

THIRTY-SIXTH ORDINARY SESSION

In re DE

Judgment No. 267

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the United Nations Food and Agriculture Organization (FAO) drawn up by Mr. Sasanka Sekkar De on 21 April 1975, the FAO's reply of 1 August 1975 and the complainant's communication of 23 August 1975;

Considering Article II, paragraph 5, of the Statute of the Tribunal, FAO Staff Regulation 301.095, and sections 305.342, 305.343, 305.344, 311.512, 314.821, 370.333, 370.334, 370.381 and 370.382 of the FAO Manual;

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 joined the service of the FAO on 30 December 1951 on a fixed-term appointment which on 1 July 1952 was converted into a permanent one. After several field assignments he was transferred to headquarters in 1965. On being appointed manager of a United Nations Development Programme (UNDP) project for which the FAO was the executing agency he was sent to Korea on 18 November 1971. His new assignment, which was for a fixed period until 17 May 1973, was extended from 18 May to 31 May 1973 and then from 1 June to 30 November 1973. The project in Korea was to have two phases and was expected to last about five years.

B. By letter of 31 May 1973 the UNDP Resident Representative, Mr. McInnis, informed the FAO of the Korean authorities' reservations about the possible extension of the complainant's assignment to Korea. The complainant was thereupon called to Rome for consultations from 29 July to 2 August 1973, when he was told that his assignment to Korea would not be extended after 30 November 1973, the date of expiry of his current assignment. On his return to Korea the FAO received from Mr. McInnis a letter dated 29 August 1973 in which he recommended replacing the complainant as project manager, that being the wish expressed to him on three occasions by the Korean authorities. By telegram of 17 September 1973 Mr. Aribisala, the director of the complainant's division, invited him to arrange to leave Korea as early as possible. By letter of the same date Mr. Bonte-Friedheim told the complainant, on Mr. Aribisala's behalf, that the FAO had been informed that it would be in the interests of the project to withdraw him immediately and invited him either to resign or to return to work at headquarters until 30 November 1973, the date of expiry of his assignment in Korea. In a cable of 24 September 1973 the complainant replied that after discussing the letter with the acting UNDP Resident Representative he was preparing to leave Korea.

C. On the complainant's return to headquarters the question arose as to whether he could be found a new assignment. Since he had passed the maximum age of sixty-two he could not be considered for a headquarters post and, since there was no suitable field post, after taking annual leave from 30 November 1973 to 18 January 1974, he was obliged to retire and left the FAO on 1 January 1974. Having been informed by minute of 30 September 1973 that his appointment would not be extended beyond 18 January 1974, he had lodged an appeal with the Director-General on 14 December 1973 in the belief that as a field project officer he was entitled to remain in the service of the FAO until the age of sixty-five. By letter of 21 December 1973 he was told that the Director-General dismissed his appeal. On 8 January 1974 he appealed to the Appeals Committee, which in a report addressed to the Director-General on 13 December 1974 held that there were no grounds for grievance and that the administrative procedures had been adhered to and recommended dismissing the appeal. It also recommended the Director-General to send the complainant a communication assuring him that his separation was in no way a reflection on his service in Korea and expressing appreciation of his many years of satisfactory service to the FAO. The Director-General endorsed the Committee's recommendations and so informed the complainant by letter of 24 January 1975. The complainant now impugns the Director-General's final decision in that letter confirming the

decision to retire him with effect from 18 January 1974.

D. The complainant contends that when he was assigned to Korea in 1971 the FAO promised him an appointment for the duration of the project, namely five years; that there were no grounds whatever for his sharp and sudden summons to headquarters in September 1973, which had no bearing on his work under the project; that during his stay in Rome the FAO promised him further employment; that it cannot justify his sudden retirement on the grounds that he was over sixty-two, the maximum age for headquarters staff, since his withdrawal had not altered his status as a field project officer, for whom the maximum age is sixty-five; and that the FAO's treatment of him has caused him serious prejudice which entitles him to compensation.

E. In his claims for relief the complainant asks the Tribunal to quash the Director-General's decision of 24 January 1975 as irregular; to award him damages equivalent to three years' salary for the various forms of prejudice he has suffered; and to award him US\$2,500 as costs.

F. As regards the termination of the o the complainant's assignment to Korea, the FAO points out that (i) he was not entitled to a five-year assignment in Korea either under the terms of his appointments or by virtue of oral commitments entered into by the FAO; (ii) the decision to withdraw the complainant from the project in Korea and summon him to headquarters was warranted in view of the information the FAO had received on the Korean authorities' attitude towards the complainant and especially their opposition to extension of his assignment as project manager; (iii) that decision was taken solely in the interests of the project and no improper motive was involved; (iv) the complainant's fairly sudden withdrawal cannot be detrimental to his professional reputation and in any case he received a letter of thanks from the FAO; (v) in the three weeks between the date of the order to leave Korea and the actual date of his departure he had enough time to dispose of his personal effects or arrange to have them stored; he cannot therefore properly impute to the FAO, as he does, liability for any loss he may have incurred; and (vi) on his return to headquarters in October 1973 he received no promise of a further assignment after 30 November 1973, the date of termination of his assignment to Korea.

G. As regards the decision to retire the complainant on 18 January 1974 the FAO point out that (i) that decision respected the relevant provisions of the Staff Regulations, Staff Rules and Administrative Manual, since nothing in those texts entitles a staff member at headquarters or in the field to remain in the service of the FAO until the age on sixty- five; (ii) paragraph 305.344 of the Administrative Manual merely means that the extension of the appointment of a field project officer beyond the age of sixty-five requires Director-General's approval, and it does not grant such officers any right to remain in service until the age of 65; (iii) the validity of the arguments set out in (I) and (ii) above is confirmed by the fact that the relevant rules have consistently been given that interpretation for years; and (iv) the question as to whether on his return to headquarters the complainant was to be regarded on his right to remain in service and even if field officers were entitled to remain in service until the age of sixty-five the complainant would naturally have again become a headquarters official on the termination of his field assignment

H. The FAO concludes that there are no grounds for quashing the decision to retire the complainant on 19 January 1974 or for granting him the compensation he claims. It asks the Tribunal to dismiss the complaint as unfounded.

CONSIDERATIONS:

As to the termination of the complainant's appointment:

1. The complainant left FAO headquarters on 18 November 1971 on an assignment as manager of a UNDP project in Korea. The assignment was originally to end on 17 May 1973 but was extended to 31 May and then to 30 November 1973. In September 1973, however, he was prematurely summoned to headquarters, where he arrived early in November. He was there informed by letter of 30 November 1973 of the decision to terminate his appointment on 18 January 1974. The question arises whether at the time of termination he was a headquarters or a field official. The parties hold differing views, but it is not necessary to settle the matter. Whichever he was, the termination of his appointment is not tainted with any flaw which entitles the Tribunal to interfere, as appears from the considerations below.

First, if the complainant was subject to the rules applicable to headquarters officials, he was required to retire at the age of sixty-two under Staff Regulation 301.095 unless the Director-General decided otherwise for exceptional reasons in the interests of the Organization. Since he reached that age limit on 4 June 1973 the complainant would

have continued in employment only if the Director-General had granted him an extension. In fact the Director-General abided by the general rule and was indeed in no way required to grant an exemption. In particular, it does not appear from the dossier that on his return to headquarters the complainant was promised any further appointment. The letter sent to the Korean authorities on 25 September 1973 on behalf of the UNDP Resident Representative does not imply any such promise, particularly since it was not addressed to the complainant .

Secondly, even supposing the complainant was a field official at the date of termination his claims would still not be valid. It is true that under Staff Regulation 305.342 field officials may remain with the Organization until the month in which they reach the age of sixty-five. But that provision does not mean that they are all entitled to stay on until the age limit. In any case it does not apply to holders of fixed-term appointments like the complainant, whose contracts normally end on the prescribed date unless the decision not to extend it is tainted. In the present case the decision is not tainted. In particular, in view of the information it had received from the UNDP Resident Representative in Korea the Organization was not bound to keep the complainant in a post in which his continued employment seemed undesirable. Moreover, it is not established that when he left for Korea he was promised employment for five years in that country. Since the execution of the project of which he was manager was to take five years he could perhaps have expected to continue to be employed for that period; but that was a mere expectation which had no legal force.

As to the claim for damages:

2. In support of his claim for damages the complainant alleges, first, that because of his sudden recall from Korea he was unable to remove the personal effects which he had taken with him and to which he attaches exceptional value. It is true that the complainant's recall to headquarters seems to have been unnecessarily sudden. But it does not follow that it caused him the prejudice for which he is claiming damages. On 30 November 1973, in the letter in which it declared its intention of terminating the complainant's services on 18 January 1974, the Organization offered to pay for the transportation of all the personal effects he had been unable to bring back with him. The complainant himself does not contend that that offer failed to prevent the prejudice alleged or that effect was not given to it.

He also maintains that the circumstances of his dismissal have proved harmful to his reputation. That contention, too, is unfounded. There is nothing dishonourable about having to retire at the normal age stipulated in the Staff Regulations;. Moreover, on the Appeal's Committee's recommendation the Organization gave him a written testimonial thanking him for his services over the past twenty-two years, and that served to remove - assuming it were necessary - the prejudice he ha alleged.

As to the claim for costs:

3. Since the complainant's claims are dismissed on the merits he is not entitled to costs.

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 12 April 1976.

(Signed)

M. Letourneur
André Grisel
Devlin

Roland Morellet

