

Registry's translation, the French text alone being authoritative.

## FORTY-EIGHTH ORDINARY SESSION

In re PETRUC (No. 2)

Judgment No. 502

### THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the Food and Agriculture Organization of the United Nations (FAO) by Mr. Théodore Claude Petruc on 28 April 1981 and brought into conformity with the Rules of Court on 15 June, the complainant's further memorandum of 23 July, the FAO's reply of 14 August, the complainant's rejoinder of 22 October and the FAO's surrejoinder of 25 November 1981;

Considering Articles II, paragraph 5, and VII, paragraphs 1 and 3, of the Statute of the Tribunal, FAO Staff Rule 301.11 and FAO Manual provisions 342.513, 342.621 and 342.7;

Having examined the written evidence and disallowed the complainant's application for oral proceedings;

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

A. The complainant joined the staff of the FAO as an expert in 1966 and served in turn in Niger, Haiti, Panama and Senegal. He contracted an illness in Senegal in 1973 and is now suffering from chronic diverticulitis which he attributes to the illness. On 9 January 1975 he suffered a heart attack in his office in Dakar. He returned to work on 11 June 1975 but, feeling that his work capacity had declined, he urged his supervisors to send him for a medical check-up in Rome. In a telex of 14 August the FAO answered that in its view no check-up would be necessary before January 1976. On 28 January 1976 the complainant underwent a check-up in Rome. He was put on unpaid leave from 1 February until 31 October 1976, and on the latter date left the Organization. In a letter of 1 March 1977 to the Director-General he asked that he should be examined by a medical board to determine the FAO's liability towards him. On 28 March 1977 he repeated his claim in a minute to the head of the medical services branch. There ensued a lengthy correspondence and after trying to secure a decision on his applications he appealed to the FAO Appeals Committee on 26 December 1978. In his appeal he invited the Committee: (1) to declare that the reason for the termination of his appointment was the illnesses which he had contracted in Senegal and which were directly attributable to the performance of his duties; (2) to recommend that the Director-General have him examined by a board of his own choosing for the purpose of determining his right either to compensation for service incurred illnesses or to a disability benefit. In its report of 12 February 1980 the Committee recommended that the promptest action should be taken on the complainant's application, the file of his case being forwarded to the competent bodies for decision. As to his application for compensation, the Deputy Director-General informed him by a letter of 13 May 1980 that it would be submitted to the Advisory Committee on Compensation Claims and that "on account of the disagreement on the medical aspects", and in accordance with Manual provision 342.72, a medical board would be convened; the complainant should therefore appoint a physician to represent him on the board. There ensued further correspondence in which the complainant objected to the proposed procedure. After considering his claim for compensation on 27 August, the Advisory Committee recommended that neither the diverticulitis nor the heart attack should be treated as attributable to the performance of official duties. By a letter of 30 October the Secretary of the Advisory Committee informed the complainant that on the Committee's recommendation the Director-General had rejected his claim for compensation. By an undated letter received on 2 December 1980 the complainant filed with the Secretary of the Committee an application for "reconsideration" under Manual provision 342.7. By a letter of 4 February 1981 the Secretary of the Committee informed him that the Committee would reconsider his case before the Director-General took his final decision. The Secretary explained that because of the disagreement on the medical aspects which had provided the basis for the Director-General's original decision the medical board provided for under Manual provision 342.72 would be convened and the complainant should therefore appoint a physician to represent him on it. In a letter which he wrote to the Director-General on 23 February the complainant stated his objections to convening the medical board. Having received no answer to his application for reconsideration on 28 April he filed his complaint with the Tribunal, relying on Article VII(3) of its Statute. In his letter of 16 June the Secretary of the Committee answered

that since the matter, in the Committee's view, was essentially a medical one no decision could be taken until the complainant had appointed a physician.

B. In his original memorandum the complainant contends that he may appeal to the Tribunal in accordance with Article VII(3) of its Statute because the FAO failed to reply within sixty days. The FAO's inaction and disregard of the relevant rules have prevented him from proving to the competent bodies the seriousness of his illnesses and from obtaining compensation for the prejudice he has suffered on account of those illnesses. The FAO has set excessive time limits for the proceedings and refused to let him undergo any thorough medical check-up. In his claims for relief he invites the Tribunal: (a) to declare that he is suffering from illnesses which are directly attributable to the performance of his official duties; (b) to declare that those illnesses have made him unfit for work and their sequelae prevent him from working; (c) to award him the compensation provided for in FAO Manual provision 342.513 ("Total incapacity") with effect from 1 February 1976; (d) to impose sanctions for the time limits set by the FAO and its refusal to let him undergo any medical examination in accordance with the relevant rules by ordering the Organization to pay him a sum equivalent to one year's salary in damages; and (e) to award him 15,000 French francs as costs. In a supplementary memorandum the complainant observes that the letter which the Secretary of the Advisory Committee sent him on 16 June 1981 calls for explanation: the Secretary is mistaken in saying that the reason for his application for reconsideration was a disagreement on the medical aspects. Manual provision 342.71, the relevant rule, does not provide for the convening of a medical board in such a case. The FAO was therefore mistaken in asking the complainant to appoint a physician. It received his application on 3 December 1980. Sixty days later it had not yet taken a decision, and the complainant was then entitled to appeal to the Tribunal.

C. In its reply the FAO contends that the complaint is clearly irreceivable, and it therefore does not argue the merits. In its view the proper procedures have not been followed in this case. The application for reconsideration could not constitute a "claim" within the meaning of Article VII(3) of the Statute of the Tribunal. In any event, since it was confined to the question of compensation for illnesses attributable to the performance of official duties it could not serve as the basis for the claim for damages submitted in the complaint. Moreover, the complainant has failed to exhaust the internal means of redress. He has not even introduced the internal appeal proceedings provided for in Staff Rule 301.111, and he has interrupted the procedure for reconsideration by refusing to appoint a physician. He should have followed the internal procedure also for his other claims. Moreover, he has means at his disposal for securing a full assessment of his claims.

D. In his rejoinder the complainant explains in detail why in his opinion the procedure proposed by the Organization is mistaken, and he maintains that it is disregarding the spirit, if not the letter, of the Appeals Committee's recommendations. He then discusses the procedure for claiming compensation as set out in the staff rules, which he believes that he has scrupulously respected. To appeal directly to the Tribunal was the only way left to him of avoiding the dilatory procedure demanded by the Administration. He had all the greater reason for filing a complaint because he had experienced the FAO's shortcomings in this respect. He was in no way bound to apply for the convening of the medical board. All the internal means of redress have therefore been exhausted and his complaint is therefore receivable.

E. In its surrejoinder the FAO develops the arguments in its reply. It then refers to certain points raised in the rejoinder and contends that either they are mistaken or the complainant has not answered its arguments. It maintains its conclusions and again asserts that the complaint is irreceivable.

#### CONSIDERATIONS:

1. Article VII, paragraph 1, of the Statute of the Tribunal states that "a complaint shall not be receivable unless the decision impugned is a final decision and the person concerned has exhausted such other means of resisting it as are open to him under the applicable Staff Regulations".

Where there is dispute over a claim in the event of illness, accident or death the FAO Staff Regulations and Staff Rules lay down an internal procedure which must be followed before a complaint may be filed with the Tribunal.

2. The complainant is asking the Tribunal to recognise that the illnesses which he is suffering from are directly attributable to the performance of his official duties at the FAO and have made him unfit for work and that he is therefore entitled to the compensation prescribed in the FAO rules. He further contends that the FAO has been negligent in its handling of his case and he claims damages on that account.

3. Before filing a complaint the complainant was required to follow the procedure laid down in the Staff Regulations and Staff Rules. For that purpose he originally submitted a request on 1 March 1977 and a few days later formal notice of his claims for compensation. A physician appointed by the FAO examined him, but the procedure laid down in the rules, if it was not abandoned, at least became meaningless. He appealed to the FAO Appeals Committee, which was not competent, whereas he ought to have followed the procedure for reconsideration. The FAO then pointed out that he should submit a claim for compensation to the Advisory Committee on Compensation Claims in accordance with Manual provisions 342.712 and 342.721, and in particular appoint a doctor to represent him on a medical board. The complainant refused to do so on the grounds that there was no disagreement on the medical aspects which had formed the basis of the Director-General's original decision. He thus refused to follow the internal procedure. Yet the only way of settling the dispute was to have an investigation carried out by a medical board. The FAO has not always handled the case with proper diligence. But the fact remains that the complainant has appealed directly to the Tribunal before the internal procedure was completed, although the FAO invited him, in keeping with the rules, to name a doctor to represent him. He cannot therefore rely on Article VII(3) of the Statute of the Tribunal: "Where the Administration fails to take a decision upon any claim of an official within sixty days from the notification of the claim to it, the person concerned may have recourse to the Tribunal and his complaint shall be receivable in the same manner as a complaint against a final decision." In this instance the FAO did not remain silent, and the complainant's principal claims for relief are therefore irreceivable.

4. So are his claims for the award of compensation since there is no prior decision for him to challenge.

5. Although the complaint is dismissed on procedural grounds, further administrative action is not precluded. Misunderstanding between the parties might be dispelled if they agreed to appoint the medical board provided for in Manual provision 342.721.

#### DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President, Mr. Jacques Ducoux, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Allan Gardner, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 3 June 1982.

(Signed)

André Grisel

J. Ducoux

Devlin

A.B. Gardner