

SIXTY-SIXTH SESSION

In re GIANOLI

Judgment 956

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Bernard Gianoli against the Food and Agriculture Organization of the United Nations (FAO) on 3 August 1988, the FAO's reply of 11 October, the complainant's rejoinder of 26 October and the FAO's surrejoinder of 9 December 1988;

Considering Article II, paragraph 5, of the Statute of the Tribunal, FAO Staff Regulation 301.014 and Staff Rules 302.907 and 303.02;

Having examined the written evidence, oral proceedings having been neither applied for by the parties nor ordered by the Tribunal;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant, a Swiss citizen born in 1952, joined the FAO on 26 March 1984 under a two-year appointment and was assigned to the office of the FAO Representative in Benin as a programme officer at grade P.2. In March 1985 he was involved, in circumstances that are not stated explicitly, in facilitating the import of a gun for someone not on the staff. The then FAO Representative, Mr. Pierson, instigated an inquiry. The upshot was that on 14 May 1986 the Director of the Field Programme Development Division (DDF) at headquarters in Rome sent the complainant a minute observing that for private reasons he had made use of the Organization to the detriment of its reputation in the host country and imposing a "written reprimand" on him.

Mr. Pierson had left Benin in May 1985 because of poor health. Before leaving he asked the complainant to settle several private matters of his, including the sale of his motor car. Mr. Pierson died in August 1985. The proceeds of the sale of the car were deposited in the office safe but were later found to have been withdrawn. In a letter of 19 September 1986 the acting Director of DDF asked the complainant to explain and he did so in a letter of 24 October 1986 to the Director.

The letter of 19 September also informed him that his appointment, which had already been extended from 26 March to 15 September, would be further extended to 31 December 1986 to enable him to finish his work. A letter of 24 November 1986 from the acting Director of DDF told him that the Organization accepted his explanation about the money; confirmed that the written reprimand of 14 May 1986 related only to the incident over the gun; and stated that his appointment was extended until 31 January 1987 "to allow a smooth transition for your successor"; the Organization would look for another post for him, though there was nothing in DDF, and he too should try to find other employment. He wrote on 12 December stating his objections to separation. In a letter of 22 January 1987 the Director said that "it would be in the best interests of the Organization to provide for a change of Programme Officers in Benin", that his post there had been filled by someone else, and that no other suitable post was vacant.

On 27 January the complainant appealed to the Director-General, by a letter of 27 March the Assistant Director-General in charge of Administration and Finance confirmed the non-

renewal, and he appealed to the Appeal Committee on 6 June.

In its report of 7 March 1988 the Committee unanimously recommended rejecting his appeal and in a letter to him of 18 May 1988, the decision impugned, the Director-General did so.

B. The complainant points out that his supervisors never criticised his performance and he was granted within-grade salary increments in 1985 and 1986. The only avowed reason for the non-renewal was a wish to have a new

programme officer in Benin, and the only reason the FAO can have had for wanting the change was the incident that had prompted the written reprimand. Yet according to FAO Staff Rule 303.02 such reprimand "shall not be deemed to be a disciplinary measure within the meaning of this rule". Besides, the Organization plainly regarded disciplinary action as pointless. It has stated no other reason for its decision, having in particular dismissed the matter of the proceeds of the sale of the motor car.

It failed to keep its promise to find him another job. Apart from his post in Benin there were several vacancies in other field offices for which he should have been given preference.

The FAO made libellous allegations and insinuations, in particular in its letter of 19 September 1986, that discredited him in the eyes of the staff and of government officials in Benin and caused him distress. A firm offer of appointment made to him by the World Food Programme (WFP) in 1986 was withdrawn and he holds the FAO liable. The FAO Representative appointed to Benin in 1986 was also prejudiced against him for several months, but came to realise he was competent and in good faith.

He seeks the quashing of the decision he impugns and reinstatement. Failing reinstatement, he claims 15,000 United States dollars for material injury, viz. the equivalent of his pay for the six months from the date of separation - 31 January 1987 - up to the date of his starting other employment; \$60,000, the equivalent of two years' pay from the WFP; \$20,000 in moral damages; and \$1,000 in costs; or a total of \$96,000.

C. The FAO replies that according to Staff Rule 302.907 "A fixed-term appointment shall expire automatically and without prior notice on the expiration date specified in the letter of appointment". The Organization gave the complainant no reason to expect further extension. It was entitled to take the view that its interests called for a change of programme officers in Benin, as indeed it informed the complainant in a letter of 22 January 1987. The extensions granted from 26 March 1986 made for smooth transition and enabled him to look elsewhere for employment.

The Organization never promised him another assignment, but merely to look for something suitable, and it actually advised him to look elsewhere. It alone may determine whether there was any suitable job for him and, even if there was, whether he was the best candidate.

Its letter of 19 September 1986 was not libellous. It did not accuse the complainant but merely alerted him to his responsibility as to the proceeds of the sale of the car. The letter cannot have discredited him in anyone's eyes because it was strictly confidential. Besides, his explanation was accepted and the matter closed.

He offers no evidence in support of his allegation that the WFP withdrew an offer because of aspersions cast on him by the Organization. It neither made him a firm offer nor asked the FAO for information about him: it was the Programme's own Representative in Benin that gave an unfavourable opinion of his work and character.

D. In his rejoinder the complainant contends that his case is not one of expiry under Rule 302.907. He had "guarantees" of further renewal in that his appointment had already been extended, his post was financed under the regular budget, he was granted step increments and the FAO promised to find another assignment for him. The Organization did not keep its word and is therefore liable. He maintains that it defamed him: by issuing false or unproven statements about the two incidents - the gun and the deposit of cash - and by failing to treat them as confidential it damaged his good name in the United Nations system and in Benin. The offer from the WFP, which was made to him on the telephone, lapsed because of what people in the FAO had said about him, as some of his former colleagues are willing to testify. The FAO's answer to that, which is to question his professional qualifications and good character, is laconic and unproven: the FAO Representative who took over in Benin in 1986 thought highly of him on both counts.

E. In its surrejoinder the FAO contends that the decision not to renew the complainant's appointment shows no flaw and that the "guarantees" he mentions were no such thing. As its letters made plain, the renewals he did get were intended merely to enable him to leave things in order for his successor. It was not remiss in failing to find another assignment for him: it undertook merely to look for one, and it did so. He is mistaken in alleging that it discredited him or put the WFP off recruiting him. Its letters were not libellous at all but factual, judicious and moderate. Besides, he fails to show that any discredit was cast on him; indeed he maintains that the Representative in Benin thought well of him. He admits that the offer from the WFP was only oral; it cannot therefore have been a firm one.

CONSIDERATIONS:

1. On 26 March 1984 the complainant began a fixed-term two-year appointment as a programme officer in the office of the FAO Representative in Benin. His appointment was extended to 15 September 1986, then to 31 December 1986 and, lastly, to 31 January 1987. A letter of 24 November 1986 told him that that was the final extension, and in confirming that in a further letter of 22 January 1987 the Director of the Field Programme Development Division told him that replacing him as programme officer would be in the best interests of the Organization. He lodged an appeal, the Appeals Committee recommended rejecting it, and by a decision of 18 May 1988, which he is challenging, the Director-General did so.

2. According to FAO Staff Rule 302.907 a fixed-term appointment should expire automatically and without prior notice on the expiry date specified in the letter of appointment.

The case law says that when authorised to refuse, without notice or compensation, to renew such an appointment the Director-General has discretion which he exercises subject to an implied requirement of respect for the demands of efficient administration and for the Organization's interests. The rule consistently applied is that, short of replacing the Director-General's appraisal of the evidence with its own, the Tribunal will set aside a decision not to renew that was taken without authority, or tainted with a formal or procedural flaw or with a mistake of fact or of law, or with abuse of authority, or in which some essential fact was overlooked or some patently wrong conclusion based on the evidence.

3. The complainant's case is that the reasons the Organization stated were "mistaken on administrative grounds", which means presumably that it came to a wrong conclusion about the facts; that it broke a promise to find him some other assignment; and that, having defamed him, it is liable for the World Food Programme's refusal to employ him.

In his submission the only basis for the grounds stated by the Director-General for non-renewal - "the Organization's interests" - was a written reprimand that had been imposed on him on 14 May 1986, nearly two months after his original appointment had ended. Yet according to the FAO Manual a reprimand does not amount to a disciplinary sanction and, although the acting Director's letter of 22 January 1987 gave the Organization's interests as the reason for giving someone else his post, the true reason was the incident that had led to the reprimand, namely helping a friend of his in March 1985 to get a firearm into the country.

The Tribunal is satisfied that it was open to the Director-General to come to the view that what the complainant had done was, to quote the letter of 14 May 1986, "harmful to the FAO's good name in the host country" and, being behaviour unworthy of an international civil servant, had been contrary to Staff Regulation 301.014. The Director-General did not go beyond the bounds of his discretion when he took account of the established facts in deciding where the Organization's interests lay: for that reason alone the non-renewal was warranted in law.

4. The complainant points out that his record was satisfactory: no-one had ever found fault with his work and he had regularly been granted his step increments.

That is beside the point. What was at issue was not his merits or his supervisors' opinion of him, but his own behaviour in an incident that had nothing to do with his official duties. So what he says about his performance is irrelevant to the lawfulness of the non-renewal.

5. His allegation of a formal promise of another assignment also fails.

What he is relying on here is a right to extension which he says the Tribunal will enforce in favour of someone on a fixed-term appointment if the Administration has acted from some "improper motive" in refusing to renew or has by word or deed fostered expectations of renewal.

The plea cannot succeed in this case. For one thing, the Tribunal does not accept the view that the Organization's motives were improper. For another, the complainant has failed to show that by word or deed the Organization led him to expect any extension, let alone that it made him a firm promise of one. None of the letters to him extending his appointment may be construed as a promise or commitment; in fact he was told quite plainly that the purpose of extension was to enable him to finish his work and allow a "smooth transition" for his successor.

6. Lastly, he alleges that the Organization libelled him and is therefore liable for his failure to get employment with

the World Food Programme.

The statements he objects to appear only in strictly confidential letters to him about two incidents he had been involved in. The letters were sent to him in the context of an office inquiry and had to set out known facts and allegations that called for some explanation from him. The established facts prompted the reprimand, whereas the allegations were dismissed because his explanations were found satisfactory.

The procedure that was followed in carrying out the administrative inquiry was correct and there was nothing wrong or libellous about making specific allegations that called for some explanation from him.

As for any harm the inquiry may have done to his prospects of getting a job elsewhere, the FAO cannot be held liable: it is not shown to have interfered directly or indirectly in the recruitment procedure.

In any event there is no reason to question the Organization's good faith in telling him when he was about to be separated that it would do everything it could to place him, while advising him to look out for himself.

On that score, too, his case is devoid of merit.DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, Tun Mohamed Suffian, Vice-President, and Mr. Edilbert Razafindralambo, Deputy Judge, the afore- mentioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 27 June 1989.

(Signed)

Jacques Ducoux
Mohamed Suffian
E. Razafindralambo
A.B. Gardner