

THIRTIETH ORDINARY SESSION

In re HOPKIRK

Judgment No. 211

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the United Nations Food and Agriculture Organization (FAO) drawn up by Mr. Robert Hopkirk on 16 November 1971, brought into conformity with the Rules of Court on 29 February 1972, the Organization's reply of 21 June 1972, and the complainant's further communication of 4 April 1975 and that received on 5 May 1973;

Considering Article II, paragraph 5, of the Statute of the Tribunal and FAO Staff Rule 302.911;

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. Mr. Hopkirk was appointed to the staff of the FAO in January 1965 and left on 5 January 1969 on the expiry of his contract. On 5 February 1969 he asked the Director of the Division of Personnel to give him a certificate of service commenting on his work and conduct as an FAO official, as provided for in Staff Rule 302.911, which reads as follows:

"Certification of service. Any staff member who so requests shall, on leaving the service of the Organization, be given a statement relating to the nature of his duties and the length of his service. On his written request, the statement shall also refer to the quality of his work and his official conduct."

B. On 26 March 1969 the complainant wrote to the Director-General contesting the terms of the certificate of service which he had received. The Director-General dismissed his complaint and he appealed to the FAO Appeals Committee on 25 April 1969. At his request examination of his case by the Committee was postponed to give him more time for preparation. In a memorandum submitted to the Appeals Committee on 26 April 1970 he added to his previous claim requests for reinstatement and appointment at grade P.5 or the payment of damages amounting to approximately US\$500,000. The Appeals Committee obtained from the Organization information and documents in support of the contested comments in the certificate of service given to the complainant concerning the quality of his work and his official conduct. The Committee reported to the Director-General on 30 July 1971 and unanimously recommended dismissal of the appeal. It held among other things that the certificate of service given to the complainant at his own request accurately reflected his duties in the FAO and that the last two sentences of the certificate relating to the quality of his work were based on a well-documented record of his performance during a period of over a year prior to the termination of his service. It found no evidence to suggest that the certificate of service was adversely affected by prejudice or any other extraneous factors. On 12 August 1971 the Director-General informed the complainant that he accepted the Committee's recommendation and dismissed his appeal.

C. In his complaint against the Director-General's decision of 12 August 1971 Mr. Hopkirk asks the Tribunal to:

"(1) request the Director-General to issue to the complainant a new certificate of service which contains facts and statements which are correct and unprejudiced, concerning the quality of his work and official conduct and based on the entire record of the complainant's performance with the Organization;

(2) request the Director-General to reinstate [him] in a suitable permanent P.5 post which [he] had the reasonable expectation of achieving in 1968/69, on the grounds that a conspiracy was responsible for [his] appointment not being renewed beyond 5 January 1969;

(3) alternatively, request the Director-General to compensate [him] damages [sic] in the amount of US\$650,000 as reasonable compensation, since for various reasons, which can be demonstrated, at an oral hearing with the testimony of witnesses, hitherto denied, and which are attributable to a conspiracy which embraces the certificate

of service and subsequent actions of the Organization having prevented the complainant from obtaining suitable employment and resulted in the complainant's loss of his international professional career, in his professional field; and

(4) request the Director-General (i.e. FAO) to bear all costs."

D. The Organization maintains that the only claim which the Tribunal is competent to consider is the one relating to the certificate of service, since the complainant did not pursue his other claims, including his claim for reinstatement at grade P.5, under the FAO appeals procedure and so did not exhaust all means of redress available under the Staff Regulations. The Organization contends that the certificate of service accurately describes the work performed by the complainant, fairly assesses the quality of his work and official conduct, and therefore meets the requirements of Staff Rule 302.911. The issue of a new certificate is unwarranted. It prays that all the complainant's claims be dismissed.

CONSIDERATIONS:

1. As to the state of the dossier:

The request by the complainant in his cable received on 3 May 1973 that the complaint should be referred back to the Director-General is too late for consideration; the request for an oral hearing has already been denied; the documents whose production is demanded by the complainant in his letter of 4 April 1973 are unnecessary; the complainant has failed to deliver a rejoinder within the time-limit allowed. The Tribunal will therefore consider the case on the dossier as it is.

2. As to the request for reinstatement:

This cannot be ordered unless the Director-General's decision, effective on 5 April 1969, not to renew the complainant's contract is set aside. The complainant did not appeal in time against this decision and it has now become final.

3. As to the request for the issue of a new certificate of service:

The principle that the Tribunal will not interfere, except upon particular and limited grounds such as prejudice or incorrect appreciation of facts or formal or procedural irregularity, with decisions of the Director-General on matters that fall within his discretion applies with special force to the form and contents of such documents as appraisal reports and certificates of service. In the preparation of such documents opinions will naturally differ about what aspects of the service should be stressed and what evaluations made; such differences must normally be resolved by the Director-General whose responsibility it is to determine whether a certificate of service is in substance and language just and fair. Having regard to this principle and there being no evidence of any prejudice in this case, there is only one point raised by the complainant that merits consideration by the Tribunal.

This point concerns the concluding paragraph of the certificate of service, which reads as follows: "His educational training and the considerable experience of personnel administration, including policies, rules and procedures of the UN system should have given Mr. Hopkirk the necessary background for personnel work. However, he had difficulty in adapting himself to the general working conditions in the Division and in cooperating with his colleagues and superiors." The complainant contends that this language implies that his service was, for the reasons given, from the first and throughout unsatisfactory, whereas the true view of the Organization itself is that it became unsatisfactory only towards the end. The conclusion of the Appeals Committee, which the Director-General accepted and set out in the letter conveying to the complainant the decision impugned, is that after some years of satisfactory service the complainant's conduct underwent a radical change caused, the Committee thought, by the stress of working conditions and severe domestic and personal difficulties; it considered however that the paragraph quoted above was supported by his record during the last year of his service. The Committee's finding that until the last year the complainant's service was satisfactory is not challenged in the Organization's reply. The view there expressed, which is also the view implicit in the reasoning of the Appeals Committee and consequently in the decision of the Director-General, is that "the assessment of a staff member's services, when set out in a Certificate of Service, should in particular reflect the standard of a former staff member's services at the time of his leaving the Organization." The Tribunal does not accept this view. A certificate of service relates to the whole period and if an evaluation is correct only in relation to a part of the period, it must be limited to that part; this is

especially important when there are causes at work, such as those mentioned by the Appeals Committee, which might account for a lapse.

The relief sought by the complainant is that the Director-General should be requested to issue to the complainant a new certificate of service which contains facts and statements which are correct and unprejudiced, concerning the quality of his work and official conduct and based on the entire record of the complainant's performance with the Organization. The relief is granted only on the ground that the evaluation in the certificate is admittedly not based on the entire record. The certificate will be quashed in order that the Director-General may, if the complainant so requests, issue a new certificate on the correct basis.

DECISION:

For the above reasons,

1. The decision of the Director-General dated 12 August 1971 is quashed.
2. The claim for reinstatement or alternatively compensation 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, Morellet, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 14 May 1973.

M. Letourneur
André Grisel
Devlin

Roland Morellet