

FIFTEENTH ORDINARY SESSION

In re DI GIULIOMARIA

Judgment No. 87

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the Food and Agriculture Organisation of the United Nations drawn up by Mr. Di Giuliomaria and dated 15 March 1965, and the Organisation's reply dated 27 April 1965;

Considering Articles II and VIII of the Statute of the Tribunal and provisions 301.081, 301.082 and 301.102 of the Staff Regulations of the Organisation, provisions 302.82 of the Staff Rules and provisions 330.150, 330.151 and 152, 330.200, 330.251 and 330.300 of the Administrative Manual of the Organisation;

Having heard, in oral proceedings on 1 November 1965, Mr. Jacques Mercier, Counsel for the complainant, and Mr. Saint-Pol, agent of the Organisation, as well as Mr. Di Giuliomaria, who was questioned by the Tribunal;

After examining the documents in the dossier, from which the following facts emerge:

A. The complainant, who entered the service of the Organisation on 26 February 1962, was employed as a locally recruited administrative clerk in Grade G.4 of the General Service category, and since 1 September of the same year had held an indefinite appointment.

B. An Assembly of the Staff Association of the Organisation, held on 18 December 1963, decided on the proposal of Mr. Di Giuliomaria to reject the report presented to it by the Staff Council (a body which, under the terms of article 301.081 of the Staff Regulations, is elected by the staff and responsible to it and is entrusted with representing the interests of the staff in its relations with the Director-General), to withdraw its confidence from the members of the Council and to release them from their functions, while his proposal to dissolve the Association and reconstitute it in the form of a trade union was referred to a Committee elected by the Assembly, to which Mr. Di Giuliomaria was appointed. At General Assemblies of the Association held on 21 and 28 February and 4 and 11 March 1964, to which the report of the above-mentioned Committee was presented, it was decided, first, to appoint a committee to aid the Staff Council in its negotiations with the administration for the improvement of General Service salaries, Mr. Di Giuliomaria being elected a member of this committee and subsequently assuming its chairmanship, and secondly, to set up a committee to redraft the constitution of the Association in accordance with the Assembly's instructions.

C. The complainant acted as Chairman of the Salary Committee until his dismissal and in that capacity took part, together with members of the Staff Council, in negotiations relating to the improvement of General Service category salaries, both in the Joint Advisory Committee provided for under article 302.82 of the Staff Regulations and directly with the competent administrative authorities, including the Director-General himself, without the representative capacity or mandate of Mr. Di Giuliomaria being challenged at any time. During this period the Committee of which Mr. Di Giuliomaria was Chairman had on several occasions publicly expressed its reservations in regard to the proposals for the improvement of General Service category salaries which were being worked out by the administration. Having been informed of the proposals which the Director-General was submitting to the Finance Committee of the Council of the Organisation, the Staff Council expressed its objections to them by a telegram dated 28 May 1964, with particular reference to the methods proposed for a statistical survey for the purpose of reviewing the General Service salary scale and to its own participation in such a survey. As a result of the Finance Committee's decisions, which, in accordance with the Director-General's proposals, recommended that for the adjustment of General Service category salaries a wage index should be substituted for a cost-of-living index, the latter being less favourable, and that a statistical survey should be undertaken by new methods to serve as the basis for an advanced review of salary scales, a difference of opinion arose between the Staff Council, which was prepared to accept these measures and to participate in the proposed survey, and the Salary Committee of which Mr. Di Giuliomaria was Chairman, which took the view that the objections expressed in the telegram of 28 May 1964 should be reaffirmed, that participation in the statistical survey should be refused,

that the staff representatives should be withdrawn from the joint machinery, that a Staff Assembly should be convened and the possibility of a protest demonstration in the form of a strike be considered. The Staff Council having refused to follow these suggestions, a Staff Assembly was convened through the agency of the members of the Salary Committee of which Mr. Di Giuliomaria was Chairman.

D. A Staff Assembly having been convened for 25 June 1964, Mr. Di Giuliomaria, at a date which is not specified but was probably 23 June 1964, distributed to the staff as a whole a statement or circular entitled "Alcune considerazioni sull' atteggiamento del Consiglio del personale ed alcune proposte per la prossima assemblea del 25 giugno". The full text of this document, included in the dossier, has been recognised as authentic by both parties. In this document, its author declares that he takes full personal responsibility for it in order to avoid any difficulties arising from the fact that two of the members of the Salary Committee did not concur in the majority view, while stating, however, that as other members of the staff have made their views known by the same method he is all the more entitled to do so inasmuch as he is a staff representative. Mr. Di Giuliomaria then criticises the Staff Council for its lack of democratic spirit (shown by its refusal to consult the Staff Assembly), its lack of determination and its contradictoriness (shown by its change of mind in regard to participation in the statistical survey), its lack of autonomy (indicated by its passive acceptance of the administration's decisions) and its inefficiency (indicated by its lack of initiative and its reluctance to hear the views of the Salary Committee). The statement went on to propose that, having regard to the deterioration of the situation since the date of the preceding Assembly on 5 May 1964, the Assembly should (a) vote its non-confidence in the Staff Council and remove all its members from office; (b) decide not to participate in any way in the statistical survey and to annul any decisions in that regard already taken by the Staff Council, proposing instead to maintain a demand for a 20 per cent. increase in salaries with effect from 1 January 1964; and (c) demand that the FAO member countries form a committee to examine the relations between the Director-General and the staff, the author of the statement adding the comment that in his belief the situation of the staff and the consequent dissatisfaction did not derive from the fact that the Director-General might be ill advised or might not know the facts of the situation. Finally, after emphasising that everyone is entitled to have his own ideas in regard to problems of staff representation, the author of the memorandum expresses his intention of considering joining an Italian trade union which would be better able to look after his interests than the Staff Council, and his desire to discuss beforehand any objections to this course that might be submitted to him.

E. On 25 June 1964 the Staff Assembly, by 193 votes to 93 with 19 abstentions, passed a vote of no-confidence in the Staff Council and decided to remove its members. On 26 June 1964 the complainant was summarily dismissed.

F. The complainant's appeal for reconsideration of his case on 7 July 1964 was rejected on 17 July 1964, the Appeals Committee issued an unfavourable recommendation on the appeal lodged with it by the complainant, and the Director-General's decision to confirm his summary dismissal, dated 18 December 1964, was received by the complainant on 21 December 1964. The complainant thereupon submitted to the Tribunal the complaint under reference, in the conclusions of which he prays that the decision to dismiss the complainant should be quashed, that the complainant should be reinstated, and that compensation should be paid to him for the injury he has suffered as a result of the above-mentioned decision.

G. The Organisation in its conclusions prays that it may please the Tribunal to find that the conduct of the complainant was such as to warrant his summary dismissal and that the procedure followed was in conformity with the relevant rules and regulations, and to dismiss the complaint. In support of these conclusions, the Organisation charges the complainant, in the light of the above-mentioned statement, with insubordination and impertinence misrepresentation of facts, incitement to agitation and offensive and injurious language. In subsidiary conclusions submitted during the oral proceedings, the agent of the Organisation stated that in the very unlikely event of the Tribunal finding that the complaint was well founded, the granting of redress in the form of compensation for injury suffered would appear to be preferable to the complainant's reinstatement.

CONSIDERATIONS:

On the procedure before the Tribunal:

1. The complainant's Counsel, after the close of the last public hearing, submitted ten documents which had not been communicated to the agent of the Organisation and upon which he therefore had no opportunity to comment. In conformity with the principle that each party shall be fully heard on all the evidence admitted, these documents were excluded from the dossier on which the Tribunal took its decision.

On the legality of the decision impugned:

2. In the first place, whereas under article 301.081 of the Staff Regulations, the Staff Council is the only body officially representing the staff in its dealings with the administrative authorities of the FAO, the Staff Association, in spite of its private character, is a lawful association which has in fact been recognised by the Director-General, its representatives having moreover been received by him on several occasions. Hence, in submitting to the sessions of the General Assembly of the Association, motions pertaining to the staff's demands, Mr. Di Giuliomaria was merely availing himself of the right of any member of the staff to defend his occupational interests, subject only to his duty to observe the moderation incumbent on any public official.

Subsequently, however, he was appointed by the Assembly as a member of a special Salary Committee, of which he became Chairman, and from that date he carried on his activities as a representative of the Staff Association which had charged him with a specific mission; and in spite of his claim to be acting in a personal capacity it was in his representative capacity that he drafted and circulated the statement entitled "Some remarks on the attitude of the Staff Council and some proposals for the next Assembly of 25 June", the distribution of which led to the summary dismissal of the complainant for serious misconduct by the decision of 26 June 1964, referred to this Tribunal.

Without it being necessary to consider what the complainant's position would have been as a mere staff member, it may be observed that in his capacity of staff representative Mr. Di Giuliomaria had responsibilities but also enjoyed special rights, such as a considerable freedom of action and expression and the right to criticise the Staff Council and even, to some extent, the FAO; authorities; he also had special obligations, such as the obligation to act solely in defence of the interests of the staff and the strict duty not to abuse these rights by using methods or expressions incompatible with the decorum appropriate both to his status as a civil servant and to the functions entrusted to him by his colleagues.

3. Secondly, if the administrative authorities of FAO consider that an official has behaved improperly, they are normally required to follow the disciplinary procedure laid down by provisions 330.130, 330.200 and 330.300 of the Administrative Manual, which provides specific safeguards for the official concerned. Consequently, by reason of its severity and of the fact that no formalities are prescribed for its application summary dismissal must necessarily be an exceptional measure which can be allowed only under an express provision and in accordance with the terms of such provision.

Article 330.251 of the FAO Administrative Manual permits summary dismissal in the following terms:

"Summary dismissal for serious misconduct:

330.251 Imposition of this disciplinary measure consists in the termination of a staff member without benefit of notice period. The measure may be imposed only by the Director-General. It is imposed only when the misconduct of the staff member concerned is so serious that it has jeopardised or is likely to jeopardise the reputation of the Organisation and its staff."

4. In taking the impugned decision of 26 June 1964 under article 330.251 cited above, the Director-General took the view that the serious misconduct justifying summary dismissal was manifested in the aforementioned statement by Mr. Di Giuliomaria's insubordination and impertinence, misrepresentation of facts and incitement to agitation, and by his injurious language.

(a) These specific charges related to parts of the statement which criticised the action of the Director-General and of the Staff Council.

(i) So far as he himself is concerned, the Director-General charges the complainant, first, with having asked member States of the FAO to form a Committee to examine the relations between the Director-General and the staff, and secondly, with having stated that the Director-General was not unaware of the unsatisfactory situation of the staff, thus implying that he had deliberately refused to improve it.

On the first point, it appears from the terms actually used by Mr. Di Giuliomaria in the original version of the statement that he did not make a direct appeal to the member States, but merely asked that they should be invited to form such a committee; in the light of the terms actually used by the complainant it cannot be asserted that in

presenting this demand he was refusing to follow the procedure legally applicable to relations with the staff; at the most he was challenging its effectiveness. Furthermore, without it being necessary to consider whether this demand in itself implied some lack of the proper discretion which the complainant was bound to observe towards the Director-General, the fact that he made it did not in any case amount to an act of insubordination or impertinence.

On the second point, the sentence in issue at most implied that the Director-General had deliberately refused to allocate for staff purposes sums provided for in the FAO budget for programme purposes, and that the complainant did not agree with the decision taken in this respect by competent authority, but this cannot be regarded as disrespectful or impertinent.

If Mr. Di Giuliomaria did not mention in his statement that at the beginning of June the Finance Committee had accepted the Director-General's recommendations concerning salary adjustments for the category of staff concerned, although he could not have been unaware of these facts when he drafted the statement, his silence can be explained by the fact that the principle of the Finance Committee's proposals to replace the cost-of-living index by a wages index and to review the salary scale on the basis of a statistical survey to be carried out by new methods, was contrary to the demands he had been pressing for several months past. The complainant may perhaps have misunderstood the importance and scope of the action taken by the FAO, directorate, but the possibly mistaken view he expressed in stating that the situation had deteriorated since the month of May cannot in the circumstances, and having regard to what has been said above, be described as misrepresentation of facts.

(ii) So far as the Staff Council is concerned, the decision impugned complains that Mr. Di Giuliomaria used injurious language towards the Council.

While the Staff Council is the official representative body of the staff in its relations with the FAO authorities, it is not itself one of these authorities. As has already been noted, the Council is elected by the staff and is responsible to it under article 301.081 of the Staff Regulations.

This necessarily implies that the Council's attitude and actions may be criticised, and even sharply criticised by the staff without any restrictions other than those already indicated; it also implies that any member of the staff is entitled to express disapproval of serving members of the Council or to call on them to resign.

It does not appear that in his statement Mr. Di Giuliomaria abused his right of criticism or that he used injurious or defamatory language.

(b) In the written memorandum it presented to the Tribunal, the Organisation submitted or specified two additional charges to the effect that by circulating his statement Mr. Di Giuliomaria was fostering useless agitation within FAO, and that he had urged staff members of the Organisation to join Italian trade unions.

On the first point, the mere fact that the Finance Committee's recommendations did not fully satisfy the category of officials concerned justified the complainant in continuing to work for the fulfilment of his demands; his activities still had an occupational objective.

On the second point, without expressing any view on the question whether a staff member of an international organisation can legally join a trade union of the country in which the organisation has its headquarters, a question which does not arise in the present case, the Tribunal considers that it follows from the terms of the complainant's statement that the charge against him has no factual basis.

5. It follows from the preceding considerations that the conduct which was deemed to justify Mr. Di Giuliomaria's summary dismissal did not constitute misconduct serious enough to jeopardise or to be likely to jeopardise the reputation of the Organisation or its staff; that hence it did not fall within the terms of provision 330.251 of the Administrative Annual cited above; and consequently, that the measure taken against the complainant was not justified and that the complaint is therefore well founded.

6. Article VIII of the Statute of the Administrative Tribunal provides that if the Tribunal is satisfied that the complaint was well founded it shall order the rescinding of a decision impugned or the performance of the obligation relied upon. If such rescinding or execution is not possible or advisable, the Tribunal shall award the complainant compensation for the injury caused to him.

Having regard to the present situation within FAO, resulting principally from the present dispute, the Tribunal

considers the rescinding of the decision impugned to be inadvisable, and considers that in the circumstances of the case the complainant should be awarded compensation for the injury he has suffered.

7. The Tribunal considers that after an appraisal of all the circumstances of the case, the proper amount to award Mr. Di Giuliomaria as compensation is five million Italian lire.

DECISION:

1. The complaint is held to be well founded.

2. The rescinding of the decision impugned being inadvisable, compensation in the amount of five million Italian lire is awarded to Mr. Di Giuliomaria against the Food and Agriculture Organisation of the United Nations, for the injury caused to him.

3. The costs incurred by the complainant in connection with the present complaint are awarded against the Organisation and will be fixed by order of the President of the Tribunal.

In witness of this judgment, delivered in public sitting in Geneva on 6 November 1965 by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto attached their signatures to these presents, as well as myself, Lemoine, Registrar of the Tribunal.

Signatures:

M. Letourneur
André Grisel
Devlin
Jacques Lemoine