

## SEVENTY-THIRD SESSION

### *In re* TRESALTI MENGHI (No. 3)

#### Judgment 1169

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Mrs. Diana Tresalti Menghi against the Food and Agriculture Organization of the United Nations (FAO) on 10 May 1991 and the FAO's reply of 6 August 1991;

Considering Articles II, paragraph 5, and VIII of the Statute of the Tribunal, FAO Staff Rules 302.622, 302.626, 302.6214, FAO Manual sections 341 and 342, Article 33 of the Regulations of the United Nations Joint Staff Pension Fund and Section H of Annex I to those Regulations;

Having examined the written evidence and decided not to order oral proceedings, which neither party has applied for;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant, an Italian citizen, joined the FAO in 1970. Her career in the Organization, where she holds grade G.6, is summed up in Judgment 1009 under A. The FAO granted her sick leave from 20 June 1988 to 15 January 1989 and from 27 February to 7 November 1989. In March 1989 the Director-General referred the matter under Staff Rule 302.622 to an independent doctor for advice. The doctor reported in April 1989 that the complainant's condition was such that she could not go back to work.

On 19 September 1989 she filed two claims: one with the FAO Staff Pension Committee to the grant of a disability benefit by the United Nations Joint Staff Pension Fund under Manual section 341; and the other with the Organization to the award of compensation for service-incurred illness under Manual section 342.

FAO Staff Rule 302.6214 reads:

"Staff members whose past continuous service and unexpired term of appointment equal or exceed three years shall be granted sick leave not exceeding 18 months in any four consecutive years. The first nine months shall be on full salary and the second nine months shall be on half salary." Rule 302.626 empowers the Director-General to grant special leave in "cases of temporary disability where the normal sick leave entitlement has been fully utilized and where the return to active duty of the staff member is anticipated within a reasonably early period".

By a letter of 19 October 1989 a personnel officer informed the complainant of a decision by the Director of the Personnel Division to put her on special leave at half-pay from 8 November 1989 to 7 February 1990 pending the hearing of her claim to a disability benefit by the Staff Pension Committee. On 18 December she appealed to the Director-General against that decision claiming full pay or at least an amount equivalent to the disability benefit. The Assistant Director-General in charge of Administration and Finance rejected her appeal by a letter of 17 January 1990 and she went to the Appeals Committee on 16 February.

Pending a report from the Staff Pension Committee on her claim to the disability benefit the Organization extended her special leave at half-pay from 8 February to 31 March 1990 and then to 30 June 1990. Meeting on 22 March 1990, the Staff Pension Committee failed to agree on whether she qualified for the benefit and so, in keeping with the rules, referred her claim to the Standing Committee of the Board of the United Nations Joint Staff Pension Fund. By letter of 17 September 1990 the Secretary of the Board told her that the Standing Committee had taken up her case on 27 June 1990 and found her ineligible for a disability benefit under Article 33(a) of the Fund's Regulations. The complainant has appealed against that decision.

In its report of 23 September 1990 the Appeals Committee recommended rejecting her appeal against the decision of 19 October 1989, which it described as warranted and in her own interest. By a letter of 7 February 1991, the decision she is impugning, the Director-General endorsed the Committee's recommendation.

B. The complainant submits that the Organization acted in breach of rule H.3 of Annex I to the Fund's Regulations,

which requires an organisation to ask its staff pension committee to assess a participant whenever "there is reason to believe" that he is incapacitated within the meaning of Article 33(a) of the Regulations, i.e. that the impairment to his health "is likely to be permanent or of long duration". The independent medical opinion the Director-General obtained in April 1989 gave reason to suppose her incapacity to be permanent.

By putting her on special leave at half-pay the Organization acknowledged her rights and, by implication, its own liability.

She asks the Tribunal to rule that the quashing of the decision "would not afford relief and is therefore inadvisable" and to award her compensation under Article VIII of its Statute.

C. In its reply the FAO rejects the complainant's allegations of breach of the rules.

Only if the Director of the Personnel Division had wrongly regarded her disability as temporary would his decision to put her on special leave at half-pay under Rule 302.626 have been flawed. But apart from a single report by a doctor, which is not binding on the FAO, there is no evidence to suggest that she is permanently unfit for work. Neither the Organization's Staff Pension Committee, which took up her case on 22 March 1990, nor the Standing Committee of the Board of the Fund, which looked into it on 27 June 1990, found her incapacitated for further service within the meaning of Article 33(a) of the Fund's Regulations. Besides, she went back to work on 3 June 1991, underwent a medical examination and was found fit for duty by the FAO's medical service. Her objections to the decision to put her on special leave are in any event misconceived since its effect was to keep her on the payroll while the Staff Pension Committee and the Standing Committee of the Board of the Fund were assessing her claims.

Rule H.3 of Annex I to the Fund's Regulations did not apply because the conditions for referral to the Staff Pension Committee to determine whether she was permanently unfit were not met: the Organization had no reason to believe her to be permanently incapacitated.

#### CONSIDERATIONS:

1. The complainant, who first served the FAO under a short-term appointment in 1970, held at the material time an indefinite appointment with the Organization at grade G.6. She was on sick leave from 20 June 1988 to 15 January 1989. She was on annual leave from 16 January to 5 February 1989 and worked part-time from 6 to 26 February. She was again on sick leave from 27 February to 7 November 1989. On 8 November she was put on special leave at half-pay in accordance with Rule 302.626. The decision she is impugning is one the Director-General took on 7 February 1991 confirming her special leave at half-pay from 8 November 1989 and declaring it to be both warranted and in her own interest.

2. The complainant is not seeking the quashing of the decision, which she says would not give her satisfaction. Instead she claims an award under Article VIII of the Tribunal's Statute of compensation for injury. She observes that in March 1989 the Director-General sought the opinion of an outside doctor in accordance with Rule 302.622; that, reporting in April 1989, the doctor found her to be suffering from a chronic illness attributable to her working conditions and unable to return to work; that the FAO's medical service never challenged that finding; and that the Director-General never referred her case to the FAO Staff Pension Committee under Manual paragraph 341.812. She alleges breach by the Organization of rule H.3 of Annex I to the Regulations of the United Nations Joint Staff Pension Fund.

3. In reply the FAO points out that she filed claims on 19 September 1989 with the FAO Staff Pension Committee to payment of a disability benefit by the Fund and with the Organization to an award of compensation for service-incurred illness. When she had exhausted her entitlement to sick leave it put her on special leave at half-pay so that she would have an income until the Staff Pension Committee and then the Standing Committee of the Board of the Fund had taken up her application for the disability benefit. The Organization explains that her leave was at first for a period of three months but was extended while the Staff Pension Committee looked further into her case. At a meeting on 22 March 1990 the Committee failed to agree on the complainant's entitlement, and so the matter was referred to the Standing Committee of the Board of the Fund. On 27 June 1990 that Committee determined that she did not qualify under Article 33(a) of the Fund's Regulations for a disability benefit. She has appealed against that determination to the competent bodies of the Fund. As from 1 August 1990 she was put on special leave and granted part payment consisting of contributions to the Fund and to health insurance.

The Organization submits that it was not bound to accept the outside medical opinion it had sought under Rule 302.622: its medical service still took the view that the complainant was not suffering from any chronic illness and that she would in time be able to return to work. It observes that that view was borne out both because the Standing Committee of the Board later declared that she was not entitled to the disability benefit and because she did return to work on 3 June 1991 and was then found to be fit.

4. It appears on the evidence that proceedings have begun, but are not yet completed, before the competent bodies of the Fund for the possible grant of a disability benefit to the complainant. This Tribunal may not rule on the matter, which is outside its jurisdiction.

5. The only matter at issue is whether the Organization properly applied to the complainant the provisions of Rule 302.626, which reads:

"The Director-General may also grant special leave with partial pay in other cases of temporary disability where the normal sick leave entitlement has been fully utilized and where the return to active duty of the staff member is anticipated within a reasonably early period."

Since proceedings before the bodies of the Fund are still pending the FAO was right to take the view that the complainant was suffering from "temporary disability", even though a doctor it had consulted had stated a different view. The conclusion is that the action it took was appropriate to the position of uncertainty she was in at the time.

6. Since the complaint cannot succeed there is no question of any award of compensation under Article VIII of the Tribunal's Statute.

#### DECISION:

For the above reasons,

The complaint is dismissed. In witness of this judgment Tun Mohamed Suffian, Vice-President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Pierre Pescatore, Deputy Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 15 July 1992.

Mohamed Suffian  
Mella Carroll  
P. Pescatore  
A.B. Gardner