Registry's translation, the French text alone being authoritative.

EIGHTY-SECOND SESSION

In re Morelli

Judgment 1614

The Administrative Tribunal,

Considering the complaint filed by Mrs. Allegra Morelli against the International Fund for Agricultural Development (IFAD) on 10 April 1996, IFAD's reply of 21 June, the complainant's rejoinder of 8 August and the Fund's surrejoinder of 20 September 1996;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

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, an Italian who was born in 1936, joined the staff of the United Nations Children's Fund (UNICEF) in 1983. On 18 February 1991 she was seconded to IFAD for two years as Director of its Information and Communications Division at grade D.1. Her appointment, which was to expire at 17 February 1993, was extended by five years to 16 February 1998.

By a bulletin of 5 September 1994 the President of IFAD announced that he intended to reform its structure. The very same day the complainant talked to her supervisor, the Assistant President in charge of the Economic Policy and Resource Strategy Department, then to the President, about what the reforms would mean for her division. In a memorandum of 21 September she asked the Director of the Personnel Division how they would affect her own duties and status. On 23 September she saw the Director and the Assistant President. The parties disagree about what was said on 5 and 23 September.

By a letter of 27 September the Director of Personnel told her that the reforms entailed abolishing her post and so her appointment would end at 1 October 1994. By a letter of 31 October she asked the President to reconsider the decision but he confirmed it in a letter of 6 December 1994. On 3 February 1995 she lodged an appeal with the Joint Appeals Board.

In its report of 10 January 1996 to the President the Board held that the Fund had acted in breach of Article 5.7.11(b) of the Personnel Policies Manual, about the reassignment of staff on abolished posts, and recommended either keeping the complainant on until 16 February 1998 or ending her appointment properly. The Board believed that she was entitled to compensation over and above the termination indemnity that she would have got had her appointment been duly terminated. It recommended setting the amount of compensation by agreement with her, bearing in mind that her appointment was not to expire until February 1998.

On 5 February 1996 the Director of Personnel wrote to the complainant offering on the President's behalf a settlement that included payment of termination indemnity equivalent to 21.63 months' basic salary. She rejected the proposal in a letter of 8 February on the grounds that it fell too far short of what the Board had recommended. The attempts to settle having come to nought, she is impugning the decision of 5 February 1996.

B. The complainant submits that there was no genuine abolition of her post. Although her performance had always been rated good, she was the only woman at IFAD to be dismissed because of the reforms. The Fund committed a misuse of authority by taking advantage of the reforms to end her appointment.

It acted in breach of Article 5.7.11(b) of the Manual and the general rule that someone whose post is abolished should have priority for reassignment. It adduced no evidence of any attempt to reassign her, other than two items which it put to the Joint Appeals Board and which it had till then hidden from her in breach of her right of reply.

By the affront to her dignity the Fund caused her undue harm and serious moral injury.

She seeks the quashing of the impugned decision; material damages in an amount that would be in keeping with the Board's recommendations and take due account of the loss of her pension entitlements; moral damages; and costs.

C. In its reply IFAD denies fabricating the abolition of her post. The functions fulfilled by her old division have disappeared, the reforms were needed, and there was no misuse of authority.

An ad hoc committee set up to help in putting through the reforms considered her applications for other vacant posts but found her qualifications -- a diploma in psychology and social welfare -- and her professional experience to be unsuitable. The Fund did give her priority for reassignment but she was not "suited" to a single vacancy.

It admits failure to apply the redundancy procedure to her from the outset: it ought indeed to have looked "more systematically" for another job for her. But to make up it paid her her salary for six months until 31 March 1995, instead of just the prescribed three months in lieu of notice, and offered her compensation over and above the termination indemnity.

It denies causing her any undue injury or affront to dignity.

D. In her rejoinder the complainant enlarges on her pleas and pleads breach of due process. She submits that the Fund could have moved her to a post of which there was not yet a description and for which the requirements were not specific: it had done as much for two other directors.

E. In its surrejoinder IFAD denies depriving her of her right of reply. It acknowledges that her post was "frozen" rather than abolished but points out that that is common practice in the United Nations system. The two directors she mentions had more readily usable qualifications and experience than she and so were better suited to other jobs.

CONSIDERATIONS

1. The complainant was with UNICEF until 18 February 1991, when she was seconded for two years to IFAD. She became Director of its Information and Communications Division and held grade D.1. On 27 October 1992 it extended her appointment, which was to expire at 17 February 1993, by five years to 16 February 1998.

2. On 5 September 1994 the President of the Fund announced plans to reform the secretariat which he said would take effect at 1 October 1994. Also on 5 September he saw the complainant and -- says the Fund -- told her that her division was to disappear. By a memorandum of 21 September she asked the Director of Personnel to tell her how that was to affect her own duties and status. On the 23rd her supervisor, the Assistant President in charge of the Economic Policy and Resource Strategy Department, and the Director of Personnel saw her and gave her some information on that score. In a letter of the 27th in reply to her memorandum of the 21st the Director of Personnel said that her post was to go and, as the Assistant President and he had told her on the 23rd, several courses of action were possible in such circumstances. He also gave her the prescribed notice of termination of her appointment as at 1 October 1994. By a letter of the 27th she sought help from the President. But he told her in a reply dated 24 October that he was upholding the decision.

On 31 October 1994 she appealed against the termination of her appointment. On 6 December the President confirmed it. Her case went to the Joint Appeals Board. The Board reported on 10 January 1996 in her favour. On 5 February the Director of Personnel made her an offer of a settlement by the grant of "additional compensation". She turned the offer down and, failing any later decision, she is impugning the one of 5 February 1996.

3. As circumstances change so must an organisation reform its structure, and that may mean doing away with posts. Even if abolition is not expressly provided for, no organisation can be required to abide for evermore by the same approach to what it has to do. The Tribunal may not replace an organisation's assessment with its own when savings or efficiency require reforms and will not review policy in that regard. But it has a duty to review any individual decisions, such as abolition of a post, that the organisation may take in furtherance of such policy. Thus it may determine whether such a decision shows any fatal flaw, such as the breach of a formal or procedural rule, a mistake of fact or of law, or misuse of authority.

4. The nub of the case is whether, as the complainant says, there was any flaw in the abolition of her post. She has

two pleas: that the abolition was a sham and that the Fund failed in its duty to give her priority for reassignment.

5. On the first point she submits that she was not told of abolition either when she saw the Assistant President and the President or in replies to her written claims. But the allegation does not square with the facts. The terms of the Fund's letter of 27 September 1994 show that by that date she could not have been left in any doubt but that her post was to go since the letter said so in as many words and gave her notice of the termination that the abolition entailed. Besides, it is hard to see how the complainant, after acknowledging in her letter of 27 September 1994 that she had been told on 5 September 1994 that her division was to go, can have failed to infer that IFAD would therefore do away with her post as director of it. What is more, she observes in the same letter that her post had been removed from the organisation chart. So the plea is devoid of merit.

6. There is nothing to bear out her contention that the abolition was spurious. The department to which the Information and Communications Division belonged had two other divisions and the Fund merged the three. The merger entailed the abolition of the posts of the three directors, of which the complainant held one. She cannot deny that the department was reformed and that its three component divisions disappeared.

7. There is no merit in her argument that the abolition of her post was not genuine. There were objective grounds for abolition: the improvement of efficiency. Though she may have been the only woman to be dismissed, though she may have had a good record, and though all her subordinates may have been kept on, those are not reasons for finding any flaw in the abolition of her post. As the Appeals Board held, her plea under this head cannot be sustained.

8. Her next plea is that the Fund denied her the priority for reassignment that it owed her under Article 5.7.11(b) of its Personnel Policies Manual:

"... when a position is no longer necessary, for whatever reasons, the staff member concerned will be given due notice and during the period of notice the Fund shall attempt to reassign the staff member."

That rule, she says, embodies a general principle which the Tribunal has often applied, for example in Judgments 133 (*in re* Hermann) under 5, 1231 (*in re* Richard) under 25 and 1487 (*in re* Bouchelaghem) under 8. She argues that (1) the Fund did not take the time prescribed in the Manual to look for another job for her; (2) it has proved no attempt to do so; and (3) it acted in bad faith by offering the Appeals Board *ex post facto* evidence of such attempts.

9. The Fund replies that it gave her another six months "to see" whether any suitable vacancy might turn up and that it did give her priority for reassignment but that neither of the two D.1 posts vacant at the time was "suitable" for her.

10. The evidence does not bear out the defendant's case. Had the Fund considered her for vacancies it would have so professed in its letters of 27 September and 24 October 1994. As for the six-month extension, there are no grounds for supposing that the purpose of it was to find her a new assignment. IFAD itself says that the purpose was to let her arrange for the return to UNICEF which it "presumed" she had in mind. By its own admission it had a duty, after the failure of her "presumed" attempt to go back to UNICEF, to look "more seriously" into the possibilities of reassignment. By inference it had not "seriously" done so during the period of notice, as the rules required, or even afterwards. Indeed it has acknowledged by implication its failure to comply with that duty: why else offer her "additional compensation" in relief? The plea succeeds and for that reason alone the impugned decision must be set aside.

11. Last comes her plea that IFAD impaired her dignity and caused her unnecessary injury. That is an issue that has a bearing on her claim to an award of moral damages. Precedent has it that the unlawfulness of the decision is not enough to warrant such an award (see Judgment 1131 (*in re* Louis) under 9): the decision must also cause humiliation or seriously wound feelings (see Judgment 447, *in re* Quiñones, under 11).

12. Here the impugned decision is to be quashed because of a flaw that discloses no malice. Contrary to what the complainant alleges, the reasons for abolishing her post were objective and had nothing to do with her own personality or performance. The decision cast no slight on her integrity and was no affront to her dignity. Her supervisors kept her informed orally and in writing about the progress of the reforms and about her own status. They thereby showed a wish to prepare her for the consequences and no bad faith may be imputed to them. The conclusion is that the defendant caused her no unnecessary or undue injury.

13. Yet she did suffer material injury: as has been said, the Fund recognises as much by implication. She is entitled under this head not only to the amounts it has already offered her by way of "additional compensation" but also to an award of damages in the amount of six months' pay. She is also awarded 3,000 United States dollars in costs.

DECISION

For the above reasons:

1. The Fund shall pay her material damages as set out under 13 above.

2. It shall pay her 3,000 United States dollars in costs.

3. Her other claims are dismissed.

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

Delivered in public in Geneva on 30 January 1997.

(Signed)

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

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