

SEVENTH ORDINARY SESSION

In re **TRANTER**

Judgment No. 37

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the Food and Agriculture Organisation of the United Nations drawn up by Miss Mildred Elizabeth Tranter on 8 July 1958, received and registered in the Registry on 21 July 1958 under No. 58.31;

Considering the reply drawn up by the respondent organisation;

Considering the Statute of the Tribunal and the Staff Regulations and Staff Rules of the organisation;

Having heard Maître Mercier, counsel for complainant, and Mr. Saint-Pol, agent of the organisation, in public sitting on 22 September 1958;

Considering that the pertinent facts at issue are the following:

1. Complainant was appointed to the staff of the organisation as a stenographer on 1 April 1951. On 1 July 1952 her fixed-term appointment was reviewed and converted into a permanent appointment.
2. On 13 October 1953 complainant was notified by the organisation that her appointment would terminate on 31 December 1953, a curtailment of funds necessitating a reduction of staff. Complainant appealed against the termination of her appointment and her appeal was referred to the Appeals Committee of the organisation in February 1954. On 13 May 1954 the Director-General of the organisation advised complainant, after taking cognizance of the recommendation of the Appeals Committee, of his decision to maintain the termination of her appointment.
3. On 18 June 1954 complainant lodged a complaint with the Tribunal requesting that the decision of 13 May 1954 be annulled. In support of her complaint she submitted the following arguments: the reduction of staff invoked as grounds for her termination was fictitious, the true grounds being a claim that her services had not been satisfactory; the organisation had made an illegal preference in selecting for retention an official holding a fixed-term appointment under the funds of the Expanded Programme for Technical Assistance instead of complainant who held a permanent appointment under the regular programme and budget of the organisation.
4. In Judgment No. 14 of 3 September 1954, delivered at its Ordinary Session of August-September 1954, the Tribunal declared that her complaint was not well founded.
5. Between the date of the delivery of this judgement and the month of March 1957 complainant came into possession of her personal file, which had been in the keeping of the organisation, and in this manner became cognizant of certain confidential documents relating to her termination. In the submission of complainant these documents contained evidence that her appointment had been terminated for reasons other than those alleged by the organisation on the occasion of the first complaint.
6. On 8 July 1958 complainant drew up and submitted to the Tribunal a new complaint seeking the annulment of the decision of 13 May 1954 for détournement de pouvoir, the granting of damages equivalent to the amount of the salary that complainant would have received had she remained in the service of the organisation from the date of the decision complained against, the application of the procedure provided for in the Regulations in order that she might receive a disability pension or in default the grant of additional damages equivalent to two years' salary.

On receivability:

Considering that the object of the complaint is that the Tribunal should declare its Judgment No. 14 no longer res judicata and that the judgement should be revised on the basis of complainant's submissions;

Considering that so far the judgements delivered by the Tribunal have always been considered as res judicata,

closing without further recourse the proceedings brought under this jurisdiction; that in particular in its report concerning the establishment of the Administrative Tribunal, the Supervisory Commission of the League of Nations stated that no provision for the revision of judgements of the Tribunal had been inserted in its Statute, it being considered that in the interests of finality and of the avoidance of vexatious proceedings the Tribunal's judgement should be final and without appeal;

Considering further that it has been provided in Article XII, which was inserted in the Statute of the Tribunal, that the Governing Body of the International Labour Office, the Administrative Board of the Pensions Fund or the Executive Board of an international organisation which has recognised the jurisdiction of the Tribunal alone may submit the validity of a decision given by the Tribunal to the International Court of Justice, if they challenge a decision of the Tribunal confirming its jurisdiction or consider that a decision of the Tribunal is vitiated by a fundamental fault in the procedure followed; that except as aforesaid there is no provision which may be invoked in order to request the revision of the decisions of the Tribunal;

Considering that the desirability of providing a more general revision procedure may be examined by the legislative authority which set up the Administrative Tribunal but that it is for this authority to determine thereon in its sovereign discretion both as to the opportunity of such a procedure and as to the rules and conditions thereof and the jurisdiction on which this function would be conferred;

Considering therefore that at present the complaint as drawn up is not receivable; that consequently all the other issues raised become subsidiary;

ON THE GROUNDS AS AFORESAID

THE TRIBUNAL,

Rejecting any wider or contrary conclusions,

Declares the complaint at present to be not receivable by reason of the absence of a procedure for the revision of the judgements delivered by the Tribunal;

Orders that the personal file communicated to the Registry by the complainant be restored to the respondent organisation.

In witness of this judgment, delivered in public sitting on 29 September 1958 by His Excellency Albert Devèze, President, Sir John Forster, K.B.E., Q.C., Vice-President and Mr. Jason Stavropoulos, Deputy Judge acting as Judge, the aforementioned have hereunto subscribed their signatures, as well as myself, Gutteridge, Assistant Registrar of the Tribunal acting as Registrar.

(Signatures)

Albert Devèze
John Forster
Jason Stavropoulos
Frank Gutteridge