

EIGHTY-EIGHTH SESSION

In re Fattah

Judgment 1900

The Administrative Tribunal,

Considering the complaint filed by Mr Nasser Dahab Abdel Fattah against the Food and Agriculture Organization of the United Nations (FAO) on 12 September 1998 and corrected on 28 November, the FAO's reply of 11 March 1999, the complainant's rejoinder of 31 March and the Organization's surrejoinder of 11 June 1999;

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

Having examined the written submissions and disallowed the complainant's application for the hearing of witnesses;

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

A. The complainant is of Egyptian nationality and was born in 1956. He was recruited as a driver at grade G.3 to the FAO's Regional Office for the Near East in Cairo. On 1 January 1992 the FAO gave him a one-year fixed-term appointment followed by several consecutive appointments.

On 25 August 1994 the Regional Representative wrote to the complainant warning him that he was not satisfied with his performance and behaviour and that, consequently, he would propose withholding his next salary increment. He attached those comments to the complainant's performance appraisal report for the period from 1 January to September 1994, which was completed in October 1994. By a letter of 13 December 1994 the Director of the Personnel Division informed the complainant that his within-grade salary increment, due on 1 January 1995, was being withheld until his services could be "certified as satisfactory". However, his performance appraisal for the period from 1 October 1994 to 31 January 1996 was again unsatisfactory. In a letter of 12 February 1997 the Director told him that in view of his unsatisfactory conduct there would be no renewal of his appointment beyond 31 March 1997.

On 25 February 1997 the complainant asked the Director to grant him an extension for a "non-extendable" period of six months, and on 4 March 1997 addressed a letter to the Appeals Committee repeating his request for a six-month extension. He also said in that letter that he had had to give up his university course. The Organization treated his letter as an appeal to the Director-General. As he was on sick leave from 17 March to 16 June the date of his separation was postponed to 17 June 1997.

In a reply of 30 April to his appeal the Assistant Director-General in charge of Administration and Finance told the complainant that his request for an extension had been approved and that his contract would end on 30 September 1997. The complainant filed an appeal with the Appeals Committee on 20 May 1997 mainly challenging how the evaluation of his performance had been carried out and who had appraised him. In a report dated 30 March 1998 the Committee noted inconsistencies in his performance evaluations and appointment extensions. It recommended regarding his appointment as having been extended *de facto* up to the end of 1997, and that he be paid compensation equal to the salary and entitlements he would have received had he been employed for that period, including salary increments.

In a letter of 15 June 1998 the Director-General accepted those recommendations and, with a view to settling the matter amicably, offered the complainant an amount of 3,092.11 United States dollars. The complainant did not accept the offer and filed his complaint with the Tribunal impugning the decision of 15 June.

B. The complainant is contesting the non-extension of his fixed-term appointment. He submits that the decision to separate him was based on incorrect facts. In the appraisal report covering the period from January to September 1994 his supervisors rated his performance as unsatisfactory, which led to the withholding of his salary increment. After stopping an increment a report has to be produced within six to nine months, which did not happen in his case. There was a gap of about twenty months before another

report was written on his performance and in March 1996 the acting Administrative Officer reported unfavourably on him over that period although he had taken up office only on 1 December 1995.

On 27 August 1996 the Regional Representative recommended the extension of his appointment from 1 January to 31 December 1997 stating on the relevant form: "the conduct of the incumbent staff member has started to improve since his last appraisal report". He was therefore "shocked" to receive the letter of 12 February 1997 from the Director of Personnel informing him that his appointment would not be extended beyond its expiry date of 31 March 1997.

He is seeking reinstatement; compensation for loss of income suffered and the repercussions on his children's level of education, for loss of "social and medical" insurance, for the psychological consequences affecting his ability to work, and for the financial loss incurred, which he sets at 176,471 dollars at least, through having to withdraw from his university course; compensation because applications for employment addressed to many organisations were not dealt with by the Regional Office; and payment of his salary until 19 July 1998 because, contrary to the terms of Manual paragraph 323.512, he was separated while on sick leave. He seeks a total of 1.5 million dollars in "full compensation" for the injury he has suffered.

C. In its reply the Organization points out that the decision not to renew the complainant's appointment for a further year was justified. He was aware of the reasons for the non-renewal and had received written warnings about his performance. Moreover he held a fixed-term appointment and under Staff Rule 302.907 such appointments end "automatically and without prior notice on the expiration date". The Organization extended his contract from 31 December 1996 to 31 March 1997 to allow for notice of separation, and showed yet more flexibility by extending it for another six months to allow him to find employment. It points out that it cannot be held responsible for the "wider effects" of the complainant's circumstances.

It contends that there were no errors of procedure in its decision. Although the Regional Representative had recommended the extension of the complainant's appointment, the decision not to renew it was taken at headquarters level, based on two unsatisfactory performance appraisals and written complaints about his conduct. While it is true that the Regional Administrative Officer had only been with the Regional Office for three months when the second appraisal report was completed, he had been the complainant's direct supervisor for that period; the Regional Representative had been there for the whole of the period covered by the report and was aware of the complainant's shortcomings.

Because of the complainant's unsatisfactory performance his within-grade salary increment was withheld from 1 January 1995. Under Manual paragraph 315.324 the increment is only granted again after the Director of Personnel issues an express recommendation to that effect. In the complainant's case he did not consider that the increment was justified and instead favoured separation. Moreover Manual paragraph 308.416 provides that -

"a staff member whose service has been reported as unsatisfactory for two successive qualifying periods is subject to transfer, demotion or separation".

D. In his rejoinder the complainant develops his pleas. According to the letter of 25 August 1994 from the Regional Representative about the withholding of his salary increment a second report on him was to be produced within six months, but none was done within that time period. He also submits that it was the wife of the Representative who was against him: the problems arose when he was acting as her driver.

He contends that the Organization put "obstacles" in his way when he sought alternative employment and had disclosed information about his performance to other organisations.

He claims that his salary should be paid every month until his case is "settled".

E. In its surrejoinder the Organization observes, as regards the timing of the performance appraisal, that the purpose of the letter of 25 August 1994 from the Regional Representative was to inform the complainant that his salary increment was to be withheld as from January 1995 and to tell him that the extension of his contract would be subject "to a further evaluation to be made after six months". In his letter of 13 December 1994 the Director of Personnel merely confirmed the suspension of the increment until his services could be "certified as satisfactory". The Organization was not under any obligation to produce a report within exactly six months: it followed a course of "discussion and negotiation" up to the time the next report was submitted

in April 1996.

The complainant has in no way proved that the Organization communicated details of his performance to other United Nations organisations. His allegation that the FAO rendered his obtaining work with other organisations difficult is therefore unsubstantiated. Likewise he has submitted no evidence to prove that the reason for his non-extension was that the wife of the Representative did not like him as a driver.

With regard to his claim for salary until his case is settled, it observes that the filing of a complaint does not suspend the effects of non-renewal.

CONSIDERATIONS

1. The complainant attacks a decision of the Director-General contained in a letter dated 15 June 1998 in which he offered him an amount of 3,092.11 dollars, representing the salary and allowances that he would have received had he been retained in employment until 31 December 1997 and retroactive payment of salary increments.
2. The letter of 15 June 1998 was in response to the complainant's appeal against the Administration's decision that his appointment, which was to expire on 31 March 1997, would not be renewed. Subsequently, the complainant was granted sick leave from 17 March until 16 June 1997. This had the effect of delaying the date of his separation until 17 June 1997.
3. In the meantime, on 30 April 1997 another administrative decision had been rendered on the complainant's appeal of 4 March and the term of his appointment had been extended, as he had specifically requested, for six months, to 30 September 1997.
4. The effect of all the foregoing was to give the complainant more than he had requested and to deprive the appeal against the 12 February 1997 decision of any substance. In addition, the complainant fails to prove that the impugned decision was unfair or arbitrary. There is, therefore, no basis on which that decision can be set aside.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 5 November 1999, Mr Michel Gentot, President of the Tribunal, Miss Mella Carroll, Vice-President, and Mr James K. Hugessen, Judge, sign below, as do I, Mrs Catherine Comtet, Registrar.

Delivered in public in Geneva on 3 February 2000.

Michel Gentot
Mella Carroll
James K. Hugessen

Catherine Comtet