

## **TWENTY-THIRD ORDINARY SESSION**

### **SILOW v. FAO**

#### **Judgment No. 151**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the United Nations Food and Agriculture Organization (FAO) drawn up by Mr. Ronald Silow on 24 March 1969, the Organization's reply of 18 June 1969, complainant's rejoinder of 13 August 1969 and the Organization's reply thereto of 3 September 1969, and complainant's further memoranda of 5 December 1969 and 28 February 1970, and his communications of 7, 14, 16, 17 and 31 March 1970;

Considering Article II, paragraph 5, of the Statute of the Tribunal, section 307 of the FAO Manual and Staff Rule 303.131;

Having examined the documents in the dossier, the oral proceedings requested by complainant having been disallowed;

Considering that the material facts of the case are as follows:

A. Complainant, who is of British nationality and an agricultural scientist, joined the FAO as an "agricultural officer" in 1950. On 1 September 1957 he was appointed Chief of a new Atomic Energy Branch of the Organization, with grade P.5. On 1 October 1964 this Branch and the Unit of Agriculture of the International Atomic Energy Agency (IAEA) were combined to form a Joint FAO/IAEA Division for Atomic Energy in Agriculture within the Agency, and complainant was appointed its Deputy Director. On 1 September 1964 he was promoted to grade D.1 in view of his new responsibilities in the Joint Division. By a letter bearing the date 2 September 1964, however, but sent on 15 September, the Assistant Director-General (Administration and Finance) of the FAO informed complainant that, since the retirement age in the IAEA was sixty, as against sixty-two in the FAO, he would be retransferred to the FAO between the ages of sixty and sixty-two, should the IAEA decide not to retain his services beyond the age of sixty. He would, however, return to the FAO at his former grade, namely P.5.

B. Soon after his transfer to the IAEA, complainant became involved in serious disputes with his superiors over the programme of the Joint Division, which he felt was inducing the developing countries to incur excessive expenditure on the application of nuclear techniques in agriculture for purposes which could be much more cheaply and easily achieved by traditional methods. By the beginning of 1966 relations between him and his superiors had become so strained, in the Agency's view, that it was decided to relieve him of his duties as Deputy Director of the Joint Division and appoint him "Director with Special Assignment". In spring 1966 the Directors-General of the Agency and of the FAO jointly appointed a group of consultants to review the Joint Division's activities. The consultants' report, published on 29 September 1966, contained a paragraph No. 88 which stated that they had reviewed "criticisms of the Joint Division's programme made by a senior member of the IAEA staff" and considered them "unjustified". Complainant immediately protested that the consultants' conclusions were at variance with scientific evidence published by internationally recognised experts and requested the Directors-General of the two organisations to withdraw the report from circulation. No effect was given to his request, however, and the IAEA published the report on 1 February 1967, the FAO on 20 November 1967.

C. The IAEA having decided not to retain complainant's services after he reached the age of sixty, the Assistant Director-General (Administration and Finance) of the FAO wrote to complainant on 29 December 1967 promising to explore the possibility of transferring him to a suitable P.5 post in the FAO. On 21 February 1968 complainant reached the age of sixty, retired from the IAEA, and returned to the FAO. Although he kept the personal grade of D.1, he was appointed to a P.5 post with the title of "Technical Officer" and responsibility for work arising out of the FAO's participation in the United Nations Advisory Committee on the Application of Science and Technology to Development. Following a letter to the Director-General dated 18 March 1968 in which complainant protested at the terms of his transfer to the FAO, on 4 April 1968 the Establishment Committee of the FAO recommended his

appointment as "Scientific Officer" at grade D.1 in the office of the Assistant Director-General (Technical Department) for two years from February 1968. Complainant objected immediately, both in writing and orally, to his position in the FAO. In a letter of 21 May 1968, in which he recapitulated those objections, he maintained that he was suffering damage to his professional standing and reputation because public recognition of his status as a director was being withheld and he was being excluded from participation in decisions and discussions on questions relating to atomic energy in the FAO.

D. In an appeal dated 10 June 1968 to the FAO Appeals Committee, complainant submitted, among other things, (1) that at the time of his transfer to the IAEA the Administration of FAO had acted unjustly in deciding that on his return to the FAO he should automatically be demoted and that that question should have been held over for review at the time of retransfer; (2) that his professional standing and reputation had suffered through his appointment to a P.5 post on his return to the FAO; (3) that his exclusion from further participation in the Organization's programme in the field of atomic energy was unjustifiable and also caused him professional damage; and (4) that that damage could not be made good simply by re-establishing him in a post at directorial level, as long as he continued to be denied full public recognition of his status. He accordingly asked for full and open vindication by the FAO of his professional standing through some such step as changing his title, and for monetary compensation amounting to US\$2 million for the damage to his international reputation.

E. The Appeals Committee reported on 28 November 1968. It held (1) that complainant's re-employment at grade P.5 on his return from the IAEA was in conformity with the written assurance which he had received at the time of his transfer and with the memorandum of understanding on transfers between the two organisations and embodied in FAO Manual section 307; besides, his post had been upgraded to D.1; (2) that although the title of complainant's D.1 post did not include the word "director", the functions attached to that post were considerable and hardly damaging to his reputation; the Committee did feel, however, that the title of "Scientific Officer" was not consonant with his job description; and (3) that other matters raised in the appeal, such as the co-operation between the FAO and IAEA in the field of atomic energy and, in particular, complainant's views on their joint programme relating to atomic energy in agriculture, fell outside the Committee's competence. The Committee accordingly found that there was no basis for making any recommendation to the Director-General. By a communication dated 3 January 1969, the Director-General informed complainant that his appeal was rejected. This communication, which complainant received on 8 January, constitutes the decision contested by him in his complaint to the Tribunal.

F. In his complaint dated 24 March 1969 complainant alleges that since 1964 the FAO has subjected him to prejudice and discrimination and to professional indignity and damage through failure to support him in the discharge of his duty as a staff member to advance the interests of member States in the field of agriculture. In his view, his professional reputation and standing have been seriously and publicly damaged by the FAO through various acts, and in particular the widespread publication in November 1967 of the report of the group of consultants on the joint programme and his unjustifiable demotion to a sub-directorial post on his retirement from the IAEA. He claims that, even though his post has been regraded D.1, his professional standing is still being damaged because of his continued exclusion from policy decisions on atomic energy questions and the FAO's refusal to change his degrading title of "Scientific Officer". He asks the Tribunal to order: (1) his restoration to full supervision of the atomic energy programme on the FAO's behalf; (2) that he be given a title which accords full public recognition to his directorial status; (3) that the FAO should make an official and public repudiation of paragraph 88 and related paragraphs of the consultants' report and circulate to governments the reasons for such repudiation; and (4) that for damage to his professional reputation he be compensated in the amount of US\$2 million.

He also asks that certain witnesses should be called to testify on the FAO's policy with regard to atomic energy in agriculture.

G. In its reply of 18 June 1969 the Organization prays the Tribunal to dismiss the complainant's claims. It maintains: (1) that under his terms and conditions of employment complainant is in no way entitled to vindication of his views on FAO policy with regard to the uses of atomic energy in agriculture and that those sections of the complaint which concern such policy do not relate to non-observance of the terms of his appointment or of any of the Staff Regulations. The calling of witnesses would serve no purpose, since the merits of FAO policy are not at issue; (2) that complaints relating to any decisions made by the FAO in 1964 on complainant's transfer to the IAEA are time-barred under Staff Rule 303.131; (3) that complainant was not demoted on his return to the FAO, but was given a post at the same grade as that which he held on his departure in 1964. Moreover, he was allowed to retain his personal grade of D.1; (4) the title of "Scientific Officer" is not prejudicial to complainant's professional

standing or reputation and he is in fact in no way excluded from discussions in the FAO of atomic energy questions arising in connection with his present work. In sum, the FAO maintains that there has been no infringement of complainant's terms and conditions of employment or of the Staff Regulations.

#### CONSIDERATIONS:

In the final version of his claim Mr. Silow confines himself to contesting the decision to retransfer him to FAO after the expiry of his transfer to the IAEA.

Accordingly it is not necessary to review the legality of the other decisions specified in his complaint, which in the absence of any appeals properly submitted within the prescribed time-limits have in any case become final.

At the time of his transfer to the IAEA Mr. Silow, who was born in February 1908, was informed by a letter of the Assistant Director-General (Administration and Finance) dated 2 September 1964 that, the retirement age in the IAEA being sixty and in the FAO sixty-two, he might be retransferred to the FAO for two years if he left the IAEA in February 1968, but with the grade of P.5 which was his grade at the time of his transfer, since he had been promoted to D.1 only on his transfer to the Agency and for the duration thereof.

The decision contained in the aforesaid letter, which was not contested within the prescribed time-limit and had therefore become final, thus gave complainant a guarantee of re-employment by the FAO for two years after reaching the age of sixty, specifying however, that he would revert to grade P.5.

Accordingly, under the terms of the undertaking by the Director-General communicated in the letter of 2 September 1964, the sole obligation resting on FAO was to reinstate Mr. Silow in grade P.5 from February 1968 to February 1970. It is a fact, however, that the FAO reinstated Mr. Silow at grade D.1 with effect from his return to the Organization, thus taking a decision in his favour which went beyond its strict obligation towards him.

Furthermore, it appears from the evidence in the file that Mr. Silow was assigned to duties appropriate to an official of his grade.

There is accordingly no foundation for complainant's claim that the decision to retransfer him to the FAO was irregular and that the circumstances of his reinstatement in the Organization were in any way damaging to his reputation.

In alleging that he was not assigned adequate responsibilities, that the title of his post did not correspond to his merits and qualifications, that he had not been allowed to take part in the FAO programme concerning the uses of atomic energy in agriculture, and that he had not been selected to represent the FAO at various conferences, complainant is challenging, the Director-General's authority to assign the staff members responsible to him in the best interest of the Organization. The authority enjoyed by the chief of the Organization in this respect affords him a wide field of discretion which the Tribunal can review only in specified cases, of which the present case clearly is not one.

#### DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and Mr. A.T. Markose, Deputy Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Bernard Spy, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 26 May 1970.

(Signed)

M. Letourneur  
André Grisel  
A.T. Markose

