

EIGHTY-THIRD SESSION

In re Wassef (No. 22)

Judgment 1651

THE ADMINISTRATIVE TRIBUNAL,

Considering the twenty-second complaint filed by Mr. Maher Nabih Wassef-Gerges against the Food and Agriculture Organization of the United Nations (FAO) on 4 November 1995, the FAO's reply of 16 February 1996 and the complainant's letter of 12 March 1996 to the Registrar of the Tribunal saying that he did not wish to rejoin;

Considering Articles II, paragraph 5, and VII 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. Information on the complainant's career at the FAO appears under A in Judgment 1401 on his first and second complaints.

By a letter of 1 August 1995 the complainant appealed to the Director-General of the FAO asking him to make reforms, particularly in the internal appeal procedure and in the working of the Appeals Committee. Pending such reforms he asked the Director-General to suspend all the activities of the Committee and to pay him a total of 4 million United States dollars in damages for the negligence and misconduct of the Administration and the Committee and the breach of their obligations.

By a letter of 2 October 1995 the Assistant Director-General in charge of the Administration and Finance Department told him that his appeal was rejected on the grounds that his claims fell outside the ambit of Staff Regulation 301.111.

The complainant took the view that that reply of 2 October was "beyond the time limit" and therefore "irreceivable". He says he is impugning the implied decision to reject his appeal of 1 August 1995.

B. Citing Judgment 533 (*in re* Iverus), the complainant contends that since the Director-General failed to answer his appeal within sixty days he was free to come to the Tribunal.

He objects to the FAO's internal appeal procedure and in particular to the absence of a panel, provided for in Annex B to Manual Section 331, of staff members willing to serve as counsel to appellants before the Appeals Committee. He contends that both Administration and Committee acted in breach of the Staff Regulations and of their obligations towards the Tribunal. He believes that the twenty-two complaints he has filed show up the attitude of the FAO, which by use of "cheap Administrative machinery" and "immoral procedural tactics", is trying to screen its behaviour from judicial review. He contends that, had there existed a real appeal committee, he would have been spared emotional, moral and physical stress and further injury. He alleges injury to his reputation and to his "social life/surroundings".

He asks the Tribunal to:

"1. declare that the internal means of redress within FAO are null and void,

2. order the establishment of sufficient safeguards for the staff members serving on both the Appeals Committee and the Panel of Counsel as requested by the Staff Associations in order for these staff members to properly assist, guide and represent appellants, and/or give their legal opinion and ruling on these matters,

3. order the revocation of the restriction on the representation of appellant by staff members in the Legal Office and in Personnel, and/or give their legal opinion and ruling on this issue,

4. order the establishment, soonest possible, of a provisory Panel of Counsel consisted by legal officers from the Legal Office until point (2) above is fully met, and/or give their legal opinion and ruling on the issue,

5. rule and/or give legal opinion on my requests to the Director-General under points 4, 5, 6 and 7 in the last page of my appeal, namely the following;

'4. secure fairness, impartiality, clarity, time limits and honesty in the internal redress procedure and impose the strict respect of all parties involved by revoking the present inscrutable law-making process in all its aspects by amending Manual Section to include a time limit not to exceed 6 months for the submission of the Appeals Committee Report to the Director-General from the date of despatch of appeal by complainant to the Committee,

5. impose the obligatory reporting of the Committee on the merit of each case,

6. impose a time limit for the final decision of the Director-General on the Committee Report,

7. postpone immediately all present activities of the Appeals Committee until the above corrective actions/measures have been secured and put into effect',

6. award me the payment of US \$ 2 Millions as a compensation for the violation by this Administration and the Appeals Committee of the Organization's declaration to ILOAT and Article VII of the Statute of the Administrative Tribunal,

7. award me the payment of US \$ 1 Million as a compensation for the wilful breach of obligations and gross negligence by this Administration and the Appeals Committee to the "applicable Staff Regulations", Rules, related Manual Section and to their principles and Spirit to the detriment of appellant

8. award me the payment of US \$ 1 Million as a compensation for the grievances, damages and injuries which resulted from the wilful wrongdoings, conduct, favouritism, and gross negligence of this Committee to its obligations

9. to award me the payment of a lump sum of US \$ 7,500.00 for cost,

10. award me a 25% per year of the total of above awards as cost of money calculated from the date of expire of the time limit for the Reply of the Director-General,

11. order the reimbursement by the FAO for the cost of publication of this judgement in 4 American, 4 European, 4 Asian and 4 Arab daily newspapers and magazines,

12. to include in this judgement a penalty clause for its execution within 30 days from the date of this judgement equivalent to 50% of the total of awards for every two weeks of delay by the FAO Administration."

C. In its reply the FAO contends that the complaint is irreceivable because the complainant has failed to exhaust his internal remedies. The decision he is impugning is not a final one, nor did he challenge it, as Staff Regulation 303.1313 prescribes, before the Appeals Committee.

By way of subsidiary argument it contends that most of the issues he raises have already been disposed of. One is his claim relating to the panel of staff members willing to serve as counsel to appellants, the main issue of his fourteenth and eighteenth complaints. Most of his claims do not properly form the subject of a complaint to the Tribunal because they have nothing to do with the observance or breach of a provision of the Staff Regulations. The FAO rejects his claims to damages.

CONSIDERATIONS

1. On 1 August 1995 the complainant, a former employee of the FAO, lodged an appeal to the Director-General asking him to carry out certain reforms, in the meantime to postpone all present activities of the Appeals Committee and to pay him compensation of 4 million United States dollars for breach of obligations, negligence and misconduct by the Administration and the Committee.

2. In a reply dated 2 October 1995 the Assistant Director-General in charge of the Administration and Finance Department stated that none of the complainant's claims in his appeal fell within the scope of Staff Regulation 301.111, which allows appeal regarding "a grievance arising out of ... an administrative decision which staff members allege to be in conflict, either in substance or in form, with the terms of their appointment or with any pertinent Staff Regulation, Staff Rule or administrative directive".

3. On 4 November 1995 the complainant filed this complaint seeking a declaration that the internal means of redress within the FAO are null and void together with other relief and awards of damages and costs.

4. The complainant argues that since more than sixty days elapsed between the lodging of his appeal with the Director-General and the Organization's reply he was entitled to come to the Tribunal to impugn an implied decision to dismiss his claim. He is mistaken. Staff Rule 303.1311 provides that a staff member may ask the Director-General to take a final decision and the time-limit for a reply is set in Staff Rule 303.1312 at sixty days for a person in the position of the complainant. Staff Rule 303.1313 provides that if no reply is received within the time limit the staff member may submit an appeal to the Appeals Committee. In this case the complainant has failed to exhaust such internal means of redress as were open to him under the Staff Rules. He has therefore failed to meet the requirements of Article VII(1), of the Tribunal's Statute and his complaint is irreceivable.

DECISION

For the above reasons,

The complaint is dismissed.

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

Delivered in public in Geneva on 10 July 1997.

**William Douglas
Mella Carroll
E. Razafindralambo
A.B. Gardner**