

The Administrative Tribunal,

Considering the complaint filed by Mr P.-S. B. against the Food and Agriculture Organization of the United Nations (FAO) on 23 December 2003 and corrected on 9 January 2004, the FAO's reply of 20 April, the complainant's rejoinder of 19 May, and the Organization's surrejoinder of 30 July 2004;

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

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

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

A. The complainant, a Canadian national born in 1945, is a former official of the World Food Programme (WFP), an autonomous joint subsidiary programme of the United Nations (UN) and the FAO. During the course of 18 years with the WFP he was reassigned to different duty stations; at the material time his duty station was Managua, Nicaragua. He was reassigned to Peshawar, Pakistan, where he arrived on 23 August 2001.

In an e-mail of 25 July a WFP official informed the complainant that the Government of Pakistan would be issuing a visa upon his arrival in the international airport. This visa could be extended, but he was told that it would be "appreciated" if he could get a proper UN assignment visa from a Pakistan embassy or mission if one existed in the country of residence or departure. There was no Pakistan embassy in Nicaragua. His official visa was delivered on 10 October 2001.

Having opted for the lump-sum payment for the shipment of his personal belongings from Managua to Peshawar the complainant was informed in an e-mail dated 26 July that the 80 per cent lump-sum liability of his shipment would be approximately 20,000 United States dollars, but that the exact amount would be communicated to him later that day. By an e-mail of 15 November he was notified of the exact amount, 11,239 dollars.

The complainant's personal effects arrived in Karachi, Pakistan, on 17 September 2001. On 20 September he informed the Finance Administrative Officer of the Programme's Country Office in Pakistan that his belongings had arrived and that his vehicle was due to arrive shortly. He added that, if the containers were not cleared in due time, a daily demurrage charge would apply; he considered that the Programme should assume these charges. His vehicle arrived on 28 September. There were delays in processing the clearance paperwork and demurrage charges continued to mount. A clearing agent paid these charges for the complainant in October 2001. By two e-mails of 4 and 6 December the Office asked the complainant to pay these charges without delay; he was told that he could claim reimbursement for them in his Travel Expense Claim. On 17 January 2002 the Office was informed that the customs authorities were preparing to auction the complainant's vehicle because it had remained uncleared for more than three months.

On 12 March the complainant was paid the lump sum of 11,239 dollars. On 10 April he lodged an appeal with the Executive Director of the Programme, arguing that the late payment of an amount lower than the original estimate invalidated his choice of a lump-sum payment in lieu of payment of actual shipping charges. The Executive Director replied on 19 June, saying that the Programme was willing to reimburse the complainant the difference between the lump-sum amount and the actual costs incurred. Additionally, the WFP would defray the demurrage charges and reimburse the customs fees paid by the clearing agent in Pakistan. He rejected, however, the claim made concerning the complainant's personal vehicle, stating that the Programme was not responsible for handling the importation of private vehicles. On 1 July 2002 the complainant filed an appeal against this offer with the Appeals Committee of the FAO. In it he claimed the difference between the lump-sum amount paid and the original estimate, the value of his vehicle, and interest on all sums due.

In its report dated 9 July 2003 the Committee considered that the complainant was partially to blame because he had not sought confirmation of the final amount of the lump sum prior to the shipment and he had been careless with regard to the visa requirements and the submission of shipping documentation essential for the customs

clearance of his goods. It noted that the Executive Director of the Programme had made a fair offer to the complainant. It determined that on the issue of the complainant's vehicle, the Programme was not responsible. It recommended rejecting the appeal. The Director-General of the FAO did so in a letter dated 16 October 2003. That is the impugned decision.

B. The complainant argues that there were inaccuracies in the Appeals Committee's report, and that these in turn misled the Director-General when he took his final decision. He points out that the Committee, despite finding that the Programme had shown a certain degree of inefficiency in applying the lump-sum procedure, in its calculation of the sum, the confirmation of the amount and the time it took to pay him, nevertheless considered that he was partially at fault; however, confirmation of the final amount of the lump-sum payment was the Programme's responsibility, not his, and he had made several attempts to find out what the exact amount would be. He had not been careless concerning the submission of documents essential for customs clearance purposes: "for security reasons" all international staff were to have their UN identification with them at all times, therefore he kept his UN laissez-passer with him.

The complainant submits that he has suffered serious financial losses and moral injury as a result of the Programme's "administrative negligence and lack of diligence". He says that he was not given proper guidance and assistance before or after his reassignment. Furthermore, in dealing with the complainant's "installation" problems, there was a failure to take into account the emergency situation in Pakistan following the attacks in the United States on 11 September 2001. Rather than insisting that customs clearance was "technically" his responsibility, the Programme should have considered the emergency situation as *force majeure* and taken the necessary steps to avoid demurrage charges and the total loss of his car.

The complainant contends that the administrative errors – in particular by first informing him that the amount of the lump sum would be 20,000 dollars and later reducing that amount to 11,239 dollars – invalidate his decision to choose the lump-sum option over the reimbursement of actual expenses. In addition, since the total loss of his car was due to administrative errors, the Programme cannot "escape its responsibility" to compensate him financially for his loss.

The complainant claims the difference between the lump sum paid to him and the original amount set at 20,000 dollars plus the actual value of his vehicle (14,870 dollars). He also claims interest on all amounts due, plus costs.

C. In its reply the Organization states first that the complainant provides no evidence that the clearance of his goods was made impossible by the events of 11 September 2001. There had been no directive issued following these events that prevented the complainant from providing the necessary clearance paperwork. Furthermore, his accusation that the Programme did not offer adequate administrative support is simply not based on facts: even though the complainant was fully responsible for the shipment of his personal effects and his personal vehicle, the Programme nevertheless provided him with guidance and support. It also sought equitable ways out of the dispute.

It submits that by selecting the lump-sum option in accordance with directive HR2001/002 from the Human Resources Division, the complainant took over all responsibility for his shipment and any associated costs. In addition, Manual Section 420.5.51 explicitly excludes any responsibility on the part of the Programme for the transport of personal vehicles. Moreover, Pakistan is not on the list of countries for which a partial reimbursement applies to the transportation of private vehicles.

The FAO asserts that the complainant acted in bad faith. Not only did he have an obligation to verify the accuracy of the lump-sum estimate before he relied on it, but he was aware that the estimate was too high. He was only charged 7,500 dollars for the shipment of his personal effects. In any event, he would not have been entitled to 20,000 dollars, but to 80 per cent of that estimate, that is 16,000 dollars. It contends that the complainant accepted the lump-sum offer because he knew in advance that it represented a substantial windfall over the actual cost of the shipment. It points out that the complainant had made arrangements for the shipment in April 2001 when his transfer was confirmed, several months before he even enquired about the lump-sum amount and that he never considered seriously a shipment through the Programme.

On the issue of the demurrage charges, the FAO says that the complainant is misguided; there existed no "emergency situation as *force majeure*". He failed to demonstrate that any situation existed that made it impossible to clear his shipment. The complainant himself exacerbated the damages by unilaterally considering that the Programme should be responsible for the clearance of his goods, which is contrary to the provisions governing a

lump-sum payment. He also did not have the proper visa upon arrival, even though he was requested to have this taken care of prior to leaving Nicaragua. Additionally, he refused to pay the demurrage charges once the shipment was cleared.

Throughout the course of the dispute the Programme made every effort to come to an “agreeable solution to the situation”. The WFP informs the Tribunal that the Executive Director’s offer as originally proposed still stands.

D. In his rejoinder the complainant denies that he made arrangements for the shipment of his personal effects in April; at that time he merely made arrangements for the temporary storage of his possessions, since his rental agreement had expired and he knew that he would leave Nicaragua. He should not be blamed for not having the proper visa before arriving in Pakistan; there was not a Pakistan embassy or consulate in Nicaragua.

The notification that his vehicle would be auctioned off came after three months in port. However, the lump-sum payment was not made until some six months after his belongings arrived in Pakistan, and only after several reminders. He contests having suggested that the events of 11 September 2001 made it “impossible” to clear his goods; he said that these events caused an “emergency situation” during which Programme officials failed to give him adequate support and help. He agrees that an estimate is subject to change, but he finds a change from 20,000 dollars down to 11,239 dollars not a “normal” adjustment.

There was no financial windfall; he shipped some of his belongings to Pakistan and others to Canada, thus the total was more than twice that quoted by the Programme. In addition, he paid 3,000 dollars to ship his car from Canada to Pakistan. He argues that if the Programme had given him more effective assistance, such as paying the demurrage charges and debiting his account, it would have avoided the loss of his vehicle.

He did not accept the offer made by the Executive Director because he found it “inadequate” in relation to all the costs and prejudice he suffered.

E. In its surrejoinder the FAO contends that the complainant has made a number of misleading and unsupported statements. The complainant had a duty to clear his personal effects as well as a duty to mitigate any losses. It points out that the Programme did acknowledge that the initial estimate was too high and the payment made too late. It sought to remedy these errors by offering to pay the difference between the shipping costs and demurrage charges actually incurred and the lump-sum amount credited to his account. However, the complainant has refused to take this offer seriously. In addition, it did offer assistance to the complainant by suggesting that he charge the additional expenses on his Travel Expense Claim, so that he would be reimbursed.

It maintains its position that it was not liable for the transport or clearance of the complainant’s personal vehicle. It notes that the complainant has not provided any documentation to support his assertion that he spent 15,000 dollars on shipping his effects. In any event, the shipment sent to Pakistan constituted the maximum weight allowance, so the cost of any shipment to Canada cannot be considered here.

CONSIDERATIONS

1. The complainant contests the amount of a lump-sum payment for the shipment of his personal effects following a change of duty station in mid-2001.
2. On 10 April 2002 the complainant lodged an appeal with the Executive Director of the WFP where he alleged that the late payment of a smaller amount than originally estimated by the Programme invalidated his choice of a lump-sum payment in lieu of all shipping charges and that the events of 11 September 2001 caused a situation of *force majeure* in Pakistan which prevented him from retrieving his belongings and vehicle from customs.
3. In his reply of 19 June the Executive Director offered reimbursement by the Programme of the difference between the lump sum received and the actual shipping costs incurred, upon submission of the appropriate invoices; to defray the demurrage charges levied on the complainant’s personal effects until the date the lump sum was credited to the complainant’s account; and to reimburse the customs fees paid by the clearing agent in Pakistan. He stopped short of offering to pay the expenses incurred for the transport of the vehicle, much less for the reimbursement of its value. However, he apologised for the delay in the payment of the lump sum.

4. The complainant refused the offer and instead filed an appeal with the Appeals Committee of the FAO on 1 July 2002. In its report to the Director-General dated 9 July 2003, the Committee recommended rejecting the appeal. On 16 October the Director-General upheld that recommendation and rejected the appeal.

5. On 23 December the complainant filed a complaint with the Tribunal against the decision of the Director-General wherein he seeks the following relief: full payment of the lump sum as originally set at 20,000 dollars minus 11,239 dollars (8,761 dollars); plus the actual value of the vehicle (i.e. 14,870 dollars); or a total payment of 23,631 dollars. He also claims interest as from September 2001 and reimbursement of his receipted legal expenses.

6. The Tribunal finds that under the relevant rules, the Programme cannot be held liable for the shipment of the complainant's personal effects inasmuch as he selected the lump-sum option for their shipment even before he received the estimate of the Programme.

The Tribunal takes note of the proposition – which it finds reasonable – made by the Executive Director offering three payments as indicated under 3, above. However, the Programme was remiss, firstly in informing the complainant that the lump-sum entitlement would be 20,000 dollars and, secondly, in not informing him promptly that the actual lump-sum entitlement would be 11,239 dollars. This omission was aggravated by its actual payment to the complainant several months after he had already arrived in Pakistan. It is possible that had he been told of the amount of the lump sum before he left for Pakistan, the complainant would have requested the Programme to take responsibility for the expenses of the shipment instead.

7. With respect to the car, the Programme cannot be held liable for its transportation charges inasmuch as Pakistan is not included in the list of countries and territories where the Organization may provide partial reimbursement of transportation of automobiles on initial appointment or on change of duty station. The Programme, therefore, had a legal basis in rejecting responsibility for the expenses incurred in the transport of the vehicle; even more so was it justified in refusing to reimburse the complainant for the value of his vehicle.

8. The so-called situation of *force majeure* that occurred in the wake of the events of 11 September 2001 which allegedly caused the delay in the processing of claims is not tenable. The Country Office in Pakistan confirmed that the offices of the Government of Pakistan, including customs clearance, were only slightly affected and were still processing requests after 11 September 2001. The complainant was not advised at any point that the clearance procedure could not be initiated.

9. In view of the foregoing considerations, and considering the offer of the Executive Director of the WFP as referred to above under 3, the Organization shall pay the complainant the amount of 1,000 euros in moral damages for the reasons given under 6, and the amount of 1,000 euros in costs.

DECISION

For the above reasons,

1. The Organization shall pay the complainant the sum of 1,000 euros in moral damages.
2. It shall pay him 1,000 euros in costs.
3. All other claims are dismissed.

In witness of this judgment, adopted on 11 November 2004, Mr Michel Gentot, President of the Tribunal, Mrs Florida Ruth P. Romero, Judge, and Mr Agustín Gordillo, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 2 February 2005.

Michel Gentot

Florida Ruth P. Romero

Agustín Gordillo

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 17 February 2005.