

The Administrative Tribunal,

Considering the complaint filed by Mr L.J. C. against the Food and Agriculture Organization of the United Nations (FAO) on 26 March 2005, the FAO's reply of 13 July, the complainant's rejoinder of 2 September and the Organization's surrejoinder of 12 December 2005;

Considering Articles II, paragraph 5, and VII 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 British citizen born in 1945, joined the FAO in 1993 as a Senior Officer, at grade P-5, in the Agricultural Engineering Service (AGSE) of what became the Agricultural Support Systems Division (AGS). In 1996 the Agricultural Engineering Service, while retaining its name and acronym, was restructured into a Branch. The complainant became Chief of AGSE, still at grade P-5, and reported to the Director of AGS. His post description was revised to reflect his duties as Chief of branch.

As from late 2001, changes were implemented in the structure of the AGS Division. Two new Services were created within the Division. One of these was the Agricultural and Food Engineering Technologies Service (AGST), and the complainant's Branch became one of three groups within AGST. These changes took effect in August 2002.

The complainant wished to have his post of Chief of AGSE upgraded from P-5 to D-1, and on 17 September 2001 he sent a memorandum on the subject to the Assistant Director-General in charge of the Agriculture Department. An exchange of correspondence between the complainant and various officials took place in late 2001 and 2002. In a memorandum of 28 August 2002 to the Director of AGS, the complainant again took up the matter. He referred to his memorandum of 17 September 2001 and said that the basis of his request was FAO Administrative Manual paragraph 280.333, which provides that a staff member may request "reconsideration of the classification of his or her post". The complainant met with both the Assistant Director-General and the Director of AGS on 30 August 2002. In November 2002 he was told that a desk audit would be conducted by the end of the year. By a Notification of Personnel Action dated 27 November 2002, the complainant was informed that the title of his post had changed from Chief of AGSE to that of Senior Officer, AGST with effect from 1 August 2002. The post of Chief of AGST was advertised at grade D-1 and an external candidate was appointed.

By a memorandum of 17 March 2003 the complainant reminded the Director of AGS that no action had been taken regarding the desk audit. On 12 June 2003 he appealed to the Director-General against the Organization's "lack of action" following his request for a review of his post, as well as his "demotion" since his status had been downgraded from "Chief" to "Senior Officer". On 28 July 2003 the Assistant Director-General in charge of the Administration and Finance Department replied on behalf of the Director-General. He stated that a desk audit would be carried out and that the complainant's appeal with regard to his request for reconsideration of the classification of his post would thus be "satisfied". He dismissed the remainder of the appeal as irreceivable and unfounded.

On 26 August 2003 the complainant filed an appeal with the Appeals Committee. He specified that his appeal concerned not a "single decision", but "a series of inactions and actions [...] going back over a period of nearly two years". On 28 August 2003 the complainant sent an e-mail headed "Desk Audit" to the Human Resources Development Service. He stated that "a review of [his] post at this time would serve little purpose" and that he had decided "to wait and then review the situation once the appeal [had] run its course".

The Appeals Committee issued its report on 27 July 2004. It considered that the complainant had been informed of "the change in his status" by the Notification of Personnel Action dated 27 November 2002, and that his appeal of

12 June 2003 to the Director-General had not been lodged within the statutory time limit. It recommended rejecting the appeal as time-barred and therefore irreceivable, but expressed concern about the way in which the Organization had handled the complainant's case. The Director-General informed the complainant by letter of 22 December 2004 that he was accepting the recommendation of the Appeals Committee, and he dismissed the complainant's appeal as irreceivable. He considered that the delay in dealing with the complainant's request was not due to any shortcomings on the part of the Organization, but had arisen from the complainant's numerous changes of position. That is the impugned decision.

B. The complainant states that his claims concern: (1) his request for reclassification of his post; (2) the "reclassification" or change of title from Chief of AGSE to Senior Officer; and (3) the Organization's "actions and inactions" in connection with those two issues as well as its failure to consider him for promotion and to utilise properly his "experience and abilities". He submits that the Appeals Committee only dealt "explicitly" with the first two issues yet recommended that the entire appeal be rejected, and the Director-General endorsed that opinion. However, neither the Committee nor the Director-General made any separate finding concerning the receivability of his other claims. He argues that his claims regarding all three issues listed above are receivable.

Regarding his request for the reclassification of his post, he maintains his claim for damages in respect of the Organization's failure to take timely action. He notes that the Organization has not contested that his appeal on that issue was filed within the prescribed time limit. Indeed, having received no reply to his memorandum of 17 March 2003 regarding the desk audit, he filed his appeal to the Director-General on 12 June. He submits that his request for reclassification of his post was made on the basis of Manual paragraph 280.333. He submitted it in September 2001 and pursued it diligently. However, by the time the FAO agreed to conduct the desk audit, his post of Chief of AGSE no longer existed. While he asked for the desk audit to be held in abeyance, at no stage did he withdraw his request for reclassification.

Concerning the change in title to "Senior Officer", the complainant points out that he only received the official notification in January 2003. The substantive injury he suffered as a result of that change in title occurred after the appointment of the new Chief of AGST in April 2003. He no longer reported directly to the Director of AGS, and no longer managed the budget of his Branch. By June he had still not been told what his new role would be, and that too caused him to file his appeal with the Director-General. He alleges procedural irregularities in that when his title changed, he was not initially given a post description. When at the request of the Appeals Committee one was later produced, it did not correspond to his new duties. Moreover, as the Human Resources Management Division refused to revise his post description, it could not know whether the change in title and duties amounted to a demotion or not.

Lastly, he contends that by the Organization's actions he was excluded from "proper consideration for advancement in his career". In his opinion the FAO was avoiding making use of his abilities and experience.

The complainant seeks the quashing of the impugned decision. He asks the Tribunal to order the Organization to pay him a sum equivalent to the difference between the salary and allowances received at grade P-5 and the amounts he would have received at D-1 in respect of the period from 1 September 2001 until he reaches age 62. He wants to receive the actuarial equivalent of the difference between the pension benefit that he will receive on the basis of grade P-5 and that he would have received at D-1. He claims 100,000 United States dollars as compensation for the damage to his reputation and standing, "including loss of income opportunities on retirement due to damage to [his] CV". He also claims costs.

C. In its reply the FAO contends that the complaint is irreceivable on two grounds. To the extent that it concerns the complainant's claim for reconsideration of the classification of his post, it holds that the complaint shows no cause of action. The complainant, it argues, was aware that the Organization was prepared to follow the procedures set out in section 280 of the Manual, but despite this, two days after filing his internal appeal he sent an e-mail to the Human Resources Development Service withdrawing his request for the reclassification review. To the extent that the complaint is directed against his change in title, the Organization claims that it is time-barred, because the change of title was brought to his attention by the official notification dated 27 November 2002, and he failed to file an appeal within the prescribed time limit.

On the merits, it claims that the complaint is unfounded. With regard to the complainant's request for the classification of his post, it contends that he was, deliberately or otherwise, confusing two issues. Initially, in the memorandum of 17 September 2001, the complainant was seeking an upgrade of his post from P-5 to D-1 in the

context of the reorganisation exercise. It was only after the structural changes had come into effect in August 2002 that he redefined his request, seeking a reclassification of his post under Manual paragraph 280.333. It was agreed at the meeting of 30 August 2002 that his request was for a special desk audit pursuant to Manual paragraph 280.333(ii). The FAO expresses doubt as to whether the complainant wanted to implement the procedure. Regarding the grading of his post, it asserts that the P-5 grade corresponded to the nature of the responsibilities assigned to him.

The Organization submits that although the complainant's title changed to Senior Officer, that did not involve any change to his job description. There were no changes of substance in the duties he was asked to perform, and it was not a question of "demotion". Referring to a matter that was raised by the Appeals Committee, it states that although the change of title was entered by hand on the job description submitted to the Committee, that did not cause any prejudice to the complainant or affect his rights. It was done in a way that complied with the relevant rules.

D. In his rejoinder, on the issue of receivability, the complainant contends that the notification regarding his job title that bore the date of 27 November 2002 was in fact only signed on 30 December 2002. That issue apart, he states that he is not opposed to the change in job title *per se*, but is contesting the "*de facto* demotion" that followed. With regard to his claim for costs, he specifies that he is claiming an amount of 3,350 dollars.

Concerning the review of his grade, he states that in September 2001 when he sought the upgrading of his post, he wished to obtain promotion and at the time was not aware of Manual Section 280. He agrees that he requested "a delay" in the desk audit, but argues that that cannot be equated with withdrawing his request for reclassification. Even if an "upgrading" or "reclassification" cannot be accomplished at this stage, he maintains his claim for damages because of the defendant's refusal to act "promptly" and "fairly". He has produced statements written by two officials in order to show that his role was equivalent to that of a Chief of Service.

E. In its surrejoinder the Organization denies that there was an inordinate delay in dealing with the complainant's request. It states that during the restructuring process he was clearly informed that his post "would not and could not" be upgraded. Thereafter, once the reclassification process was initiated, the complainant withdrew his request. The Organization does not accept that the complainant suffered a *de facto* demotion. It comments on the witness statements submitted by the complainant but reiterates that even after the restructuring process his duties remained essentially the same.

## CONSIDERATIONS

1. The complainant has been a staff member of the FAO since 1993 when he was appointed as Senior Officer at grade P-5, in the Agricultural Engineering Service (AGSE) of what became the Agricultural Support Systems Division (AGS). In 1996 the AGSE was designated a Branch and the complainant's post was redesignated as Chief of that branch. However, his post remained at P-5. Later, there was a restructuring of the AGS Division and, in the context of that restructuring, the complainant was informed in December 2002 that his post had again been redesignated. With effect from 1 August of that year, his post had been designated "Senior Officer, Agricultural and Food Engineering Technologies Service" or "Senior Officer, AGST". Again, the post remained at P-5. The immediate consequence of the restructuring was that, instead of reporting directly to the Director of AGS, as had previously been the case, the complainant was required to report to the Chief of AGST.

2. Before the restructuring, but at a time when it was in contemplation, the complainant asked to have his post as Chief of AGSE regraded to D-1. His request, which was first made in September 2001, was renewed from time to time and, in August 2002, it was formalised as a request pursuant to "manual section 280.333(ii)". No action had been taken with respect to the regrading of his post when the restructuring was implemented and the redesignation of his post took effect. After the restructuring, according to the complainant, changes in the level of his duties and responsibilities gradually became apparent although there was no change in his post description. He claims that those changes continued after the arrival of a new Chief of AGST in April 2003 and culminated in what he describes as a "*de facto* demotion". In June of that year, the complainant lodged an appeal with the Director-General.

3. The appeal lodged by the complainant was directed to two issues. The first was said to be "lack of action following request for review of [his] post"; the second was described as "appeal against demotion". So far as

concerns the second issue, the complainant referred to changes “over the last six months” involving “a substantial reduction in the level of [his] duties and responsibilities”. In his appeal, the complainant asked for “a reprieve of the time factor” on the ground that the full implications were not apparent when he received notice in December 2002 of the redesignation of his post.

4. The Assistant Director-General in charge of the Administration and Finance Department, informed the complainant on 28 July 2003 that a desk audit of his post would shortly be conducted as part of a classification review process but that the remainder of his appeal was dismissed as “not receivable and unfounded”. The complainant then lodged an appeal with the FAO Appeals Committee. He stated therein that his appeal did not “refer to a single decision made on a single date [but] concern[ed] a series of inactions and actions [...] going back over a period of nearly two years”.

5. The Appeals Committee expressed its “deep concern about the way the [complainant’s] case was handled by the Organization”. Regarding the request for regrading, it said that “correct and responsible behaviour” required that the complainant be provided with “a written response within a reasonable period of time especially when he was repeatedly raising the issue”. It also noted that there had been “inordinate delay” in the conduct of a desk audit. However, it considered that it was not competent to make its own assessment of the complainant’s duties and stated that a desk audit was the only means available to address the question of regrading.

6. On the question of demotion, the Appeals Committee expressed its consternation with the manner in which the complainant had eventually been provided with a post description for his redesignated post of Senior Officer. However, it concluded that, as an appeal had not been lodged with the Director-General within 90 days of the notification of redesignation, his appeal to the Appeals Committee was time-barred. In the result, the Committee recommended that the appeal be rejected as not receivable.

7. The complainant was informed by letter of 22 December 2004 that the Director-General had rejected the criticisms made by the Appeals Committee but that he had decided to accept its recommendation that the appeal be rejected as not receivable. It is that decision that is the subject of the present complaint. By way of relief, the complainant seeks monetary compensation equivalent to the aggregate increment in salary and pension entitlements that he would have received had his post been regraded to D-1 in September 2001. He also seeks damages for injury to his reputation and consequential loss of post-retirement opportunities, together with an order for costs.

8. The FAO contends that the complaint is not receivable on the ground that the complainant’s appeal to the Director-General was time-barred. It also contends that the complaint does not disclose a cause of action. In this last respect, it points out that the claim for reconsideration of the classification of the complainant’s post was accepted and that, as his post remained at the same grade, there was no administrative decision resulting in injury. Further, the FAO argues that the complaint is unfounded, contending that the complainant’s post was at all times properly graded and that he suffered no injury or other prejudice by reason of the redesignation of his post.

9. It is well settled that an individual administrative decision that has been notified to a staff member can only be challenged within the time set by the relevant staff rules (see Judgments 1132 and 1393). If the decision has not been challenged within the time allowed, no subsequent complaint may be received by this Tribunal (see Judgment 955). Had the complainant been challenging the individual decision to change the designation of his post, his appeal would have been irreceivable as time-barred. However, as he made clear in his appeal to the Appeals Committee, he was not challenging an individual decision which had been notified to him but a course of conduct involving both “lack of action” on his request to have his post regraded and a reduction in the level of his duties and responsibilities following the redesignation of his post.

10. By his appeal to the Director-General and subsequent appeal to the Appeals Committee the complainant was challenging an implied decision to reduce the level of his duties and responsibilities in the restructured AGS Division. He relied on the failure to act upon his request for regrading of his post and the actual decision to redesignate his post as evidence of that implied decision. Moreover, he was contending that that decision was notified to him only when he became aware of the extent of its consequences. That issue was never examined by the Appeals Committee. Its failure so to do constituted an error of law. And because the Director-General’s decision was based on the Committee’s recommendation, it involved the same error of law.

11. It follows that the Director-General’s decision of 22 December 2004 must be set aside. However, it does not follow that the complainant is entitled to substantive relief as claimed by him. The Appeals Committee has neither

considered whether he has, in fact, suffered a reduction in the level of his duties and responsibilities nor whether his claim in that regard is receivable. Those issues must be decided before any determination can be made as to whether the complainant has suffered any injury entitling him to relief by way of damages. Accordingly, the appropriate course is to remit his case to the Director-General for further consideration. The complainant should have his costs of the proceedings in this Tribunal.

## DECISION

For the above reasons,

1. The Director-General's decision of 22 December 2004 is set aside.
2. The case is remitted to the Director-General for review, after further consideration by the Appeals Committee if necessary.
3. The FAO shall pay the complainant's costs of the proceedings before the Tribunal in the sum of 1,500 euros.

In witness of this judgment, adopted on 5 May 2006, Mr Michel Gentot, President of the Tribunal, Ms Mary G. Gaudron, Judge, and Mr Agustín Gordillo, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 12 July 2006.

Michel Gentot

Mary G. Gaudron

Agustín Gordillo

Catherine Comtet