

FORTY-FIFTH ORDINARY SESSION

In re CONNOLLY-BATTISTI (No. 6)

Judgment No. 420

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the United Nations Food and Agriculture Organization (FAO) by Mrs. Norah Connolly-Battisti on 4 December 1979, the FAO's reply of 11 February 1980, the complainant's rejoinder of 11 March and the FAO's surrejoinder of 22 April 1980;

Considering Article II, paragraph 5, of the Statute of the Tribunal, FAO Staff Regulation 301.014, FAO Staff Rules 303.01 and 303.02 and FAO Manual sections 304, 330.211 and 330.212;

Having examined the written evidence, oral proceedings having been neither applied for by the parties nor ordered by the Tribunal;

Considering that the material facts of the case are as follows:

A. By Judgment No. 274 of 12 April 1976 (in re Connolly-Battisti (No. 2)) the Tribunal directed that the letters and memoranda of 22 June and 25 July 1973 should be removed from the complainant's record and remitted to the Director-General for reconsideration and so that he might, if he thought fit, reprimand the complainant for having acted in such a manner as to lead to an interruption of the proceedings of the FAO Council in committee on 15 June 1973. In a letter dated 20 July 1976 and signed on his behalf by the Deputy Director-General the Director-General informed the complainant that, in accordance with that judgment, he had reviewed the incident and concluded that her conduct had been incompatible with Staff Regulation 301.014 (proper discharge of duties) and Manual section 304 (standards of conduct of FAO officials) and that the incident had been sufficiently grave in itself to merit a written reprimand. He was therefore reprimanding her for interrupting the proceedings of the FAO Council in committee on 15 June 1973.

B. On 20 August 1976 the complainant asked that the reprimand should be withdrawn, on three grounds: (1) it had been signed by the Deputy Director-General, who had been a party to the dispute which had formed the subject of Judgment No. 274; (2) it did not follow the directions of the Tribunal, which had intended that the incident which had prompted the dispute should be re-examined to establish whether the complainant had committed misconduct and that she should be given a hearing; and (3) it was not a simple reprimand - which, according to Staff Rule 303.02, is not a disciplinary measure - but in fact a written censure - which is. On 13 October the Director of the Personnel Division replied on behalf of the Director-General indicating that it was the Director-General who had imposed the reprimand and that the Deputy Director-General had merely signed the letter on his behalf. He added that in his view it was unnecessary and improper to reopen questions of fact which had been established in Judgment No. 274: the Tribunal had remitted the matter to the Director-General so that he could determine whether the incident in itself warranted a reprimand. The Director-General had concluded that it did and had therefore imposed the reprimand, phrasing it along the lines indicated by the Appeals Committee, as indeed the Tribunal had directed. The new dispute over the performance of Judgment No. 274 was referred to the Appeals Committee on 13 July 1977. In its report dated 27 August 1979 the Appeals Committee held that the reprimand was correct in form and in substance and complied with the Tribunal's directions. It also expressed the view that the appeal was "vexatious". On 17 September 1979 the Director-General dismissed the complainant's appeal and that is the decision she impugns.

C. The complainant repeats her three arguments. She also maintains that her appeal was in no way vexatious since, as chairwoman of the Non-Local Staff Association, she is under a duty to defend herself so that she can take care of the interests of the staff who elected her. She maintains that to say that her conduct was incompatible with the standards laid down in Staff Regulation 301.014 is tantamount to saying that she is not up to the standards required of an international civil servant. She affirms that she never did anything to bring the FAO into disrepute and that the written censure was exaggerated and unwarranted and exceeded the intention of Judgment No. 274. She asks the Tribunal to instruct the FAO (1) to remove the letter of 20 July 1976 from her personnel file; (2) to withdraw formally the written censure contained in that file, which constitutes a disciplinary measure; and (3) to withdraw the letter of 13 October 1976, in particular from her personnel file.

D. In its reply the FAO points out that the Deputy Director-General was not a party to the dispute but had merely been involved in the incident which had led to it. It was quite correct for him to sign the Director-General's letter in his absence. As to the second argument, the Tribunal did not ask the Director-General to carry out a fresh investigation of the facts - the Tribunal itself found that the complainant had committed misconduct in the incident of 15 June 1973 - but to determine whether that incident in itself was sufficient to justify a reprimand. After reviewing the case he took the view that it was. Lastly, the FAO utterly denies that the reprimand is a written censure. The letter notifying the reprimand referred to Manual section 330.212, and that provision relates to reprimands.

E. In her rejoinder the complainant points out that clearly she was not given a hearing. The reprimand now imposed on her is more serious than the one which the Director-General addressed to her on 22 June 1973, immediately after the incident. Moreover, it is not the provision of the rules which determines whether a letter is a reprimand or a censure but what it actually says. It is clear from the wording of the letter of 20 July 1976 that it was a censure. Lastly, although the Tribunal did indeed find that she had been "in the wrong", it did not conclude that she had committed misconduct.

F. In its surrejoinder the FAO maintains that the Director-General complied strictly with the Tribunal's directions, which invited him to reconsider whether the incident was sufficiently grave to be by itself deserving of a reprimand. That is what he did, and he concluded that the complainant's behaviour on that occasion had not been in accordance with the high standards of conduct which an international civil servant is expected to observe at all times. That is why he imposed the reprimand of 20 July 1976, and the letter makes it quite plain that what he was imposing was merely a reprimand. The FAO therefore asks the Tribunal to dismiss the complaint as unfounded.

CONSIDERATIONS:

1. Staff Rule 303.01 provides for disciplinary measures for unsatisfactory conduct of which the least grave is a written censure. Staff Rule 303.02 and Manual section 330.212 provide for a written reprimand, which is said not to be a disciplinary measure, and which is clearly intended to cover matters not grave enough for a written censure. On 15 June 1973 the complainant took part in an incident which led to a rebuke by the Deputy Director-General, Mr. Jackson, and an interruption of the proceedings of the FAO Council in committee. There was some difference about what exactly took place, but in Judgment No. 274 the Tribunal reached the conclusion that the complainant was in the wrong. Meanwhile, on 22 June 1973 the Director-General had addressed to the complainant a written reprimand; in it he said that he took a serious view of the affair because of a formal warning he had previously given to the complainant on 2 February 1973. In its Judgment No. 274 the Tribunal held that the formal warning of 2 February was unjustified. Accordingly, the Tribunal set aside the reprimand of 22 June and remitted the matter to the Director-General for reconsideration and so that he might, if he thought fit, reprimand the complainant for having acted in such a manner as to lead to an interruption of the proceedings of the FAO Council in committee on 15 June 1973.

2. The above judgment was delivered on 12 April 1976. On 20 July 1976 there was issued from the Director-General's office a letter which stated that the Director-General had reviewed the incident in accordance with the Tribunal's judgment. "After careful consideration, I have concluded that your conduct was incompatible with the Standards of Conduct, as laid down in Staff Regulation 301.014 and Manual section 304, and that the incident was sufficiently grave in itself to merit a written reprimand. Therefore, I hereby reprimand you for having acted in such a manner as to lead to an interruption of the proceedings of the FAO Council in committee on 15 June 1973." The letter was signed "Roy D. Jackson for Edouard Saouma".

3. The complainant puts forward three objections to the reprimand in this form:

- (1) that it was signed by the Deputy Director-General who was an interested party to the complaint;
- (2) that the Director-General had failed to review the case as intended by the Tribunal;
- (3) that the letter with its references to the Staff Regulations constituted a written censure.

4. As to the first objection, the Director of Personnel wrote to the complainant on 13 October 1976 to say that the letter of 20 July was signed by Mr. Jackson "on the Director-General's behalf and at his request". In the dossier it is stated that the Director-General himself reviewed the matter and, because he had to be out of Rome, left

instructions with the Deputy Director-General to sign and despatch the letter on his behalf. It is unfortunate that the signatory was a man who might reasonably be thought by the complainant to have initiated the reprimand and who certainly was closely involved in the incident. When, as here, a reprimand is being administered by the Director-General himself and when, likewise as here, there is no exceptional urgency about its despatch, it is preferable that the document, which is to form part of the staff member's record, should bear the Director-General's own signature. But the Tribunal does not consider that the form of signature invalidates the document.

5. As to the second objection, the Tribunal did not intend that the Director-General should re-examine the incident nor was it necessary that he should do so. Judgment No. 274 set out the facts and left it to the Director-General to exercise his discretion on the question whether the complainant's conduct, as there recorded, was deserving of a reprimand.

6. As to the third objection, the Tribunal would not have thought it right to dictate to the Director-General the exact form the reprimand should take, nor did the Tribunal in fact do so. The terms of the letter of 20 July 1976 do not exceed what is proper, and in particular do not amount to a censure as distinct from a reprimand.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, Vice-President, the Right Honourable Lord Devlin, P.C., Judge, and Mr. Hubert Armbruster, Deputy Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Bernard Spy, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 11 December 1980.

André Grisel
Devlin
H. Armbruster

Bernard Spy