

TWENTY-THIRD ORDINARY SESSION

In re AKINOLA DEKO

Judgment No. 150

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the Food and Agriculture Organization of the United Nations (FAO) drawn up by Mr. Gabriel Akinola Deko on 3 February 1969, the Organization's reply of 1 April 1969, complainant's rejoinder of 30 April 1969 and the Organization's reply thereto of 29 May 1969;

Considering Article II, paragraph 5, of the Statute of the Administrative Tribunal and sections 330.321 to 330.325 of the FAO Manual;

Having examined the written documents in the dossier, oral proceedings having been neither requested by the parties nor ordered by the Tribunal;

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

A. In March 1968 the Chief of the Internal Audit and Inspection Branch submitted an audit inspection report on the FAO's African Regional Office in Accra. He reported that Mr. Akinola Deko, who was head of the office and FAO regional representative at grade D.2, had committed errors which amounted to unsatisfactory performance and cast serious doubts on the office's efficiency. Further to the report, the Director-General called Mr. Akinola Deko to Rome and had three meetings with him. Not being satisfied with his explanations at their first meeting on 13 May 1968, the Director-General, on the next day, suggested to Mr. Akinola Deko that if he resigned he would consider the whole matter closed. Mr. Akinola Deko replied that he was prepared to resign. He later sought, however, and obtained a further meeting with the Director-General. At that meeting, pleading section 330.322 of the Manual of the Organization, complainant asked to receive a memorandum setting out his alleged errors. In the memorandum, which he received on 17 May 1968 and to which were appended the nine charges against Mr. Akinola Deko, the Director-General expressed regret at being compelled to initiate the dismissal procedure under section 330.325 of the Manual on the ground of unsatisfactory performance, but stated that he would desist and regard the matter as closed provided that Mr. Akinola Deko offered his resignation within five days. Complainant replied in two letters of 23 and 27 May 1968 in which he gave explanations which, in his view, fully exonerated him from the charges made against him in the memorandum. He observed that the person who had carried out the audit inspection had not granted him a hearing, although he had spent two weeks in Accra, and had been wrong to accept as proofs documents prepared by one of complainant's subordinates in the Regional Office, whom he accused of malice towards him. Finally, he criticised the Director-General for holding their first meeting in the company of officials who were familiar with the audit inspection report whereas he himself had not read it, and said that, being thus caught unawares, he had not replied as convincingly as he might otherwise have done to the flood of accusations to which he had been exposed. At the end of his letter of 23 May 1968 he stated: "I will be grateful if you would regard this as my notice of resignation which should come into effect as from 1 July 1968 provided that I can take whatever leave is due to me as from that date." On 5 June 1968 the Director-General informed complainant that he accepted his resignation with effect from 1 July 1968 and that, in accordance with the terms of the memorandum, the matter was now regarded as closed. The letter did not touch upon the substance of the dispute.

B. Mr. Akinola Deko appealed to the FAO Appeals Committee and it reported on 20 June 1968. It held that, since the disciplinary procedure had not been completed, complainant's employment had been terminated by his own resignation and that he was therefore not entitled to plead section 301.111 concerning appeals to the Appeals Committee. The Director-General endorsed the Committee's findings and informed complainant on 26 November 1968 that his appeal was dismissed.

C. In his complaint against the decision taken by the Director-General on the basis of the Appeals Committee's report, Mr. Akinola Deko alleges that the procedure followed by the Organization after receiving the audit inspection report was not in accordance with sections 330.321 to 330.325 of the Manual, governing the disciplinary procedure. Under those provisions an official who initiates that procedure must send a memorandum describing the complaints against the official concerned to the Chief of Personnel so that the latter can review them and the measures recommended, in the light of the official's personnel record and decide whether to proceed with the

matter. In the present case the Director-General, who himself initiated the procedure, failed to consult the Chief of Personnel. Complainant adds that his rights of defence were overlooked in two respects: first, the person who carried out the audit inspection in Accra did not give him a hearing and, secondly, the Director-General did not allow him time to study the file and prepare his defence before inviting him to express his views. As to the substance, he again rejects all the charges against him and requests the Tribunal to invite the Director-General to admit that the audit inspection report was mistaken; to take disciplinary action against the person who carried out the audit inspection and the member of the Regional Office who drew up the incriminating documents - whom he charges with collusion - and to compel them to offer him their apologies. He prays the Tribunal to award him damages for the loss of his employment and for injury to his reputation.

D. The Organization replies that Mr. Akinola Deko resigned voluntarily and that there is therefore no decision which he can legitimately contest, the Director-General having declared the matter closed on receiving his resignation. His rights of defence were respected: there was no need to give him a hearing either before initiating the disciplinary procedure or in connection with the inspection. The Director-General kindly allowed complainant several opportunities to offer explanations before sending him the memorandum. The Director-General did not refer the case to the Chief of Personnel because the latter was subordinate to the person who had initiated the procedure and held a grade lower than complainant's. The Organization reserves its right to reply concerning the merits of the complaint, should the Tribunal reject its conclusions and decide to examine questions of substance. It requests the Tribunal to dismiss complainant's arguments and maintains that in any case the Tribunal cannot ask the Director-General to adopt a subjective attitude such as is requested by complainant.

CONSIDERATIONS:

1. The complaint is lodged against the decision whereby the Director-General, endorsing the recommendation of the Appeals Committee, noted that the complainant's appointment had terminated as a result of his resignation. The resignation of an official of an organisation entails the termination of his appointment unless it is established that the resignation was not given voluntarily. In order to prove that the resignation which he submitted to the Director-General on 23 May 1968 was not voluntary, Mr. Akinola Deko maintains, first, that the procedure followed by the Director-General in the days preceding the letter of resignation was irregular in that it was not in conformity with Manual section 330 and, secondly, that pressure was exerted upon him before 23 May 1968 and his freedom of action was thereby restricted.

2. In cases where the Director-General suspects an official of having committed acts of indiscipline in the performance of or in connection with his duties, he has to take action in the most adroit fashion to safeguard, if possible, the reputation both of the Organization and of the official. For that reason, before initiating the disciplinary procedure, the Director-General is always free - possibly even for the purpose of obtaining fuller information - to summon the official and ask him for explanations.

In the present case the procedure which was started could not cause any injury to complainant particularly since it was by a unilateral act of complainant that he terminated that procedure. Under the circumstances the plea based on an alleged infringement of FAO Manual section 330 is unacceptable.

3. As regards the question of the validity of the resignation of complainant the Tribunal notes that at the meeting which he had with Mr. Akinola Deko on 14 May 1968, the Director-General suggested that he would be ready to accept his resignation, consider the whole matter closed and refrain from initiating the disciplinary procedure if Mr. Akinola Deko thought it preferable to resign. Mr. Akinola Deko later sought a further meeting with the Director-General and asked for written communication of the accusations against him, in accordance with Manual section 330.322; this he obtained, with a period of five days to think about the matter. He replied in detail with facts and figures to the nine charges against him and considered himself fully vindicated. At the end of his reply he stated, however: "I will be grateful if you would regard this as my notice of resignation which should come into effect as from 1 July 1968 ...". It appears from the foregoing that no threat or pressure was imposed by the Organization on Mr. Akinola Deko, that the failure to submit the matter to the Chief of Personnel cannot have had any effect whatsoever upon the complainant's freedom of action, that his resignation was therefore freely given and that his appointment terminated as a result. The reliefs claimed are accordingly refused.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and Mr. A.T. Markose, Deputy Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Bernard Spy, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 26 May 1970.

M. Letourneur
André Grisel
A.T. Markose
Bernard Spy

Updated by PFR. Approved by CC. Last update: 7 July 2000.