

## SEVENTY-FOURTH SESSION

### *In re* WALL

#### Judgment 1208

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Miss Rosemary Wall against the Food and Agriculture Organization of the United Nations (FAO) on 29 November 1991, the FAO's reply of 25 May 1992, the complainant's rejoinder of 21 July and the Organization's surrejoinder of 15 September 1992;

Considering Article II, paragraph 5, of the Statute of the Tribunal and FAO Manual section 331, Appendix E;

Having examined the written submissions and decided not to order hearings, 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, a British citizen born in 1941, has worked for the FAO since July 1967 except for two years when she was studying Spanish. She is an administrative assistant (project monitoring) at grade G.6, in the Technical Co-operation Programme Unit (DDFT). The unit forms part of the Field Programme Development Division, known as DDF. In accordance with a new reporting procedure introduced in November 1988 the head of the Unit signed on 15 November 1989 a report on her performance in the period from 1 June 1988 to 31 May 1989. On 4 December 1989 she submitted comments on the report and applied for conciliation under Appendix E to FAO Manual section 331. In the meantime the report had been forwarded to the Director of the DDF, the second reporting officer, who added comment on 18 December 1989.

Someone who applies for conciliation may present his views within ten days of the date on which he is informed of the decision that he is challenging. On 13 December 1989 the complainant told her first-level supervisor that she would be on home leave from 14 December 1989 to 5 January 1990 and that the proceedings might resume on her return. By a memorandum of 16 January 1990 she informed him that the first stage had resumed on 8 January and, according to the deadline in Appendix E, she was expecting an answer from him by 23 January. In a memorandum of 23 January he asked her to submit in writing the evidence she was relying on to challenge the report. She did not reply. By a memorandum of 26 January she informed the Director of DDF that the first stage had failed and she wanted to go on to the second.

On 14 February 1990 there was a meeting between her, a conciliator and the Assistant Director of the Division. The Assistant Director offered her transfer to a documentation unit under the Director's supervision. A second meeting was scheduled for 21 February. In a memorandum of 15 February she told the Assistant Director that an offer of transfer had nothing to do with conciliation and asked him to confirm that her firstlevel supervisor would not change the report and close the conciliation proceedings so that she could go to the Appeals Committee.

The Assistant Director of the Division replied on 20 February that, though the purpose of the meeting scheduled for the morrow was to go over the matter, he noted that she regarded conciliation as closed.

On 26 March 1990 she appealed to the Director-General asking that her report be withdrawn. The Assistant Director-General in charge of Administration and Finance rejected her appeal on 25 April. On 22 May 1990 she referred the matter to the Appeals Committee, which in its report of 22 May 1991 recommended dismissing her appeal. By a letter of 4 September 1991, the decision impugned, the Director-General did so.

B. The complainant pleads breach of the rules on reporting on the grounds that neither her immediate supervisor nor the Director of the Division had an interview with her before the report was made. The instructions on the report form were not followed: the reporting officer omitted both to describe her duties and to explain why he described her work in the unit as "unsatisfactory".

She submits that the time limits for the conciliation proceedings were not met and that her supervisors showed bias in that they commented on her conduct rather than her work. If it wanted to find fault with her conduct the Organization ought to have followed the disciplinary procedure, which affords the staff member proper safeguards.

Mistaken conclusions were drawn from the evidence. The appraisal is flawed because the post description it is based on is out of date and the pretexts the Appeals Committee found to exonerate the reporting officer are factually wrong. The trial period of one year for the new reporting procedure was over by the time the report was written.

The complainant seeks the quashing of the Director-General's decision of 4 September 1991. She wants an impartial report containing an accurate description of her duties and commenting only on her work. Failing that, she asks that the report be declared null and void and removed from her file. She claims awards of moral damages and of 38,000 French francs in costs.

C. The Organization submits that the complainant shows no cause of action. The period covered by her report fell within the one-year period of trial for the new procedure, introduced in November 1988, for appraising the performance of staff, like the complainant, who are in the General Service category. Records on such staff are kept only for the sake of reference: they do not and will not have any legal or practical effect. The complainant was given a within-grade salary increment shortly before her report was written. The Director-General's decision of 4 September 1991 is not detrimental to her career and the report did not afford the basis for any decision that might have affected her adversely.

Although the conciliation proceedings, which would probably have led to settlement, were not duly completed, the complainant put an end to them of her own accord.

That there was no interview with her before appraisal does not matter as much as she makes out since her first-level supervisor was seeing her every day anyway. Her right to be kept informed and her right to challenge the report were fully respected.

As for the safeguards she says she would have had under the disciplinary procedure, management has discretion in matters of discipline, and her behaviour did not warrant resorting to that procedure.

Her duties consisted in monitoring projects financed by the FAO's Technical Co-operation Programme. The further tasks she says she was given come under those duties and the description of her post still corresponds to what she is actually doing.

Lastly, she offers no evidence in support of her contention that the report was prejudiced and arbitrary.

D. In her rejoinder, the complainant enlarges on her pleas. She further submits that the report may already have been taken into account when it was decided to abolish her post at the end of 1991. She raises her claim to costs to 45,000 French francs.

E. In its surrejoinder the Organization maintains that inasmuch as the impugned decision caused the complainant no injury she has no cause of action. No personal and direct interest of hers is at stake in this dispute and she seems to be acting for the General Services category as a whole.

#### CONSIDERATIONS:

1. The complainant joined the staff of the FAO in 1967. At the material time she was an administrative assistant at grade G.6 in the Technical Co-operation Unit (DDFT), in which she had been serving since 1979. Her duties included the monitoring of projects financed by the Technical Co-operation Programme under the general supervision of the Co-ordinator of the Unit and the guidance of the programme officer in charge of each project. She was in charge of gathering, recording and collating information on the execution of projects. In August 1989 she was granted a within-grade salary increment on the grounds of satisfactory service in the qualifying period from August 1987 to July 1989.

By administrative circular 88/27 of 25 October 1988 the FAO introduced as from November 1988 a new system of drawing up "performance appraisal and achievement records" for staff in the General Service category.

This case is about the complainant's "performance appraisal and achievement record" for 1988-89. The report by her supervisors gave her "overall rating" as "unsatisfactory" under Part II of the prescribed form. It accused her of being uncooperative, of seldom bringing "implementation problems to the attention of the responsible officers", of

not being on speaking terms with the rest of the Unit except one officer, of being insolent to the Co-ordinator and of "long absences from the office during the day".

She objected to the report on the grounds that it did not comply with circular 88/27, which, she observed, was supposed to provide objective summary assessment of performance and achievements during the period under review. She asked for the conciliation provided for in Appendix E to Section 331 of the FAO Manual.

The conciliation proceedings

2. The matter was put to the Assistant Director of DDF. The complainant failed to reply to his memorandum of 23 January 1990 asking her to supply the evidence on which she based her objections to the report; and her first-level supervisor refused to make any change in the report and took the view that what she was doing was unnecessary anyway. Faced with the intransigence of both sides the Assistant Director was unable either to clarify or to alter the appraisal.

First, the process of conciliation was not properly followed: if it had been, allegations of unsatisfactory conduct would have been distinguished from allegations of unsatisfactory service. That is a distinction that the Tribunal drew in an earlier case against the FAO (in re Nemeth): see Judgment 247 under 12 and 13.

Secondly, the conciliator failed to determine whether the terms of the circular had been complied with, especially the requirement of dialogue between the supervisor and the complainant before the appraisal is made.

And thirdly, the conciliator failed to point out to the supervisor that in view of the grant to the complainant of the within-grade salary increment in August 1989 for satisfactory service his evaluation was in all likelihood untenable.

The internal appeal proceedings

3. There were two issues before the Appeals Committee: the description of the complainant's post and the report appraising her performance.

The complainant maintained that the description of her post was inaccurate in that it did not set out fully the duties she was performing. The Organization denied that but indicated that since it was essential to define duties and responsibilities clearly the Personnel Division would carry out a "desk audit" of her post.

As to the appraisal report, the Organization offered to settle the matter by withdrawing it from her personal file and paying her the costs of her appeal. The complainant declined the offer because she insisted that there had been a breach of the Staff Regulations and she was seeking a change in the description of her post. The Appeals Committee noted some shortcomings in the completion of the report and expressed the view that it was not a good example of proper assessment of performance and achievements. It did not sustain her view that it should be rewritten but recommended against keeping it on record for future reference. The Director-General agreed with the Committee's recommendation on the grounds that the report covered a period in which the system had been on trial.

The Tribunal's ruling

4. The Organization states in its surrejoinder that it has withdrawn the report, returned the original text to her and given her a written assurance that the report "would have no practical or administrative consequences for her and would not affect her career".

That is tantamount to acknowledgment that she was justified in bringing her complaint. Though there is no longer any need to rule on the Director-General's decision of 4 September 1991, she is entitled to awards of damages for moral injury and of costs.

DECISION:

For the above reasons,

1. The Tribunal need not rule on the complainant's claim to the quashing of the Director-General's decision of 4 September 1991.

2. The Organization shall pay her 10,000 French francs in moral damages.

3. It shall pay her 20,000 French francs in costs.

4. Her other claims are dismissed.

In witness of this judgment Sir William Douglas, Vice-President of the Tribunal, Mr. Edilbert Razafindralambo, Judge, and Mr. Michel Gentot, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 10 February 1993.

William Douglas  
E. Razafindralambo  
Michel Gentot  
A.B. Gardner