

SEVENTH ORDINARY SESSION

***In re* REYNOLDS**

Judgment No. 38

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the Food and Agriculture Organisation of the United Nations drawn up by Mrs. Florence Reynolds on 17 July 1958, received and registered in the Registry on 25 July 1958 under No. 58.32, as amended on 22 September 1958, with the agreement of the respondent organisation and by leave of the Tribunal;

Considering the reply drawn up by the respondent organisation;

Considering the additional documents submitted by the parties;

Considering the Statute of the Tribunal, the Staff Regulations and the Staff Rules of the respondent organisation, particularly Articles 301.012, 301.091 and 301.10 of the Staff Regulations and 302.902 of the Staff Rules;

Having heard Maître Mercier, counsel for complainant, and Mr. Saint-Pol, agent of the organisation, in public sitting on 22 September 1958;

Considering that the facts relevant to the issue are as follows:

1. Complainant was appointed to the staff of the respondent organisation on 11 March 1946, and, until the time when the headquarters of the organisation was transferred from Washington to Rome, held the position of Chief of the Information Service of the organisation in Washington.
2. Before the removal of the headquarters of the organisation to Rome, at which time complainant held a five-year appointment, the conference of the organisation had ruled that all officials to be transferred to Rome could either elect to accept their transfer or to resign, in which case they would nevertheless be entitled to termination indemnities.
3. By agreement with the Director-General, complainant was permitted to remain in Washington as Regional Information Officer without reduction of her grade or the salary which she enjoyed and, in 1952, was granted a permanent appointment with the probationary period considered as having been completed.
4. On conversion of the grades and salary scales previously in force in the respondent organisation to the common salary, allowances and leave system of the United Nations and the specialised agencies, complainant was notified that her post had been classified as that of first officer (P.4) and after an initial objection, she accepted such classification.
5. In 1956 complainant suffered from an illness diagnosed by her physician as due to the strain and tension resulting from her employment.
6. By office memorandum of the Director of the Information Division dated 21 February 1957, implementing the Director-General's instructions of 19 February 1957, copy of which was attached, complainant was notified that she was to be transferred to Rome at her existing grade and salary to undertake research for and drafting of reports, articles, educational materials and similar matters of a specialised nature.
7. Complainant's medical attendants did not agree that it was in the best interests of complainant's health to transfer her to Rome, which proposed transfer she alleged was the seat of the dissention which had caused her illness, and they ordered her on extended sick leave.
8. On 26 April 1957 another official was appointed to the P.4 post which complainant had held in Washington up

to that time.

9. The approved job description of the proposed post in Rome, which was sent to complainant on 20 October 1957 in response to a request which she had made on 17 April 1957, afforded some justification for her belief that the proposed transfer would involve some measure of demotion.

10. A peremptory notification to complainant in a cable of 9 November 1957 intimated that unless she immediately cabled acceptance of transfer to the P.4 post in Rome - which up to the date of this judgement the respondent organisation has not thought it necessary to fill - she would be considered to have resigned as from 15 November 1957.

11. In the absence of a reply by complainant, she was treated as having resigned as from 15 November 1957, a deduction was made from her accumulated leave to cover the period from 15 September 1957 to 15 November 1957, and on the strength of provision 311.424 of the Staff Manual, she was deprived of any termination indemnities.

12. On 24 July 1958 the Director-General, acting on the advice of the Appeals Board, to which complainant had earlier submitted her case, offered to amend the original decision to terminate her appointment so as to provide restoration of the accumulated leave withheld, payment of three months' salary in lieu of notice, and an ex gratia payment of an amount corresponding to the termination indemnity provided for under Annex III of the Staff Regulations. On 2 September 1958 complainant rejected the offer of an ex gratia payment.

On the substance:

Considering that Article 301.012 of the Staff Regulations provides that the Director-General may assign an official to any one of the duty stations of the organisation;

Considering that following the decision to transfer complainant from Washington to Rome, against which complainant cannot invoke any acquired rights since that decision was taken in virtue of statutory authority, complainant was free to resign from her post for reasons of personal convenience;

Considering that while complainant's refusal to comply with a decision to transfer her to Rome did not provide grounds for her summary dismissal for serious misconduct, it did nonetheless constitute a breach of complainant's statutory obligations by reason of which it was open to the organisation to initiate proceedings for the termination of her appointment;

Considering that complainant was separated from service under provision 311.424 of the Staff Manual which provides that, except where an official's post is downgraded, the refusal to accept transfer to another duty station shall be regarded as a resignation;

Considering that under the terms of Staff Regulation 301.00 approved by the Council of the organisation the Director-General is authorised to provide and enforce such Staff Rules consistent with the general principles embodied in the Staff Regulations as he considers necessary;

Considering that in promulgating Staff Rules the Director General exercises within the limits imposed upon him by the Staff Regulations, the legislative power conferred upon him by the Council of the organisation;

Considering that in approving the provisions of the Staff Manual the Director-General, by his decision taken as Executive Head of the Secretariat, assents to an interpretation and a procedure aimed at ensuring the effective application of legislative provisions, laid down either in the Staff Regulations by the Council itself or in the Staff Rules by the Director-General in the exercise of the powers delegated to him by the Council;

Considering that the provisions of the Staff Manual must comply both with the Staff Regulations and the Staff Rules - which is not questioned by the organisation - and are subject to review by the Tribunal in the same way as any individual administrative decision taken in conformity with the Staff Regulations and Rules;

Considering that under the terms of Staff Rule 302.902 the expression "resignation" in the sense of the Staff Regulations is deemed to mean any separation from service resulting from the initiative of the official concerned and that thus the refusal of complainant to accept a transfer to Rome did not in itself constitute a resignation in the

sense of the Staff Regulations, and could only constitute such a breach of her obligations as would lead to the application of disciplinary action or termination;

Considering, on the other hand, that the organisation did not take any steps properly to terminate the appointment of complainant on the grounds of her refusal to accept to be transferred to Rome, and that had they done so termination indemnities would have become payable;

Considering that provision 311.424 of the Staff Manual, under which complainant has been separated from service, is contrary to the Staff Regulations and Rules since, on the one hand, it wrongly treats a refusal to accept a transfer as a voluntary resignation and, on the other hand, it denies to the official concerned the guarantees attached to a proper termination as well as the indemnities which would be payable in such a case;

Considering that the organisation cannot rely on its ex gratia offer, made on 24 July 1958 and impounded before the Tribunal, to pay to complainant a termination indemnity as a proper satisfaction for the action taken against her;

Considering that therefore provision 311.424 of the Staff Manual should be rescinded and that the action taken in reliance of this provision should also be rescinded;

ON THE GROUNDS AS AFORESAID

THE TRIBUNAL,

Rejecting any wider or contrary conclusions,

Declares the complaint, as amended on 22 September 1958 by agreement between the parties and by leave of the Tribunal, to be receivable;

Declares that it is competent to hear the complaint and, proceeding to decide on the substance thereof;

Orders that provision 311.424 of the Staff Manual of the organisation be rescinded;

Orders, therefore, that in so far as it was taken under the terms of the above provision the dismissal of complainant be rescinded;

Orders that the organisation pay to complainant the salary and allowances which she would have received from the date of her putative resignation until the date of this judgement;

Orders that the organisation pay to complainant a sum corresponding to three months' notice of dismissal, that complainant's right to accumulated leave be restored and that she be paid the termination indemnities payable under the terms of Annex III of the Staff Regulations;

Orders that the organisation pay to complainant the sum of six hundred United States dollars by way of participation in the cost of her defence; and

Save as aforesaid dismisses her suit.

In witness of this judgment, delivered in public sitting on 29 September 1958 by His Excellency Albert Devèze, President, Sir John Forster, K.B.E., Q.C., Vice-President and Mr. Jason Stavropoulos, Deputy Judge acting as Judge, the aforementioned have hereunto subscribed their signatures, as well as myself, Lemoine, Registrar of the Tribunal.

(Signatures)

Albert Devèze
John Forster
Jason Stavropoulos
Jacques Lemoine

