TWENTY-FIFTH ORDINARY SESSION

In re TAYLOR UNGARO

Judgment No. 167

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the United Nations Food and Agriculture Organization (FAO) drawn up by Mrs. Anne Patricia Taylor Ungaro on 5 July 1969, the reply of the Organization dated 4 September 1969, the complainant's rejoinder dated 29 October 1969 and the Organization's reply thereto dated 13 February 1970;

Considering Article II, paragraph 5, of the Statute of the Tribunal, Rule XXXVI of the General Rules of the Organization, FAO Staff Rule 302.4073 (repealed on 5 October 1965), and Staff Rules 302.3023 and 302.811;

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

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

A. Mrs. Taylor Ungaro entered the service of FAO on 16 May 1966 under a one-year contract, subject to a six-months' probationary period, as a stenographer at grade G.3, step 1, classified as "non-local", and was assigned to the Division of Finance in Rome. At that time she was an Irish national and was unmarried. On 16 May 1967 her appointment was extended for one year. On 16 May 1968 she was given an indefinite appointment at grade G.3, step 3, with "non-local" status, under a contract signed by her on 14 June 1968. On 13 July 1968 she married Mr. Claudio Ungaro, a staff member of FAO, and on 13 August 1968 she informed the Personnel Division that she did not intend to assume Italian citizenship and that in accordance with section 23 of the Irish Nationality and Citizenship Act, 1956 (No. 26) she was retaining her Irish nationality, and therefore claimed maintenance of her non-local status.

B. The Personnel Division replied on 23 August 1968 that as a result of her marriage to a person regarded as a member of the local staff, and with effect from the date of her marriage, she had lost her non-local status and must return her commissary card and her identity card in accordance with Staff Rule 302.3023. On 10 September 1968, Mrs. Taylor Ungaro appealed to the Director-General against the Administration's decision to change her status as a result of her marriage. She protested against the withdrawal of her identity card and stated that in spite of her marriage she still regarded herself as an alien living in, but not residing in Italy. The Director-General replied on 22 October 1968 that the decision in question had been taken in accordance with the Staff Regulations and Rules.

C. Mrs. Taylor Ungaro lodged an appeal with the FAO Joint Appeals Committee. She stated that Staff Rule 302.4073, dated 1 September 1965 and applicable at the time of her appointment in 1966, provided that her status would not be changed during the period of her appointment except if she voluntarily acquired the nationality of the country of the duty station (automatic acquisition of citizenship by marriage not being construed to be voluntary), and that this was not the case since she had no intention of fulfilling the formalities required by section 13 of the Italian Nationality Act of 13 June 1912 with a view to acquiring Italian nationality. She therefore regarded herself as entitled to the benefit of the allowances and privileges of non-local staff, which she considered to be part of her basic salary and in consideration of which she had accepted employment with the FAO. The Organization replied that Staff Rule 302.4073 on which the complainant relied was no longer in force at the time of her appointment, and had been superseded by Administrative Memorandum AM 65/60 dated 5 October 1965 (incorporated in the Staff Rules on 12 December 1966 as Rule 302.3023) applicable to General Service staff recruited from 1 January 1966 onwards and providing for the withdrawal of the non-resident's allowance, subject to the retention of certain benefits, and the consequent acquisition of local status in circumstances such as those of the complainant, i.e. in the case of a female member of the staff who married a person who, if employed by the Organization, would be regarded as resident in Italy. Furthermore, as a result of the complainant's marriage her personal status was governed by Italian law. In her counter-statement the complainant maintained that Staff Rule 302.4073 alone was applicable to her case, and that as she was not of Italian nationality she was entitled to receive the non-resident's allowance, to purchase duty-free imported goods, and eventually to a repatriation grant. In its report dated 20 March 1969 the Joint Appeals Committee recommended that the Director-General should not grant the complainant non-resident status but, if she so desired, should recognise her entitlement to repatriation grant and repatriation

travel expenses in accordance with Administrative Memorandum AM 65/60, paragraph V (b). The Director-General accepted these recommendations and so informed the complainant on 9 April 1969.

D. In her complaint to the Tribunal, Mrs. Taylor Ungaro contends that Staff Rule 302.3023 created a sex discrimination, that it prejudiced the rights she had acquired under Staff Rule 302.4073 which was in force at the time of her appointment, and that it is invalid because it includes provisions contained in Memorandum AM 65/60 to the incorporation of which the Staff Council had objected. In regard to the question of her nationality, the complainant claims that under Article 5 of the Contention concerning the political rights of women, which is applicable to her circumstances, the nationality of the husband cannot be forced on the wife, and that since her status has not changed as a result of her marriage she is entitled to all the benefits due to non-locally recruited staff as laid down in Staff Rule 302.4072. She prays that the Tribunal may be pleased to recognise this right and to order that the Director-General's decision of 9 April 1969 be quashed.

E. In its reply the Organization states, first, that the provisions of Memorandum AM 65/60, later incorporated into the Staff Rules and amended by document DGB/674 of 5 October 1966, are entirely valid because the procedure for consultation with staff representatives was observed and the Director-General is entitled to amend the Staff Rules and the Administrative Manual by such means as he may consider most appropriate - in the case at issue, by means of an administrative memorandum - and that, furthermore, the provisions in question do not prejudice acquired rights or establish any discrimination based on category or sex. Secondly, the Organization repeats that Memorandum AM 65/60 of 5 October 1965 was already in force at the time of the complainant's first appointment on 16 May 1966, although it had not yet been incorporated in the Staff Rules at that date, and that in any event it was applicable and ought to have been .known to the complainant when she received her indefinite appointment on 16 May 1968. The question of nationality is immaterial since the applicable criterion in respect of the cessation of entitlement to a non-resident's allowance and certain other benefits accorded to non-local staff is marriage to a person who would be regarded as resident or local if recruited by the Organization, this being the situation in the present case. The Organization accordingly prays that the complaint be dismissed.

F. In her rejoinder Mrs. Taylor Ungaro argues that, while the Director-General certainly has power to amend the Staff Rules, he must do so with due regard to internal procedures (Staff Regulation 301.081 and Staff Rule 302.811). The Staff Regulations themselves can be amended only by the Conference or the Council of FAO, and "without prejudice to the acquired rights of staff members" (Staff Regulation 301.121). The procedure by which Memorandum AM 65/60 was adopted and enforced was illegal since it was undisputed that between 1 January and 18 November 1965 there was no elected Staff Council, and the consultation which took place was merely on a personal basis with staff members who had no mandate to represent the staff. The complainant further contends that the provision in question violates acquired rights of staff members. Moreover, Memorandum AM 65/60 has had undesirable psychological effects and has encouraged immorality because in order to avoid losing their privileges as non-local staff members many women have formed common law unions or gone through private religious ceremonies without civil formalities, or have married secretly; further, the number of illegitimate children has increased since the enforcement of Memorandum AM 65/60. Lastly, the complainant claims that she was denied the basic rights of due process of law at the stage of internal appeal because she was informed neither of the date of the meeting of the Joint Appeals Committee nor of its composition. The Organization replies that it was not possible to consult the Staff Council because of delay, for which the staff was responsible, in its reconstitution, and that the members of the former Staff Council were in fact consulted. It contests the validity of the complainant's allegations of immorality resulting from the application of Memorandum AM 65/60 and quotes a relevant extract from a letter from the Director-General expressing the view that the concept of marriage would be reduced to a very low level if it were to be calculated in terms of the loss of commissary and of a few other privileges. Finally, the Organization refutes the complainant's alterations concerning procedural irregularities in connection with the Joint Appeals Committee, pointing out that neither the Staff Regulations nor the Staff Rules nor the Administrative Manual contain any provision requiring an appellant to be informed of the date of the meeting of the Committee or of its composition.

CONSIDERATIONS:

1. It is not disputed that if Staff Rule 302.3023 is applicable to this claim, the claim must fail because under the provisions of that Rule the complainant is not after her marriage entitled to non-resident benefits. Likewise it is not disputed that if the earlier Rule 302.4073 is applicable, the claim must succeed because under the provisions of that Rule the complainant, notwithstanding her marriage, is so entitled. At the time of her marriage the complainant was employed under the contract signed on 14 June 1968 which was made subject to the Staff Rules. The current

edition of the Staff Rules was that dated 12 December 1966 which incorporated Rule 302.3023. Accordingly the claim must fail unless the complainant can show that Rule 302.3023 was either invalid or inapplicable to her. In that case the earlier Rule 302.4073 would apply and the claim would succeed.

2. As to invalidity, four grounds are alleged by the complainant, namely, sex discrimination, category discrimination, lack of agreement with the Staff Council and lack of consultation with the Staff Council. As to the first three, the Tribunal considers that, even if the allegation was well founded in fact, it would not affect the validity of Rule 302.3023 inasmuch as the Director-General by making the Rule would not be exceeding the powers conferred upon him under Rule XXXVI of the General Rules of the Organization. As to the fourth, the Tribunal finds that before Rule 302.3023 was incorporated on 12 December 1966, there had been consultation with the Staff Council and the Council had had ample opportunity of making proposals to the Director-General in accordance with Staff Rule 302.811: consequently this allegation fails on the facts.

3. As to inapplicability, the complainant contends in the first place that she is not bound by Rule 302.3023 because it was not brought to her knowledge and accepted by her at the time of her appointment. In the opinion of the Tribunal, this contention fails. The contract was expressly made subject to the Staff Rules and Regulations and it is not necessary that any particular rule should be brought to the notice of the employee or specifically accepted by her.

4. Further as to inapplicability, the complainant contends in the second place that under her earlier contracts of employment, beginning with the contract dated 16 May 1966, she had acquired a right to enjoy non-resident status in accordance with the terms of Rule 302.4073 and that the Director-General had no power to make a new rule depriving her of that right. It is unnecessary for the Tribunal to consider whether the complainant had under her earlier contracts acquired such a right. If she had, the right did not survive the contracts themselves, the latest of which expired before her marriage.

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 the Right Honourable Lord Devlin, P.C., 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 17 November 1970.

M. Letourneur
André Grisel
Devlin
Bernard Spy

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