is clear and precise and leaves no doubt about the FAO's intentions, namely (1) that the letter and appended form should not be treated as an offer; (2) that such an offer would be made only when several internal and external matters had been settled; (3) that there would be confirmation of an offer, probably in the form of a telegram; and (4) that the complainant should remain free to make up his mind and might therefore still turn an offer down.

The wording of the letter makes it equally clear that the sole purpose of sending the "Terms of appointment" was to give some particulars about the appointment and that the complainant was being invited to sign it only so as to "avoid delay" if an offer was later made.

It was an appendix to the letter, and only by deliberate distortion of the wording of the letter can it be treated in itself as an offer.

Moreover, clause 19, which is headed "Acceptance", reads⁽²⁾: "I take note of the terms stated above, which will apply to the offer that may be made to me."

In subscribing to that declaration the complainant cannot but have been aware that what he was signing was no contract; the FAO had said it would send him an offer later and that the confirmation would probably be by telegram.

The Tribunal need not go into the complainant's quite irrelevant contention that there was some sort of prior confirmation of an offer of appointment to be inferred from telexes of 10 September and 7 October 1983.

The Tribunal therefore finds on the evidence that the signing of the text by the complainant on 20 October 1983 created no binding contract but was just a step in negotiation, and that the FAO's intention was to make the appointment subject to certain requirements. What the FAO was saying could at most be construed as a conditional offer.

4. The reason why, as it said in its letter of 18 November 1983, the FAO had to "decide against offering him an appointment" was indeed that not all the conditions were fulfilled.

As was observed in 1 above, the "internal and external agreements" had been obtained by 11 October, and the only possible inference is that it was not to those the letter was referring. Moreover, the letter states medical clearance as a specific condition, separate from the others.

The Tribunal has no reason to believe that the letter was in bad faith and finds convincing the FAO's statement that, besides the actual agreements, various references and other information are required before a formal offer can be made.

Thus the FAO will ordinarily ask for information about the candidate from his previous employer and other suitable referees.

The Tribunal sees nothing untoward in taking account of such information in recruiting an international civil servant, the practice deriving from a reasonable desire to have full

information on candidates and secure staff of sound technical competence and high moral integrity.

Whether the candidate qualifies is a matter which the executive head must be left to determine at his discretion, and the Tribunal will not review the exercise of such discretion.

The Tribunal will therefore dismiss the complainant's allegation that the FAO committed an unlawful breach of a binding contract between them.

It is immaterial that the complainant was summoned for what he regards as a "briefing" in Rome and what was in fact "technical discussions". Besides, there was no objection to inviting him for such discussions so as to avoid delay, the purpose for which he had been sent the terms of appointment.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, Mr. Jacques Ducoux, Vice-President, and Mr. Edilbert Razafindralambo, Deputy Judge, the aforementioned have hereunto subscribed their signatures, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 18 March 1985.

(Signed)

André Grisel

Jacques Ducoux

E. Razafindralambo

A.B. Gardner

1. Registry translation.

2. Registry translation.