

EIGHTY-SECOND SESSION

In re Wassef (No. 16)

Judgment 1571

The Administrative Tribunal,

Considering the sixteenth complaint filed by Mr. Maher Nabih Wassef-Gerges against the Food and Agriculture Organization of the United Nations (FAO) on 14 August 1995, the FAO's reply of 9 January 1996, the complainant's rejoinder of 13 February and the Organization's surrejoinder of 27 May 1996;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, which neither party has applied for;

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

A. The complainant's record of employment at the FAO, which he left in January 1994, is set out under A in Judgment 1401 on his first two complaints. Facts relevant to this complaint appear under A in Judgment 1533, in which the Tribunal dismissed his thirteenth complaint.

After seeing the complainant on 5 October 1992, the Assistant Director of the Administrative Services Division gave the complainant in a letter of 6 October what he described as "constructive comments" about the work of a civil servant, presuming, he said, that "it is in your interest to continue working for FAO".

In a letter dated 30 November 1993 the complainant asked the Director of the Administrative Services Division for transfer to a permanent post at grade P.4 at Rome in keeping with a "verbal offer" which he said the Assistant Director had made him on 5 October 1992. By a letter of 8 March 1994 the Director of the Personnel Division denied that the Assistant Director had ever made him any binding offer.

The complainant appealed to the Director-General on 11 May 1994 and by a letter of 24 June the Deputy Director-General rejected his claim. On 27 July he put the matter to the Appeals Committee, which recommended rejection in a report of 15 April 1995. By a letter of 12 June 1995, which he impugns, the Director-General endorsed the Committee's recommendation.

B. The complainant submits that the FAO failed to keep its promise to grant him a continuing appointment on a grade P.4 post at headquarters.

He asks the Tribunal to:

"1. award [me] the maximum of the compensation claimed US \$ 2,500,000 (Two Millions Five Hundred Thousand Dollars US),

2. award [me] the payment of a lump sum of US \$ 6,000.00 for cost,

3. award [me] the reimbursement by the FAO for the cost of publication of this judgement in 4 American, 4 European and 4 Arab daily newspapers and magazines,

4. include in its judgement a penalty clause for its execution within 30 days from the date of this judgement equivalent to 50% of the total of all awards for every two weeks of delay by the FAO Administration seen the cost of money equivalent to more than 25% [I] suffered and was documented in [my] complaint No. 11 before this Tribunal."

C. In its reply the FAO says it has never made him any such promise; nor has he adduced any "valid" evidence of one.

D. In his rejoinder the complainant disputes points of fact in the reply and describes the Organization's treatment of him as malicious.

E. In its surrejoinder the FAO answers issues of fact and of law in the rejoinder.

CONSIDERATIONS

1. The FAO employed the complainant in Chad under a fixed-term contract which was to expire at 30 September 1993. It later extended his appointment to 7 January 1994 for medical reasons in the circumstances recounted in Judgment 1531, on his ninth complaint.

2. On 27 August 1992 he sent what he called a "strictly personal" letter to the acting Assistant Director of the Administrative Services Division (AFS) in which he made remarks about other staff but no claim. That letter was passed on to the newly appointed Assistant Director of the same division, who discussed it with him on 5 October 1992 and sent him a letter the next day summing up the discussion. What is pertinent to the present claim is the concluding remark:

"Your letter ... does not define a scope, nor does it request any particular action. I am given to understand, however, that it is in your interest to continue working for FAO. In that spirit, I wanted to give some - hopefully - constructive comments."

3. There was nothing in that letter to suggest that the complainant had received any offer of a continuing appointment. He did not at the time in any way dispute the Assistant Director's account of the discussion. Not until nearly a year later, on 14 September 1993, did he send another official a handwritten letter which he called "personal" and in which he alleged that the Assistant Director had said to him:

"I know that you are looking forward to put your foot back in Rome. I promise you that before the end of your present contract in Tchad, I will take the necessary actions for your transfer to a post with us here."

He followed that up in a letter of 30 November 1993 to the Director of AFS in which he claimed:

"My transfer to a Continuing P-4 post in Rome ... in conformity with AFS confirmed proposal/offer and my acceptance ... on 5 October 1992."

4. Although the Director acknowledged that letter on 10 December 1993 with a promise to reply in due course, he did take until 8 March 1994 to answer saying that the Assistant Director had not made the alleged offer and had no authority anyway to bind the Organization that way. But the complainant's letter of 30 November 1993 had been seven pages long with 56 attachments and had set out a great litany of grievances and claims; on 11 January 1994, too, the complainant had addressed an appeal to the Director-General, putting forward this and other claims. In those circumstances the delay in replying does not weaken the force of the denial.

5. The complainant's appeal went to the Appeals Committee, and the upshot was that in a letter of 12 June 1995 and on the Committee's recommendation the Director-General rejected his claim to a continuing appointment at headquarters. That is the decision he is impugning.

6. The rules of good faith give a staff member the right to the fulfilment of a substantive promise made by the organisation that employs him provided that certain conditions are met. The Tribunal stated those conditions, for example in Judgment 782 (*in re Geiser*). One is that there must be satisfactory evidence that such promise was made. Here there is none. There is no evidence to suggest that before seeing the Assistant Director on 5 October 1992 the complainant had made any request for transfer to Rome. The Assistant Director's letter of the next day shows that at that meeting he merely took note of the complainant's interest in continuing to work for the Organization. The Tribunal is satisfied that, had the Assistant Director's summary of their discussion been inaccurate or inadequate in any respect, the complainant is not someone who would have tarried over eleven months to put the record straight. The conclusion is that the evidence is quite insufficient to show the existence of the promise that the complainant is seeking to rely on.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment Sir William Douglas, President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Mark Fernando, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 30 January 1997.

William Douglas
Mella Carroll
Mark Fernando
A.B. Gardner

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