

## EIGHTH ORDINARY SESSION

### ***In re FISHER***

#### **Judgment No. 48**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the Food and Agriculture Organisation of the United Nations drawn up by Mrs. Mella Fisher on 26 February 1960 and the reply of that organisation;

Considering Administrative Memoranda No. 212 (Amend. 11) of 24 October 1950 and No. 324 of 13 August 1951;

Having heard Mr. Jacques Mercier, counsel for complainant, and Mr. Saint-Pol, agent of the organisation, in public sitting on 13 September 1960;

Considering that the pertinent facts at issue are the following:

A. Complainant acquired Yugoslav nationality in 1929. In 1941 she fled from Yugoslavia and took refuge in Italy, where she has since been living. She was interned in a concentration camp and later worked for various international organisations. On 7 May 1951 she was appointed to a general service post with the Food and Agriculture Organization in Rome as a locally-recruited official. At that time she held an identity card issued by the International Refugee Organization on 5 January 1950.

B. In 1957 the Staff Council of FAO asked the Director-General to consider the possibility of giving non-local status to certain officials considered as having been locally recruited, and accordingly to grant them non-residents' allowances.

On 20 March 1959 complainant was informed that the Director-General had decided that she should continue to be classified as local.

Mrs. Fisher brought the matter before the Appeals Committee, which found that the Regulations had been correctly applied but nevertheless recommended that in view of special circumstances complainant be classified as non-local.

On 26 November 1959 the Director-General confirmed his decision notified on 20 March 1959.

C. Complainant has referred the decision of 26 November 1959 to the Tribunal and prays that as from 23 September 1958 she be granted the entitlements applying to non-local staff. The organisation prays that the complaint be rejected.

#### IN LAW

1. The decision of 26 November 1959 was preceded by a further examination of complainant's position and by additional proceedings. It was therefore a decision on the substance of the case, and superseded the decision taken in 1951 to regard complainant as locally-recruited. Such a decision can be impugned before the Tribunal, and the complaint against the decision of 26 November 1959 is therefore receivable.

2. Under Administrative Memorandum No. 324 of 13 August 1951, local employees are those staff members who, at the time of appointment, have been resident for a period of one year or more within the country in which their duty station is located. Being retroactive to 1 January 1951 and being more favourable to the employees concerned than the earlier rule, this memorandum applies to complainant, whose appointment dates back to 7 May 1951. The issue therefore is whether on that date she had been resident for a period of one year or more in Italy, where her duty station is located.

Complainant argues that before Italy ratified a Convention of July 1951 she was unable to leave the country, that her residence in Italy at the time of her appointment to the staff of the organisation was therefore enforced and that consequently she was not resident in Italy within the meaning of Memorandum No. 324. It is unnecessary, however, to consider whether the meaning of the word "residence" as used in the memorandum implies not only physical presence in a particular State but also the intention to settle in that State rather than in another, since in this case both of these conditions are complied with. Moreover, it is established that before entering the employment of the organisation complainant had lived in Italy for more than one year, that is for a period in excess of the minimum laid down by Memorandum No. 324. In addition, according to a statement by the representative in Italy of the United Nations High Commissioner for Refugees which is included in the dossier, as the bearer of an identity card issued by the International Refugee Organization complainant could have left Italy without let or hindrance on the part of the Italian authorities and she also had the possibility of obtaining a travel document provided for in the London Agreement of 15 October 1946; with such a document she could have emigrated to various countries before her appointment to the staff of the organisation. The fact that complainant was still in Italy on 7 May 1951 was due neither to a legal barrier to her emigration nor to any physical impossibility of securing admission to another country. Therefore, even if the notion of residence involves fulfilment of the two conditions of physical presence and intention to reside, complainant was rightly deemed to have been resident in Italy for a period of more than one year at the time of her appointment. The decision to classify complainant as a locally recruited official and to deny her the benefits granted to non-local officials is therefore well-founded.

## DECISION

The complaint is dismissed.

In witness of this judgment, delivered in public sitting on 23 September 1960 by the Rt. Hon. Lord Forster of Harraby, K.B.E., Q.C.; President, Mr. Maxime Letourneur, Vice-President, and Mr. André Grisel, Judge, the aforementioned have hereunto subscribed their signatures, as well as myself, Lemoine, Registrar of the Tribunal.

Signatures:

Forster of Harraby  
M. Letourneur  
André Grisel  
Jacques Lemoine