

FORTIETH ORDINARY SESSION

In re LEE (No. 2)

Judgment No. 341

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the United Nations Food and Agriculture Organization (FAO) by Mrs. Soo Lee on 23 May 1977, the FAO's reply of 29 July, the complainant's rejoinder of 22 August and the FAO's surrejoinder of 6 October 1977;

Considering Article II, paragraph 5, of the Statute of the Tribunal and the FAO Staff Rules, particularly 302.131, 302.5332 and 302.5335;

Having examined the documents in the dossier, oral proceedings having been neither applied for by the parties nor ordered by the Tribunal;

Considering that the material facts of the case are as follows:

A. This case arises out of Judgment No. 271 of 12 April 1976 in the case of Lopez Vallarino, in which the present complainant was an intervener. In point (iv) of its decision in Judgment No. 271 the Tribunal ordered "that the claims of the interveners be remitted to the Director-General for him to determine what sums, if any, are in the light of this judgment due to them in respect of home leave entitlement, and with liberty to the interveners, if they do not accept such determination, to apply to the Tribunal, giving full particulars of the sums claimed and of the facts relied on in support of the claim".

B. On 17 August 1976 the FAO told the complainant in writing how it determined her entitlements in the light of Judgment No. 271. It said that she might claim payment, with interest at the rate of 8 per cent a year from 23 January 1975, or the difference between the expenses she had actually incurred in taking home leave in Washington in 1972 and the amount it had paid her. The complainant took the view that she should be repaid, over and above the expenses she had incurred in taking leave in 1972, the leave expenses she had incurred in 1970, and she made a claim to that effect on 30 September 1976. On 23 February 1977 the FAO replied that it had no obligation to repay her leave expenses for 1970. Relying upon point (iv) of Judgment No. 271, which is quoted in A above, the complainant contests the determination of her entitlements in so far as the FAO refuses to repay the cost of her home leave travel in 1970.

C. The complainant says that she did not know she was entitled to home leave before 1 April 1971 and that is why in 1970 she made her own arrangements to go to the United States. It later became clear that her entitlement to home leave had started to run on 1 June 1969. But she was never so informed and she should not suffer for the FAO's negligence. She therefore asks the Tribunal to "reopen case of intervener Soo Lee (Judgment No. 271 in re Lopez Vallarino)" and to consider the reimbursement of the expenses of her home leave travel to the United States in June 1970.

D. In its reply the FAO observes that the amendments to the Staff Rules which entitled the complainant to home leave from 1 June 1969 were circulated to all staff members and she should therefore have been aware of them. According to Staff Rule 302.5332 a staff member may not take home leave until 18 months have elapsed after he has become entitled to it. The complainant therefore could not take it before 1 December 1970. She herself admits she went to Washington in June 1970. Since she was not yet entitled to take leave at that time the FAO is not bound to regard her as having travelled on home leave or to pay her any sum whatever on that account. It has correctly applied Judgment No. 271 in the complainant's case and asks the Tribunal to dismiss the complaint.

CONSIDERATIONS:

The benefit of home leave travel paid for by the Organization was not extended to the category of officers to which the complainant belongs until 1 June 1969. She then became entitled to paid home leave once in every two years, the first leave to be taken after eighteen months i.e. on or after 1 December 1970. Copies of the amendment to the Regulations which provided this benefit were circulated to the staff in Transmittal Memorandum 1483 in the usual

way, i.e. one copy per desk.

In June 1970 the complainant took her leave in her home country, paying her own travelling expenses. She says that had she known that in December 1970 she could have got her expenses paid by the Organization, she would have waited until then. But she was under the impression from what "she heard in the corridors" that the new entitlement did not become effective until 1 April 1971. She does not state what steps, if any, she took to verify what she heard. She does not state positively that Memorandum 1483 did not reach her desk, but she says that the Organization's distribution arrangements "leave much to be desired". On the ground that the Personnel Department failed to inform her of her rights, she asks that she should be reimbursed the travel expenses incurred in 1970.

On this material the Tribunal cannot find that there has been any fault by the Organization constituting a breach of the Regulations or of the complainant's contract of employment.

DECISION:

For the above reasons, and without it being necessary to examine the receivability of the complaint.

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 8 May 1978.

M. Letourneur
André Grisel
Devlin

Roland Morellet