

## **EIGHTY-FIFTH SESSION**

### ***In re* Everts (No. 2)**

#### **Judgment 1742**

The Administrative Tribunal,

Considering the second complaint filed by Mr. Daan Willem Everts against the Food and Agriculture Organization of the United Nations (FAO) on 12 February 1997 and corrected on 22 May, the FAO's reply of 4 September, the complainant's rejoinder of 9 December 1997 and the Organization's surrejoinder of 30 March 1998;

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. Facts relevant to this case are set out, under A, in Judgment 1741, also delivered this day on Mr. Everts' first complaint. The World Food Programme is a subsidiary body of the United Nations and of the FAO. On 15 June 1995 the Executive Director of the Programme decided to relieve him of duty as Deputy Executive Director for Operations. On 16 October 1995 he lodged an internal appeal against the Director's refusal to reverse her decision. In its report of 21 June 1996 the Appeals Committee of the FAO held that the challenged decision was an "affront to his dignity", but it found no evidence of material injury. It recommended granting him redress for "grave moral injury". By a letter of 15 November 1996, which he impugns, the Director-General sent him a copy of the report and rejected his appeal.

B. The complainant submits that in suspending him from duty for misconduct the FAO acted in breach of due process and thereby made a mistake of law. The decision and the hasty execution of it were in breach of the Organization's duty of respect for his dignity and good name and caused him unnecessary and undue injury. Besides material injury, he sustained, as the Appeals Committee held, grave moral injury: the offer of transfer to a less senior post in the United Nations was so "deeply humiliating" as to damage his career and good name. What is more, the decision was out of all proportion to anything he had done.

He claims the quashing of the impugned decision and an award of costs.

C. In its reply the FAO speaks of the intolerable disruption of work the complainant caused by his attempts to muster support inside and outside the Programme. The impugned decision, which was "an unavoidable response to his own behaviour" and taken for the sake of the Programme, was a reasonable exercise of discretion that heeded his rightful interests.

Even if there might have been grounds for disciplinary action, says the defendant, it took another course. There was nothing punitive about letting him choose between a new job with the United Nations and special leave on full pay. Besides, he was given ample opportunity to have his say.

The defendant observes that the post he was offered entailed no change in grade. The Programme's interests precluded giving him longer notice. In any event the decision cannot have taken him aback since the Executive Director had warned him in her letter of 21 April 1995 confirming non-renewal that they could not "continue to provide joint leadership to the Programme in an atmosphere where staff are being actively encouraged to take sides". He offers no evidence of material or moral injury.

D. In his rejoinder the complainant submits that the decisions not to renew his contract and to "suspend him from duty" were linked and tantamount to "dismissal". The persistent allusions to his conduct show that he suffered a hidden disciplinary sanction. He denies waging a campaign against the decision and points out that the Appeals

Committee declared it an "affront to his dignity". He sees bad faith in the FAO's denial of material injury.

E. In its surrejoinder the FAO contends that the non-renewal was not at all the same thing as the special leave, and the reasons were not the same either. How can they be tantamount to dismissal when the reason for non-renewal was poor performance whereas he was put on special leave, three months later, because of his attempts to put pressure on the Director? The defendant maintains that he suffered no material injury since on leaving the Programme he took up senior posts with the Dutch Government and then with another international organisation. Such an organisation is "not liable for the whole career of the holder of a fixed-term appointment".

## CONSIDERATIONS

1. The World Food Programme (WFP) recruited the complainant on 31 August 1993 under a fixed-term appointment for two years. Most of the material facts are summed up in Judgment 1741, also delivered this day, on his first complaint, in which he impugns a final decision of 15 November 1996 by the Director-General of the FAO not to renew his contract.

2. After taking the original decision, on 21 April 1995, the Executive Director of the Programme sent the complainant a memorandum dated 15 June 1995. She cited statements he had made, in a memorandum of 25 May 1995 to her, that he either could or would not "stop the activity outside the Programme" aimed at making her change her mind about his contract. She taxed him with breach of the standards of conduct in the international civil service and said that since he must not go on rejecting her authority she would have him transferred to the United Nations Department of Humanitarian Affairs, with the consent of its Director or, if he preferred, put him on special leave.

3. In his reply of 22 June 1995 the complainant rejected her charges and said he saw no reason to choose between the options, objecting as he did to the very decision which had led her to offer him the choice.

4. On 24 July 1995 he appealed to her against her decision of 15 June 1995. By a letter of 14 September 1995 she rejected his appeal and upheld her decision.

5. He went to the Appeals Committee of the FAO on 16 October 1995. In its report of 21 June 1996 to the Director-General the Committee held that the lawfulness of the decision was "challengeable on both formal and substantive grounds". What was more, the very processing of the decision had been an "affront to his dignity" and caused him serious moral injury. The Committee recommended "prompt redress of some kind to make him whole". But on 15 November 1996 the Director-General wrote rejecting his appeal against being put on special leave up to the end of his contract.

6. In this, his second, complaint he submits that that decision erred in law by denying him due disciplinary process.

7. In the defendant's submission the decision was, on the evidence, warranted by his behaviour, which fell short of the standards of conduct required of international civil servants. He was "intriguing to get governments and staff to induce a change of mind in the Director". That is borne out by her memorandum of 15 June 1995 and corroborated by the Director-General, who said to him in the impugned decision:

" ... having accused you of breach of the Staff Rules and the Standards of Conduct of the International Civil Service - for example by blatant defiance of her - the Executive Director had the duty of safeguarding the Programme by proposing the transfer and, when you declined, putting you on special leave until the expiry of your contract."

8. Because of the complainant's high rank in the Programme the decision was tantamount to a disciplinary sanction imposed on him on the grounds of his behaviour. Since those grounds rested on his own supervisor's allegations and accusations there ought to have been due disciplinary process affording him the opportunity of arguing his case and, if need be, questioning anyone who was levelling charges against him.

9. By depriving him of the safeguards of due disciplinary process before taking what amounted to disciplinary action the Director-General erred in law. His decision therefore cannot stand.

10. The decision was an affront to the complainant's dignity. There being no material injury, he is entitled to an award of 4,000 United States dollars in moral damages and to a sum in costs.

## DECISION

For the above reasons,

1. The decision of 15 November 1996 is set aside.
2. The defendant Organization shall pay the complainant 4,000 United States dollars in moral damages.
3. It shall pay him 10,000 French francs in costs.

In witness of this judgment, adopted on 20 May 1998, Mr. Michel Gentot, President of the Tribunal, Mr. Jean-François Egli, Judge, and Mr. Seydou Ba, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 9 July 1998.

*(Signed)*

Michel Gentot  
Jean-François Egli  
Seydou Ba

A.B. Gardner