

SEVENTY-FIFTH SESSION

In re ZAIDI (No. 2)

Judgment 1261

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr. Syed Muhammad Mohsin Zaidi against the Food and Agriculture Organization of the United Nations (FAO) on 14 July 1992, the FAO's reply of 13 October, the complainant's rejoinder of 11 November 1992 and the Organization's surrejoinder of 23 April 1993;

Considering Article II, paragraph 5, of the Statute of the Tribunal, FAO Staff Rule 303.131 and FAO Manual paragraphs 325.41, 325.421 and 325.432;

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. As was stated in Judgment 1210 of 10 February 1993 under A, the complainant was employed by several United Nations agencies in Pakistan from 1 July 1970. On 1 May 1979 he was appointed senior administrative assistant at grade G.7A in the office of the FAO's Representative at Islamabad. In June 1982 he became a senior finance assistant, still at the same grade. In July 1989 he was seconded to a programme of the United Nations in Pakistan for the rehabilitation of agriculture in Afghanistan. His duties included the processing of claims by staff to the payment of overtime hours. He made no such claims of his own while on the post.

The circumstances that led to his suspension from duty and then to his termination are set out in Judgment 1210, which dismissed his first complaint against the termination.

In a letter of 21 March 1991 to the Co-ordinator of the Programme he claimed payment for 150 hours' overtime which he said he had done in November and December 1989. In his reply of 28 April 1991 the Co-ordinator said that his claim was "extremely late"; he was claiming for a period "during which tuition in the computers was being run", something that was "considered ... of material benefit to the staff in question and therefore not ... counted as ... overtime"; and payment was due only for overtime approved by the FAO's Representative, who had not given him leave to do it.

In a letter of 20 January 1992 the Representative told him that the Organization would pay him for nine hours' overtime he had done on 15 and 16 December 1989.

By a letter of 8 April 1992 he made a request to the Director-General in accordance with Rule 303.131 for a final decision on his full claim.

By a letter of 23 June 1992 the Deputy Director-General confirmed that the Organization would pay him only for the nine hours' overtime but not the rest. That is the decision he impugns.

B. The complainant contends that he is entitled to payment for 150 hours' overtime he worked in the two months before his suspension, November and December 1989.

The reason why he had not claimed for overtime at all or had reduced the amount of his claim was a desire not to overburden the programme's meagre budget for administration. And the reason for the delay was that after suspension from duty he was not allowed to take away papers and it later took him a long time to get hold of copies of vehicle log-books that showed the dates and number of his overtime hours.

Since the programme was carrying out emergency work there was no procedure for prior authorisation of overtime. Instead the manager gave merely oral instructions, and it is unwarranted to ask or expect him to produce written leave. Besides, even supposing that written leave was required, the Co-ordinator, who was his supervisor, ought to have followed the procedure laid down in the rules and failed to do so. It is unfair to apply to him and not to others the requirement of prior leave of overtime in Manual paragraph 325.41. In any case the overtime hours he is

claiming payment for may be checked against the log-books.

The overtime hours he did while on the computer course were authorised beforehand by the Co-ordinator, who set the schedule of work, and only 14 out of the total of 150 hours he claimed were spent on the course anyway.

As for the nine hours' overtime which the Organization does agree to pay for, the two authorisations the Representative issued made only an estimate of the number of hours that would be needed and did not state the actual number of hours worked. Under that head alone the FAO owes him payment for another four hours.

He claims payment for 150 hours' overtime and awards of 1,000 United States dollars in damages for delay in payment, \$10,000 in damages for moral injury and \$4,000 in costs.

C. In its reply the Organization submits that the complainant offers no evidence to show that he did the overtime work he is claiming payment for or that his supervisor authorised it beforehand. If he did do it he must bear the consequences of failing to get the leave required by Manual paragraph 325.421, which provides that "the staff member prepares an 'Overtime Request' ... and sends it, through his or her supervisor and the certifying officer concerned, to the appropriate authorizing official".

The two authorisations he did seek and obtain for the nine hours' overtime that the Organization is willing to pay for show that a procedure did exist for authorising overtime under the programme. There is no authorisation to cover the remaining 141 hours either because he did not do such overtime work for the Organization or because his supervisors did not authorise it. The burden of proof is on him and by failing to claim within a reasonable lapse of time he made it the harder to discharge it. After all, since he himself was in charge of processing such claims, it is odd that he failed to make his own in time.

His claim to damages for delay is unsubstantiated. Besides, any delay was his own fault because he took so long to put in his claim. And he offers not a jot of evidence of moral injury.

D. In his rejoinder the complainant enlarges on his earlier pleas. In his submission the FAO has failed to show that the Co-ordinator ever followed the rules on overtime. The overtime work he himself did was in the Organization's interest and carried out under the Co-ordinator's close supervision. He was in no position to disobey the Co-ordinator's oral instructions and no staff member ever claimed overtime payment on the strength of a prior authorisation.

As for the two authorisations for the overtime he did on 15 and 16 December 1989, neither he nor the Co-ordinator had anything to do with them: the Representative made the request for the overtime and the FAO's offer to pay is unacceptable because he did 13, not just 9, hours' overtime on those days.

E. In its surrejoinder the Organization points out that in the period which the complainant is claiming for its policy was to cut down overtime. The work did not call for much overtime anyway; so the amount of overtime he says he did would hardly have gone unnoticed if he had done it. He was given leave for only five hours' overtime on 15 December and four on 16 December 1989.

CONSIDERATIONS:

1. The complainant, a Pakistani, used to work in the office of the FAO's Representative at Islamabad. As from 23 July 1989 he was seconded, still in Pakistan and as a member of the staff of the Organization, to a United Nations programme for the rehabilitation of agriculture in Afghanistan. On 16 December 1989 he was suspended from duty pending investigation into charges that before secondment he had used the Organization's funds for his own benefit. On 26 August 1990 he had his employment terminated and the Tribunal dismissed his complaint against termination in Judgment 1210 of 10 February 1993.

2. In March 1991 he submitted two claims to payment for overtime he said he had done: 114 hours in November and 36 in December 1989. His explanation for the delay was that upon suspension he had not been allowed to take with him the records of overtime on which he could have based his claims and that only long afterwards had he managed to get hold of copies of log-books showing movements of office vehicles and - or so he said - the dates and hours of the overtime he had done. The Organization accepted on 20 January 1992 that he had done nine hours' overtime on 15 and 16 December 1989. It did so on the strength of two undated authorisations issued by the FAO's Representative at Islamabad and received in the office of the programme on 17 December 1989. The Organization

informed the complainant by a letter dated 23 June 1992 of the Director-General's final decision to reject his claims to payment for the remaining 141 hours on the grounds that the prescribed procedure for the authorisation of overtime had not been followed, there was no evidence that he had actually worked those hours and because of the lateness of his claim the figure could no longer be checked.

3. He is now claiming payment for the overtime as well as awards of damages for delay and for moral injury and of costs as set out in B above. He argues that because the programme's work was urgent there was no procedure for getting advance written authorisation of overtime, for which only oral instructions were issued; that the Organization is seeking to apply the requirement only to his own claim; and that his claim to payment for 141 hours' overtime includes 14 hours he spent on a compulsory course in computers that took 30 or 40 minutes a day just after working hours from 16 October to 30 November 1989.

4. The Organization describes its procedures for authorising and reporting overtime and for claiming payment, which it says are intended to protect the interests of staff as well as its own. In its submission restrictions on overtime, the grant of compensatory leave instead of payment and the requirement of prior authorisation are designed to protect staff from working abnormally long hours and enable the Organization to ascertain in advance the need for overtime and the availability of funds to pay for it.

5. The complainant was required under FAO Manual paragraph 325.41 to obtain prior written authorisation of overtime. Even if he could not do so he should, in accordance with paragraph 325.432, have reported the overtime he had done and obtained certification of it. He might then have got subsequent written authorisation of the kind he got for the overtime he did on 15 and 16 December 1989.

6. The FAO observes that he was responsible for processing claims from staff to payments for overtime, and in the material period three employees submitted claims which were processed and paid. He does not deny that, but says that he cannot remember processing the other claims.

It was his duty as the responsible officer to ensure that the Organization's rules were being complied with. If they were not he should have brought the matter to the notice of his supervisors. There is no evidence that he did so. That he may have failed to apply the rules in processing claims from other employees does not entitle him to object that the Organization is wrong to apply them to him. Even supposing, as he contends, that the proper procedure was not being followed, he gives no explanation for his failure to report promptly the overtime he had done and get certification of it. The conclusion is that he failed to comply with the rules on overtime claims.

7. The Organization observes that the computer course he took was not compulsory and that none of his colleagues who took it claimed or received payments of overtime on that account. His own position is inconsistent: although in his complaint he claims payment of 14 hours' overtime - equivalent to working after hours on 20 to 28 days - for taking the course, he stated when making his claim on 5 May 1991 that he "seldom attended the course due to extreme load of office work". Moreover, in the two claim forms he filled up he referred only to "office work" and made no mention of time spent on the course. His assertion that the course was compulsory and that he spent 14 hours on it must therefore be rejected.

8. To prove that he did do overtime in November and December 1989 he relies solely on entries in the log-books of office vehicles and on the payments of the overtime made to drivers who took him to work and home again. But such evidence does not prove that he was doing overtime work for the Organization or had been duly authorised to do it. His assertions on the subject are again unreliable. As he does not deny, he did not submit any claims at all. His contention that he worked overtime in that period is therefore unacceptable.

9. Since his claim to payment for overtime fails, so too do his other claims, which are consequential.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Mr. José Maria Ruda, President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Mark Fernando, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 14 July 1993.

(Signed)

José Maria Ruda
Mella Carroll
Mark Fernando
A.B. Gardner

Updated by PFR. Approved by CC. Last update: 7 July 2000.