

THIRTY-FIRST ORDINARY SESSION

In re LIBERATI

Judgment No. 215

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the United Nations Food and Agriculture Organization (FAO) drawn up by Mr. Fabrizio Liberati on 3 October 1972, the Organization's reply of 28 December 1972, the complainant's rejoinder of 19 January 1973, the Organization's surrejoinder of 6 April 1973 and the complainant's further memorandum of 30 May 1973;

Considering Article II, paragraph 5, of the Statute of the Tribunal and FAO Staff Rule 302.221;

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. The complainant was appointed to the staff of the FAO in 1963 at grade G.3 and successively promoted to higher grades. By the end of his career in the FAO he had reached grade G.6. From June 1970 to June 1971 he was seconded to the secretariat of the General Agreement on Tariffs and Trade (GATT) on a fixed-term contract at grade P.2. The Director-General of the FAO refused his request for a one-year extension of his secondment to GATT, which had offered him a new contract, on the grounds of "pressing requirements" in the FAO which made it necessary to fill his post with a permanent incumbent. He then had to choose between accepting a temporary contract with GATT at grade P.2 after giving up his post with the FAO, and returning to the FAO, where he had a permanent contract at grade G.6. He chose the latter course and resumed work in Rome on 1 July 1971.

B. The complainant considered that the reason given by the Director-General ("pressing requirements") had not proved valid; he claims to have been given only subordinate and trifling tasks. On 9 October 1971 he appealed to the FAO Appeals Committee complaining of the refusal to extend his secondment to GATT; believing it to be too late to ask for review of that decision, however, he asked the Committee to recommend the Director-General to pay him damages for wrongfully refusing to extend his secondment, on the grounds that the sole reason given for doing so was invalid, or else to recommend his termination owing to abolition of post, since his post and therefore his services were not needed. Pending the hearing of his appeal, on 23 December 1971, he resigned from the FAO with effect from 1 January 1972. The Appeals Committee dismissed his appeal on the grounds that secondment or extension of secondment to another organisation was not a right but fell within the Director-General's discretion and that the complainant was therefore not entitled to compensation. The Committee held that the alleged "abolition of post" was a matter of policy and, by implication, that it was not competent to pronounce upon it.

C. The Director-General endorsed the Appeals Committee's recommendation and so informed the complainant by letter of 13 July 1972. Mr. Liberati is appealing against the decision notified to him in that letter.

D. The complainant asks the Tribunal to award him the following damages:

(a) 3 million lire, representing one year's difference in salary between his post with GATT and his post with the FAO;

(b) 3.5 million lire, representing the sum which would have been due to him for the "abolition of post" formally requested by him on the grounds that he had no adequate work in the FAO;

(c) a sum to be determined by the Tribunal as compensation for loss of seniority due to his resigning from the FAO, the only decent course he could take before starting a new career.

E. The Organization maintains that the complaint is irreceivable in that it does not fall within the scope of Article II, paragraph 5, of the Statute of the Tribunal. A decision as to whether or not to second a staff member has no bearing on a staff member's terms of appointment, and in any case there has been no breach of the terms of the

complainant's appointment. The complaint is also ill-founded since the decision not to extend the complainant's secondment was not discriminatory and was taken in the Organization's interests. Moreover, the allegation that there were no "pressing requirements" is false and is intended merely to justify the request for abolition of post. Finally, the Organization maintains that the complainant should be awarded no damages since his post has not been abolished and he voluntarily resigned.

F. The Organization accordingly prays that the complaint be dismissed.

CONSIDERATIONS:

1. The decision impugned is the decision of the Director-General given on 13 July 1972 whereby he refused to extend a period of secondment which had been granted to the complainant. Under Article II of its Statute the Tribunal is competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials and of provisions of the Staff Regulations. There is not, nor is there alleged to be, any term of the complainant's appointment nor any provision in any Staff Regulation which requires the Organization either to grant or to extend secondments to another international organisation. Accordingly, the Tribunal is not competent to examine this complaint or to consider whether or not the reason given by the Organization for its refusal was well-founded. Thus the first request for 3 million lire damages fails.

2. The second and third requests for damages do not arise out of the decision impugned, and must fail on that ground.

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, Morellet, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 22 October 1973.

M. Letourneur
André Grisel
Devlin

Roland Morellet