

EIGHTY-SECOND SESSION

In re Wassef (Nos. 20 and 21)

Judgment 1574

The Administrative Tribunal,

Considering the twentieth complaint filed by Mr. Maher Nabih Wassef-Gerges against the Food and Agriculture Organization of the United Nations (FAO) on 23 October 1995, the FAO's reply of 16 February 1996, the complainant's rejoinder of 7 May and the Organization's surrejoinder of 13 August 1996;

Considering his twenty-first complaint filed against the Organization on 23 October 1995, the FAO's reply of 16 February 1996, the complainant's rejoinder of 7 May and the Organization's surrejoinder of 31 July 1996;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Considering that the two complaints should be joined to form the subject of a single judgment.

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 summed up under A in Judgment 1401 on his first two complaints. Facts relevant to this dispute appear under A in Judgment 1486 on his eighth complaint.

By a letter of 19 June 1995 the Secretary of the Advisory Committee on Compensation Claims informed the complainant that the Committee had recommended (1) refunding all the medical expenses he had incurred for the treatment of the hepatitis B he had caught while stationed in Chad; (2) treating him as having been on sick leave with full pay for the period from 22 November 1993 to 4 January 1994; and (3) rejecting his claims to recognition of partial incapacity and payment of his wife's travel expenses from Rome to Paris and daily subsistence allowance while she was in Paris during his stay in hospital there. The Secretary told him that the Director-General endorsed those recommendations.

By letters dated 1 and 2 August 1995 he addressed appeals to the Director-General. In a single letter of 29 September 1995, which he received on 7 October, the Assistant Director-General informed him that the Director-General had rejected both appeals and that he was free to appeal to the Appeals Committee if he so wished. The complainant is impugning the implied rejection of his claims.

B. The complainant submits that the postmark on the letter of 29 September 1995 was forged. So he is, he argues, entitled to infer rejection from the FAO's failure to reply to his appeals within the time limit of sixty days set in its rules. He accuses the Administration of moral turpitude and the members of the Advisory Committee of being "unqualified charlatans".

In his twentieth complaint he asks the Tribunal to:

- "1. declare the Committee's report improper, impure and inadequate in quality,
2. consolidate the substance of this recognition by recognising my permanent partial incapacity and all related benefits from 22 August 1993,
3. extend my appointment from 4.1.1994 to the date on which this claim will be settled and approve my sick leave accordingly,
4. grant me for life effective 31.5.95 the actual date of recognition by the Director-General which was never officially communicated to me or effective the date of 27 July 1995 (date of the Secretary's communication of recognition of my service-incurred illness) an equivalent occupation at Headquarters appropriate to my qualifications, experience, title in accordance with Manual Section 342.524 ... including the promotion to P-4. Without any prejudice to any other claim of mine for the promotion with transfer to Hqs, this equivalent occupation should have been obtained at my last grade P-3 around 13 September 1993 date of my letter to dr. Eder requesting her to take necessary actions for the recognition,

5. instruct Personnel to effect the prompt payment of all benefits, entitlements, salaries according to points 3 and 4 above, plus the cost of money equivalent to 25% (twenty five per cent) per year for each amount due calculated from the day it was due,
6. instruct Personnel to effect the prompt payment of all per diem in Rome due to me from the date on which Personnel stopped it to the date on which this claim will be settled and paid plus the cost of money equivalent to 25% (twenty five per cent) per year for each amount due calculated from the day it was due (each period of 15 days to be calculated on the initial day it was due for),
7. grant me 30 days of special leave (R & R) with full pay starting the following day after the date on which this claim will be settled & prior of taking up duty,
8. award me the compensation of US \$ 2,000,000.00 for not having recognised my service-incurred illness on September 1993 with all related benefits and for damages and injuries,
9. award me the compensation of US \$ 2,000,000.00 for punitive damages since the Director-General disregarding my invitation in my appeal did not put an end to this treatment within the time limit established by Staff Rules for his decision on this appeal.
10. award me the payment of a lump sum of US \$ 6,000.00 for cost.
11. order 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,
12. to include in this judgement a penalty clause for its execution within 30 days from the date of this judgement equivalent to 50% of the total of awards for every two weeks of delay by the FAO Administration."

In his twenty-first complaint he asks the Tribunal to:

- "1. award me the compensation of US \$ 1.5 Millions for this gross wilful misconduct,
2. award me the compensation of US \$ 1.5 Millions for damages,
3. award me the payment of a lump sum of US \$ 6,000.00 for cost,
4. order the payment of 25% per year for the total of above awards effective 2 October 1995 date of expiry of the time limit for the reply by the Director-General,
5. order 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,
6. to include in this judgement a penalty clause for its execution within 30 days from the date of this judgement equivalent to 50% of the total of awards for every two weeks of delay by the FAO Administration."

C. The FAO replies that both complaints are irreceivable because the complainant has failed to exhaust the internal means of redress. By relying on what he says is an inaccurate postmark on the envelope containing its reply of 29 September 1995 to his appeals, by treating that reply as invalid, and so by "deliberately" avoiding resort to internal remedies, he betrays the vexatious intent that underlies the two cases.

D. In his rejoinders the complainant objects to the FAO's pleas on receivability, submits that the Organization should have declared his illness service-incurred sooner and charges the Advisory Committee on Compensation Claims with "wilful misconduct".

E. In its surrejoinders the FAO maintains that the complaints are irreceivable. It points out that since the Tribunal has already found his illness to be service-incurred the matter is *res judicata* anyway. It denies that the Committee acted improperly.

CONSIDERATIONS

1. The main facts that have given rise to these two complaints are set out in Judgments 1401 on Mr. Wassef's first and second complaints and 1486 on his eighth. In November 1993 he claimed compensation and other benefits on the grounds of service-incurred illness. The secretary of the Advisory Committee on Compensation Claims told him in a letter of 4 March 1994 that his claims were rejected. On 16 March he wrote to the secretary asking for review. Without awaiting the outcome he filed his eighth complaint with the Tribunal on 16 March 1995. The Organization objected to the receivability of that complaint on the grounds of his failure to exhaust internal

remedies. In Judgment 1486, however, the Tribunal rejected that plea on the grounds of inordinate delay in the internal proceedings, went into the merits, declared the complainant's illness to have been service-incurred, and sent the case back for the Organization to determine his entitlements.

2. As the Tribunal observed in that judgment under 13, not even in its surrejoinder of 28 July 1995 had the Organization said whether the Advisory Committee's recommendations had been put to the Director-General or whether he had taken his decision. Yet it now emerges that even while that case was pending before the Tribunal the Committee had recommended, and the Director-General had agreed, that:

(a) the complainant's illness be recognised as service-incurred and that he be reimbursed all medical expenses and granted full pay for the period of his illness,

(b) his claim to recognition of partial incapacity after 4 January 1994 be rejected since he had been declared fit for work thereafter both by his own physician and by the FAO's own medical service; and

(c) his claim to payment of his wife's expenses for travel from Rome to Paris and back in connection with his illness be rejected since he had needed no additional attention while in hospital in Paris.

3. In letters of 1 and 2 August 1995 the complainant addressed appeals to the Director-General. In the one of 1 August he asked the Director-General to:

(a) declare that the Advisory Committee's report was "improper, impure and inadequate in quality";

(b) "consolidate the substance of this recognition by recognising [his] permanent partial incapacity and all related benefits from 22 August 1993",

(c) "extend [his] appointment from 4.1.1994 to the date on which this claim will be settled and approve [his] sick leave accordingly",

(d) grant him an appropriate appointment at headquarters for life,

(e) direct prompt payment of all the above benefits and entitlements with interest, and

(f) grant him 2 million United States dollars as compensation for not having recognised his illness as service-incurred in September 1993.

In his letter of 2 August he alleged that:

"... to shoulder shamelessly Personnel's misconduct in squandering of unlawful harm to staff [the Advisory Committee] unanimously cements Personnel's ruling regarding matters which were never brought to its attention, authority nor competence.

Thus, the recommendations of this Committee are designed to accommodate and to justify the wilful wrongdoings of Personnel Division. ... the present recognition of my service-incurred illness has been crookedly manipulated by the [Advisory Committee] to empty it from its real substance. Exactly, where are the benefits of my illness as service-incurred? ...

In view of the foregoing and seen the nature of breach of obligations of the [Advisory Committee] and its active role for over 20 months in messing around with my case and its intentional misconduct in aiming at causing me, not only damages limited to the past 22 months but its wilful behaviour for these damages to be extendable to my future, I ... request ... the payment of [\$ 3 million] as compensation for damages."

4. By his letter dated 29 September 1995 the Director-General rejected those claims. Instead of lodging an appeal against that decision with the Appeals Committee in accordance with Rule 303.1313 the complainant filed the present complaints with the Tribunal on 23 October 1995, purporting to impugn, not the express, but implied rejection of his appeals of 1 and 2 August 1995. He argues that, although the envelope containing the Director-General's letter bore a postmark dated 29 September 1995, he did not receive it until 7 October; that the decision was not communicated to him, as Rule 303.1312 required, within the time limit of sixty days from the notification of the claims in his letters of 1 and 2 August; and that he may therefore appeal directly to the Tribunal against implied rejection. The Organization retorts that the complaints are irreceivable because the complainant has failed to go to the Appeals Committee and so to exhaust his internal remedies.

5. Rule 303.1313 provides that a staff member, if he is dissatisfied with the Director-General's reply or has

received no reply within the time limit in Rule 303.1312, may submit a memorandum of appeal to the Appeals Committee. Even assuming that the complainant had not received the Director-General's decision within sixty days of the notification of the claims in his letters of 1 and 2 August, the remedy he had under Rule 303.1313 was to appeal to the Appeals Committee against the implied rejection of his claims; he was not entitled to come straight to the Tribunal. Besides, even before he acted on his assumption of implied rejection he did, on 7 October 1995, receive the Director-General's decision. He thus had an express decision and appeal against it too lay, according to the Staff Rules, to the Appeals Committee. As was held in Judgment 532 (*in re Devisme*), a complainant may no longer properly challenge an implied decision when he has an express one.

6. The conclusion is that whether he received the Director-General's letter of 29 September 1995 before or after the lapse of the sixty-day period both his complaints are irreceivable under Article VII(1) of the Tribunal's Statute on account of his failure to exhaust his internal remedies.

DECISION

For the above reasons,

The complaints are 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