

SEVENTY-NINTH SESSION

In re WASSEF (No. 5)

Judgment 1454

THE ADMINISTRATIVE TRIBUNAL,

Considering the fifth complaint filed by Mr. Maher Nabih Wassef-Gerges against the Food and Agriculture Organization of the United Nations (FAO) on 24 August 1994, the FAO's reply of 14 October and the complainant's letters of 22 December 1994 and 23 January 1995 informing the Registrar of the Tribunal that he did not wish to file a rejoinder;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and disallowed the complainant's application for hearings;

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

A. Facts relevant to this case are summed up, under A, in Judgment 1401 and in Judgments 1452 and 1453 also delivered this day.

In a letter dated 30 November 1993 the complainant asked the Director of the Administrative Services Division to put him on a continuing post at grade P.4 at headquarters on the grounds that the Assistant Director of the Division had offered him such a post when they had met on 5 October 1992. In a memorandum of 10 December 1993 the Director acknowledged receipt of his letter.

By a letter dated 8 March 1994 the Director of the Personnel Division told him that the Administration had never offered him such a post.

On 11 May he appealed to the Director-General for a final decision on his assignment to a continuing post, and failing that, claimed an award of damages. By a letter of 24 June the Deputy Director-General rejected his claims on the Director-General's behalf, adding that the decision was not final.

On 27 July 1994 the complainant appealed to the Organization's Appeals Committee.

B. The complainant restates the pleas he put forward in his fourth complaint. He maintains that the Assistant Director of the Administrative Services Division offered him a continuing post at headquarters when they met on 5 October 1992. The Administration failed to keep its promise and acted in breach of good faith.

The letter of 24 June 1994 was "illegal" because the Director-General failed to answer his claims within the time limit set in the rules.

He asks the Tribunal to award him 2,500,000 United States dollars in damages if the FAO fails to transfer him to a continuing post at grade P.4 three months "before" the date of the judgment, and \$2,200 to meet office expenses and "up to" \$14,000 to cover "lawyer's fees, if any".

C. In its reply the FAO pleads that the complainant is not impugning a final decision. He has not satisfied the requirement in Article VII(1) of the Tribunal's Statute and FAO Manual section 332.222 that he exhaust the internal remedies open to him before going to the Tribunal. Since Article VII(3) applies only where the Administration has failed to take any decision it affords him no grounds for appeal. Since he has put his case to the Tribunal before the Appeals Committee has reported on his claims his complaint is premature.

CONSIDERATIONS:

1. On 12 May 1994 the complainant despatched a letter dated 11 May by registered post to the Director-General of the Organization. The letter claimed a final decision on his assignment to a continuing P.4 post at headquarters or else an award of damages.

2. The Deputy Director-General replied on the Director- General's behalf in a letter dated 24 June 1994 rejecting his claims. The letter pointed out that if he wished to appeal to the Appeals Committee he might do so within sixty days from the date of receipt and that the decision was not a final one.
3. According to Staff Rule 303.1312 the time limit for a reply by the Director-General to such claims is ninety days "if the staff member has requested the Director-General" - as the complainant did - "to render a final decision". The Director- General therefore observed the time limit in this case.
4. On 27 July the complainant lodged with the Appeals Committee an appeal in which he repeated his claims. He lodged this complaint with the Tribunal on 24 August 1994, and the decision he is challenging is the rejection of his claims that he infers under Article VII(3) of the Tribunal's Statute.
5. The complainant has come to the Tribunal before he has exhausted the means of internal appeal and obtained the Director-General's final decision. Article VII(3) does not apply. His complaint must be dismissed as irreceivable.

DECISION:

For the above reasons,

The complaint is dismissed.

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

Delivered in public in Geneva on 6 July 1995.

William Douglas
Michel Gentot
Mella Carroll
A.B. Gardner