

NINETY-SECOND SESSION

Judgment No. 2103

The Administrative Tribunal,

Considering the second complaint filed by Mr A. J. against the International Fund for Agricultural Development (IFAD) on 8 December 2000 and corrected on 20 December 2000, IFAD's reply of 17 April 2001, the complainant's rejoinder of 30 July, the Fund's surrejoinder of 19 October, the complainant's further brief of 25 October and the Fund's observations thereon of 1 November 2001;

Considering Articles II, paragraphs 5 and 7, and VII of the Statute of the Tribunal;

Having examined the written submissions and disallowed the complainant's application for hearings;

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

A. The facts that prompted this dispute are identical to those recounted under A in Judgment 2102 delivered this day in which the Tribunal ruled on Mr J.'s first complaint.

This complaint is "against the decision by the President of IFAD to reconsider the legal basis of the complainant's separation from service and to 'suspend' formalities for the payment of his entitlements (including his pension entitlements)".

B. On receivability, the complainant refers to the arguments he developed in his first complaint. He also adduces the same pleas on the merits: breach of due process, abuse of authority, failure to respect his dignity and good name and serious financial and moral injury.

The complainant says that he is now not sure that it was ever the Fund's intention to pay him, or to allow the United Nations Joint Staff Pension Fund (UNJSPF) to pay him, anything at all. According to the evidence in his possession, the UNJSPF has "never received any documents from IFAD about his separation from service, which justifies serious doubts as to the Fund's intention to pay his entitlements".

He pleads injury on two counts. The Fund undoubtedly caused him financial injury by not paying him his entitlements (particularly his pension entitlements and his repatriation grant amounting to some 120,000 and 20,000 United States dollars respectively). To that must be added the loss of earnings he has sustained because the United Nations Food and Agriculture Organization (FAO) decided not to honour a long-standing professional commitment it had with him. He alleges that the Fund caused him serious moral injury by treating him in a manner which offended against the most elementary rules of justice and equity.

He asks the Tribunal:

"to order the quashing of the impugned decision and award [him] all consequent redress, namely:

(a) to order IFAD to pay [him] an amount corresponding to all allowances and the pension entitlements due to him upon separation from service, plus interest on arrears at the rate of 10 per cent a year as from the date of his separation;

(b) to order IFAD to pay [him] compensation ... for moral injury; [and]

to award [him] ... costs ..."

C. In its reply IFAD's main plea is that this Tribunal is not competent to hear the case. Insofar as the complainant is claiming his pension entitlements, which may be granted only by the UNJSPF itself, the competent body is clearly the United Nations Administrative Tribunal. The Fund points out that Article 48⁽¹⁾ of the Regulations of the UNJSPF seems to require that an appeal can lie only against a decision by the UNJSPF itself. This Tribunal has nonetheless held that a decision by the administration may be reviewed by the United Nations Administrative Tribunal if it concerns some issue affecting the staff member's pension entitlements.

Secondly, IFAD contends that the complaint is irreceivable for failure to exhaust the internal remedies.

In subsidiary arguments, on the merits, it submits that it had every right to delay issuing the form allowing payment of the complainant's pension entitlements. It cites an Administrative instruction issued by the United Nations on 31 August 1990 under which, before issuing documents pertaining to separation from service, the administration has to ascertain that the staff member has discharged all his or her obligations, debts and responsibilities towards the organisation. IFAD's "suspension" of the formalities for payment of his entitlements was fully in line with that instruction since the complainant had not discharged all his debts.

As it did in its reply to the complainant's first complaint, IFAD asks the Tribunal to postpone ruling until the High Court of Justice in England has taken a final decision about the complainant's liability, and to award costs against the complainant in an amount of 50,000 Swiss francs.

D. In his rejoinder the complainant points out that the non-payment of the repatriation allowance is undeniably a matter for the Tribunal. He observes that in this complaint he makes no mention whatsoever of "non-observance of [the] Regulations [of the UNJSPF] arising out of [a] decision of the Board". The impugned decision was taken not by the Board but by IFAD: the dispute is not about payment of his pension entitlements by the UNJSPF but about IFAD's decision not to forward the requisite forms to the former, which was consequently unable to proceed with the settlement.

On the merits he observes that IFAD wrote him no letters either to say that he owed it money or to specify the exact amount of the debt and ask him to repay it. In his view the Fund may not seek reimbursement of monies for which the consultants provided the prescribed service. Nor may it claim repayment of monies it knows were used in its own interests or those of the consultants.

E. In its surrejoinder IFAD reiterates its objections to the competence of the Tribunal and to the receivability of the complaint.

It presses its pleas on the merits. Citing the letter it addressed to him on 12 August 1998 it asserts that it did inform the complainant of his debt. To provide him with further information in order to "specify the exact amount of the debt and ask him to repay it" was out of the question: he must have known that he would one day have to repay to IFAD the funds he had misappropriated. IFAD could not warn him in advance that his conduct amounted to a criminal offence for which it would take him to court, without running the risk of evidence being destroyed and preventing justice from being done in the Italian courts.

Reiterating the arguments it adduced in its reply to the complainant's first complaint, the Fund submits that a decision by the Tribunal ordering it to give prior notice of the filing of a criminal complaint would be unacceptable.

F. In a further brief the complainant explains that in a judgment of 20 October 2001 the High Court of Justice in England rejected IFAD's application for summary judgment, thus disproving the allegation that he had no sound arguments.

G. In its observations the Fund contends that the complainant has misread the judgment of the High Court: the latter merely rejected IFAD's application to have the case dealt with by a process which would be more expeditious and less costly for both parties.

CONSIDERATIONS

1. The facts that prompted this complaint are set out in Judgment 2102 delivered this day. As recounted in that judgment, having left IFAD on 31 December 1997 after resigning, the complainant inquired on 3 August 1998 why IFAD had suspended the formalities for payment of his repatriation grant and pension entitlements. IFAD replied on 12 August 1998 that it was reconsidering the reasons for his separation from service and was not in a position to proceed with the corresponding entitlements. On 10 October 1998 the complainant wrote to the President of IFAD requesting a review of that decision, to pay him what he was owed in separation entitlements, and compensation. The complainant went to the Joint Appeals Board on 24 November 1998 appealing against the President's reply of 19 October and reiterating his claims. In response to a request of 21 February 2000 from the Fund to postpone its ruling, the Board gave the parties a time limit to submit documents pertaining to "the plea bargain sentence" in the criminal case discussed in Judgment 2102. In the absence of any ruling from the Board, the complainant has come to the Tribunal seeking the quashing of the implied rejection of his request for review dated 10 October 1998, payment by IFAD of "an amount corresponding to all allowances and the pension entitlements due to him upon separation from service, plus interest on arrears at the rate of 10 per cent a year as from the date of his separation", and compensation for moral injury. He also claims costs.

2. IFAD rebuts the complainant's claim to pension entitlements on the ground that the Tribunal is not competent to hear the complaint. It points out that the staff of IFAD are affiliated to the UNJSPF and that Article 48 of the latter's Regulations confers on the United Nations Administrative Tribunal competence for complaints concerning pension entitlements. That is borne out by Article 28 of the Rules of Procedure and Guidelines of the Joint Appeals Board.

3. The Tribunal observes that the dispute is not about the scope of his pension entitlements but, as the complainant himself points out, about IFAD's decision not to send to the UNJSPF documents enabling it to consider and, if appropriate, settle the claim. The Tribunal is of course not competent to rule on the complainant's pension entitlements, but the only current issue is whether the Fund discharged its obligations to its former employee. The fact that the UNJSPF was not given the requisite documents is immaterial to this case, so the Tribunal is competent to hear it.

4. IFAD contends that the complaint as a whole is in any event irreceivable because the complainant failed to exhaust all the available internal means of redress. Its explanation of the delay in the internal procedure is that the case was an exceptional one: IFAD was unable to defend itself openly because Italian criminal law bound it to secrecy. Moreover, the complainant contributed to the delay by repeatedly filing appeals in Italy and the Netherlands in order to avoid imprisonment and extradition. He also failed to provide the Board with the information it requested. In any event, says IFAD, "there is no doubt that the [Board] would come to a final decision".

5. On receivability, the Tribunal sees no evidence that a prompt response could be expected from the Board to an appeal which had been before it since 24 November 1998. The dispute was not so exceptional as to preclude consideration within a reasonable period. IFAD's failure to hear the internal appeal can be justified neither by the secrecy required during the investigation nor by the court proceedings, past or present. The conclusion is that the complainant acted lawfully in coming to the Tribunal without awaiting the outcome of an internal procedure that had become bogged down.

6. On the merits, in rebuttal of the plea that it failed to provide the forms needed for consideration of his pension entitlements and payment of his repatriation grant, the Fund submits that it was right to suspend settlement of his various terminal entitlements because the complainant had not "discharged all his debts to IFAD". It cites a "general rule of international civil service law" set forth in a United Nations Administrative instruction of 31 August 1990: on leaving service a staff member must settle all his debts towards the organisation and the administration may refuse to issue the form for the UNJSPF or delay issuing it until the requirement has been met.

7. The Tribunal does not share IFAD's view. It is true that an organisation may try by all legal means to recover any money a staff member may owe it when he or she leaves service. But that does not entitle it to suspend or block consideration of the staff member's pension entitlements.

8. If the Tribunal were to allow the complainant's claims, IFAD asks it to postpone ruling until the English courts have judged the civil suit against its former employee. But the dossier shows that the case will not be heard until the summer of 2002, and there is nothing to prevent the Tribunal from ruling on the complainant's claims forthwith.

9. The conclusion is that the complainant may lawfully seek the quashing of the decision refusing to send the UNJSPF the forms it needed in order to consider the complainant's pension entitlements. But it is not for the Tribunal to order IFAD to pay the complainant the arrears of pension due to him. The settlement of his pension rights is a matter for the UNJSPF alone, and may be challenged before the United Nations Administrative Tribunal if need be.

10. However, as for his claim to payment of the repatriation allowance the Tribunal is of the view that since the Italian criminal court allowed IFAD's complaint, that a large amount of money was involved and that IFAD had to go to the High Court to seek repayment of the funds misappropriated by the complainant or, failing that, damages, IFAD was right to defer consideration of the complainant's entitlement to a repatriation allowance.

11. The complainant's other pleas - breach of due process, abuse of authority and failure to respect his dignity and good name - are the same as those examined in Judgment 2102 delivered this day and the Tribunal's ruling on them will also be the same. In view of the circumstances of the case, the Tribunal cannot allow his claim to moral damages.

12. Having succeeded in part, the complainant is entitled to costs, which are set at 2,000 euros.

13. In view of the circumstances of the case, the Tribunal sees no reason to allow IFAD's counterclaim to an award of costs against the complainant.

DECISION

For the above reasons,

1. IFAD's implied decision to reject the complainant's request for review dated 10 October 1998 is set aside insofar as it upholds the suspension of the formalities for the consideration of the complainant's pension entitlements.
2. IFAD shall send to the UNJSPF the form certifying the complainant's separation from service.
3. IFAD shall pay the complainant 2,000 euros in costs.
4. The complainant's other claims are dismissed.
5. IFAD's counterclaims are dismissed.

In witness of this judgment, adopted on 6 November 2001, Mr Michel Gentot, President of the Tribunal, Miss Mella Carroll, Vice-President, and Mr Jean-François Egli, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 30 January 2002.

(Signed)

Michel Gentot

Mella Carroll

Jean-François Egli

Catherine Comtet

1. Paragraph (a) of Article 48 provides in particular that:

"Applications alleging non-observance of these Regulations arising out of the decision of the Board may be submitted directly to the United Nations Administrative Tribunal."

