

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

FIFTY-FOURTH ORDINARY SESSION

In re CAMPITELLI

Judgment No. 640

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the Food and Agriculture Organization of the United Nations (FAO) by Mr. Nazzaro Campitelli on 30 September 1983 and corrected on 2 December, the FAO's reply of 25 January 1984, the complainant's rejoinder of 2 April and the FAO's surrejoinder of 3 May 1984;

Considering Article II, paragraph 5, of the Statute of the Tribunal and FAO Manual provisions 330.152 and 330.241;

Having examined the written evidence, 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. The complainant, an Italian born in 1930, was employed for over twenty years as a carpenter at grade G.2 in the Administrative Services Division at FAO headquarters in Rome. On 21 May 1982 a security guard stopped him from carrying four wooden chairs out of the FAO building to his motor car. The complainant said he had bought them on 9 May 1980 for 12,000 lire in a sale of surplus furniture by the FAO Commissary and had been given a receipt, but could not find it. He had, he says, kept them in his workshop for two years. On 24 May 1982 he applied in writing for permission to remove the chairs. On 9 June the Director answered that he had unlawfully attempted to remove the chairs, that was unsatisfactory conduct within the meaning of Manual provision 330.152 and his dismissal was recommended in accordance with 330.241 ("Dismissal for misconduct consists of termination for conduct that has jeopardised, or would in the future jeopardise, the reputation of the Organization and its staff"). In a memorandum of 14 June and in an interview with the Director on 28 June the complainant reaffirmed that he had bought the chairs on 9 May 1980 from the Commissary. But shortly after he produced what purported to be a receipt signed on 9 May 1980 by a Mr. Carlo Rua, alleged to have been temporarily employed at the time as a driver for the Italian Red Cross. By a minute of 15 July 1982 the Assistant Director-General for Administration and Finance informed him that, the authenticity of that document not being established, his employment was terminated forthwith. He left the FAO on 23 July. An appeal to the Director-General failed and he went to the Appeals Committee. The Committee submitted an undated report to the Director-General on 6 June 1983; the majority recommended rejecting the appeal; the minority, reinstating him. By a letter of 4 July 1983, the impugned decision, the Deputy Director-General informed him that the Director-General rejected his appeal.

B. The complainant submits that it was wrong to shift to him the burden of proving his own innocence. The FAO has not proved that four chairs had ever been missing, as they should have been if not validly sold in 1980. He bought them on FAO premises from Mr. Rua, a van-driver who had just taken delivery from the FAO on behalf of the Italian Red Cross. Nor is it proved that the receipt he produced was a forgery, though the burden of proof was on the FAO: failure to trace Mr. Rua does not suffice. Inconsistencies in his own explanations are accounted for by the lapse of time since what was anyway a trivial purchase. It is not proved he was lying when he said the chairs had been in his workshop: the FAO disregarded the evidence of six other staff members to that effect. He suggests he may have been dismissed because he was in bad odour with his supervisor, who, he alleges, was glad of an opportunity to get rid of him. Besides, even if he were guilty of the attempt at theft, the punishment would be disproportionately severe. The chairs were worth little, and stealing them could hardly "jeopardise the FAO's reputation". The complainant asks the Tribunal to quash the decision; failing reinstatement, to award him three years' salary as damages; and in any event to award him costs.

C. The FAO replies that the complaint is devoid of merit. It gives its own account of the facts. It submits that the burden was on the complainant to rebut the presumption that all moveables on FAO premises belong to the FAO and that he made an attempt at theft; it was not for the FAO to prove its ownership of the chairs. Investigation revealed that the Red Cross had not issued the receipt, the signature was not that of any of its employees, and

"Carlo Rua" was unknown. The complainant's explanations were inconsistent and false. There was no receipt from the Red Cross, and no proof that the paper he had produced was a genuine receipt from anyone else. Getting evidence from his fellow workers, four months after his dismissal, was just a belated attempt to save him. His allegations of personal prejudice are unsupported and untrue. As for the proportionality of the sanction, the financial value of the object stolen is not the only yardstick. The circumstances must be seen as a whole -- his response to investigation, his future reliability, the effects on the reputation of other staff, and so on -- and in this case dismissal was warranted.

D. In his rejoinder the complainant challenges the FAO's account on certain points. If guilty he would not have raised the matter again on 24 May 1982. He never said the receipt was from the Red Cross, but from a temporarily employed driver, whom the FAO made no proper attempt to trace. Circumstantial evidence shows that it cannot be a forgery; and it is for the FAO to prove his bad faith anyway. Since, as others have confirmed, the chairs were kept in his workshop for two years, they were no longer used as FAO furniture, and so it is for the FAO to prove theft. It is wrong to reject the evidence of six of its employees. All the circumstances -- not just the value of the chairs -- being taken into account, the sanction was still too severe.

E. In its surrejoinder the FAO submits that it has already answered most of the complainant's arguments. He wrote his memorandum of 24 May 1982 not because he was innocent but because he knew the guard would report the matter anyway. It was not for the FAO, but for the complainant, to trace the signatory of the alleged receipt. The FAO discusses allegations of fact by the complainant which it regards as tendentious or inconsistent. It again invites the Tribunal to dismiss the claims.

CONSIDERATIONS:

1. The complainant was dismissed on the grounds of attempted theft of four wooden chairs from the Organization. The disciplinary measure will be upheld only if -- and it is the first issue in this case -- the alleged attempt must be taken as proved.

2. There are aspects of the case which cast doubt on the complainant's denial, and it is on those aspects that the charges against him may be based.

That there were inconsistencies in what he said on different occasions is beyond doubt. At first he said he had bought the chairs from the FAO for 12,000 lire at a sale of second-hand equipment and had been given a receipt by an agent, but had temporarily mislaid it. He went back on that when he produced a receipt declaring the seller to be the Italian Red Cross and written on a sheet of paper with the FAO letterhead. Then he suggested he had dealt with the Italian Society for Child protection, a body connected with the Italian Red Cross. These shifts of position are indeed odd. But since the sale had occurred over two years before and the chairs were not of much value, it is understandable enough that the complainant's memory should have failed him.

The investigation by the FAO revealed that it had not sold any chairs to the complainant, to the Italian Red Cross or to the Italian Society for Child Protection on any of the days just preceding the date borne by the receipt. There is therefore some doubt about what the complainant says.

It is surprising, moreover, that he stored the chairs for two years in his workshop instead of taking them home straightaway. That is a further reason for not giving full credence to his version.

3. Yet several features of the case do argue in his favour.

First, the receipt he later produced does carry some conviction. Although the person who signed remains unidentified it is striking that the date it bears is subsequent to a sale of second-hand FAO equipment. That need not be mere coincidence. Moreover, if the complainant forgot the receipt himself, how did he know the name of the person mentioned on the receipt as "Peppino", and his telephone number too? Such details can hardly have been invented.

The complainant's former colleague have declared that he did keep the chairs in his workshop. Their statement is not as unconvincing as the FAO maintains. They stood rather to lose than to gain from a falsehood. They ran the risk of damaging their standing with the Organization; yet they were unlikely to gain from lying for the sake of the complainant, who was no longer with them.

4. In sum, the arguments in favour and against cancel each other out. The charge of attempted theft cannot therefore be taken as proven and the impugned decision is unlawful.

The Tribunal will not order the reinstatement of the complainant, who has left the FAO. Instead it will award him compensation, which, because of the length of his service, it sets ex aequo et bono at 8,000 United States dollars.

Since the complainant has succeeded, he is also entitled to costs, which are set at \$2,000.

DECISION:

For the above reasons,

1. The impugned decision is quashed.
2. The Organization shall pay the complainant \$8,000 in damages and \$2,000 in costs.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, Mr. Jacques Ducoux, Vice-President, and the Right Honourable Sir William Douglas, Deputy Judge, the aforementioned have hereunto subscribed their signatures, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 5 December 1984.

(Signed)

André Grisel

Jacques Ducoux

William Douglas

A.B. Gardner