Registry's translation, the French text alone being authoritative.

FIFTY-SIXTH ORDINARY SESSION

In re REDFERN

Judgment No. 679

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the Food and Agriculture Organization of the United Nations (FAO) by Mrs. Maria Luisa Redfern on 6 December 1984, the FAO's reply of 21 February 1985, the complainant's rejoinder of 22 March and the FAO's surrejoinder of 8 May 1985;

Considering Articles II, paragraph 5, and VII, paragraph 1, of the Statute of the Tribunal, FAO Staff Rule 302.40631 and FAO Manual provision 319.1.11;

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. The complainant, a British subject, held temporary and short-term appointments with the FAO from 18 April 1955 to 24 November 1967. On 20 May 1974 she was given a two-week appointment under a special services agreement.(1) She was given further such appointments, the last of which expired on 31 January 1975. From 3 February to 31 December 1975 she held a short-term appointment, converted as from 1 October 1975 into a fixed-term one. This was extended to 31 December 1976 and to 31 December 1977. In June 1977 it was converted into a continuing appointment with retroactive effect from 1 January 1977. On 7 September 1977 the complainant asked the Assistant Director-General, Administration and Finance, to grant her non-local status. On 30 September she was told that her claim was rejected. She was an intervener in Mrs. Clegg-Bernardi's case (Judgment 505). On 31 August 1982 she wrote to the Director-General asking that the Tribunal's ruling in Judgment 506 (in re Hoefnagels) be applied to her case, but this was refused on 10 November 1982. She put a claim to the Director-General on 21 December 1982, rejected on 18 March 1983 on the grounds that it was time-barred and irreceivable, and on 19 April she appealed to the Appeals Committee. By a letter of 10 September 1984 she was informed that the Director-General rejected her appeal and that is the decision she now impugns.

B. The complainant observes that the Appeals Committee declared her appeal receivable, even though the Director-General disagreed, and she cites examples of several cases of staff members in a situation like her own whose claims have nevertheless been treated as receivable.

As to the merits, she observes that by 1974 her husband, who had been employed by the FAO with non-local status for over 20 years, had to decide to retire on a disability pension because of poor health. She went to see her husband's supervisor who gave her to understand that something might be done to solve her family problems: she would be taken on as a non-local staff member and might thus continue to receive the education allowances her husband had been paid. The supervisor promised her a fixed-term appointment with non-local status as soon as a suitable vacancy occurred after her husband left: in the meantime she would be given short-term appointments. A personnel officer made a similar commitment. The Forestry Department also said she might have a fixed-term appointment with non-local status as from 15 January 1975. She passed typing tests and was given the series of appointments under special services agreements which began in May 1974. On asking for a fixed-term appointment instead, she was told that the only sort of appointment she might get was under such an agreement, even though at the time the rules did still allow the recruitment of non-local staff under a fixed-term appointment. A suitable post did exist, but it was not filled, by the grant of a fixed-term appointment with local status, until 3 February 1975, two days after the FAO's new recruitment policy came into force. She believes that early in 1974 the intention of the Personnel Department was to honour the promise she had been made, but after a change in Directors the Department applied the new policy of doing away with non-local staff. The special services agreements were unlawful. She asks that she be put on a par with other staff members who were granted non-local status.

She seeks non-local status and the incidental benefits as from 24 May 1975 or as from 1 October 1975, the date on

which she got a fixed-term appointment.

C. In its reply the FAO submits that the complaint is irreceivable because the complainant failed to exhaust the internal means of redress. Her claim of 7 September 1977 was rejected on 30 September, and she then dropped the matter. She did not take it up again with the Director-General until 31 August 1982, and her internal appeal of 19 April 1983 to the Appeals Committee was time-barred.

The FAO discusses Judgments 506 and 506 and argues that the complainant may not rely on them. In its view she failed to satisfy the conditions for the grant of non-local status. Nor indeed does she produce any item of evidence addressed to her which would show that she was given any commitment. For her legitimate expectation to be raised a commitment must have been entered into. Obviously the officials who dealt with her recruitment were anxious to help when she was taken on in 1974, but they had no authority to enter into any commitment.

The FAO invites the Tribunal to declare the complaint irreceivable and, subsidiarily, to dismiss it as devoid of merit.

D. In her rejoinder the complainant enlarges on her contention that her complaint is receivable. She reaffirms that a commitment was made to her which ought to have been honoured and she dwells on the facts at some length. She discusses a number of provisions of the rules and develops her arguments on the merits. She presses her claims.

E. In its surrejoinder the FAO repeats its submissions on receivability. It observes that the complainant was not recruited to the staff before the end of October 1974: until February 1975 she served under special services agreements and was therefore not on the staff. The Director-General was entitled to conclude such agreements. The Organization observes that the complainant submits no evidence of the commitment she alleges.

CONSIDERATIONS:

Receivability

1. Article VII(1) of the Statute of the Tribunal stipulates that a complaint shall not be receivable unless the person concerned has exhausted such other means of resisting it as are open to him under the applicable Staff Regulations. It is not enough to exhaust the internal means of redress; the internal time limits must be observed. If the staff member failed to lodge his internal appeal in time his complaint to the Tribunal will be irreceivable.

But the staff member may ask the Administration for review either where some new and unforeseeable fact of decisive importance has occurred since the decision was taken, or else where the staff member is relying on facts or evidence of decisive importance of which he was not and could not have been aware before the decision was taken. If either condition is fulfilled the Administration is under a duty to review, and even if the time limit was originally not respected, the new decision will set a new one. The staff member who observes the new time limit may in turn submit a complaint to the Tribunal.

2. The complainant is at present employed by virtue of a decision to give her a continuing appointment in June 1977, which does not confer the non-local status and benefits she is claiming. It is not in dispute that she failed to challenge the decision in accordance with the procedure prescribed in the rules. She did make a claim for non-local status on 7 September 1977, and it was refused on 30 September 1977, but she failed to appeal against that refusal.

There has, however, been a new and unforeseeable fact of decisive importance since June 1977 on which she may now rely. In Judgments 505 and 506, which it delivered on 3 June 1982, the Tribunal held that the Director-General had adopted a rule in pursuance of decisions taken by the FAO Council in November 1974. The rule draws a distinction between two groups of General Service category staff. Those who held short-term appointments before the end of October 1974 and had or might have been informed of their eligibility for non-local status were to continue to qualify for such status by satisfying certain conditions determined by practice. Those who were appointed later were subject to Staff Rule 302.40631 and were to qualify for non-local status only if they had held it by 31 January 1975 and had since continued in service. Though neither published nor even communicated to the staff as a whole before the Tribunal delivered its judgments, the rule greatly altered the position of staff in the General Service category, and the Tribunal's formulation of it amounted to a new and unforeseeable fact of decisive importance which put the FAO under a duty to entertain a request for review.

After the Tribunal's judgments had come to her knowledge the complainant correctly followed the internal appeal

procedure. On 31 August 1982 she submitted a claim to the Director-General, and it was rejected on 10 November. She repeated it on 21 December. It was refused again on 18 March 1983, and on 19 April she appealed to the Appeals Committee. On the Committee's recommendation the Director General finally rejected her claim on 10 September 1984. She has therefore exhausted the internal means of redress, and respected the time limits, and her complaint is receivable.

3. It is immaterial that she was an intervener in the unsuccessful suit filed by Mrs. Clegg-Bernardi. Someone who intervenes in a complaint does so on account of his interest in the outcome: he may rely on the rights of a successful litigant in whose case he intervenes, but he may still file a complaint of his own even if that case should fail.

Merits

4. The complainant's husband was on the staff of the FAO for about 21 years. In 1973 he obtained extended sick leave and in 1974 was put on half-pay. Being in financial straits he went back to work, but poor health forced him to leave the Organization in 1974 on a disability pension. It was then that the complainant, who had held temporary appointments at the FAO from 18 April 1955 to 24 November 1967, applied for employment. She was granted an appointment on 20 May 1974 under a special services agreement. She was later given similar appointments, the last of which expired on 31 January 1975. From 3 February to 31 December 1975 she held a short-term appointment. This was converted as from 1 October 1975 into a fixed-term appointment which was extended several times and in turn converted, in June 1977, into a continuing appointment as from 1 January 1977. Since 1974 the complainant has had local status.

5. According to the rule stated in Judgments 505 and 506 and set out in 2 above only staff members who had held short-term appointments in the General Service category before the end of October 1974 and had or might have been informed of their eligibility for non-local status continued to qualify for that status, provided they fulfilled the conditions determined by practice. From 20 May 1974 until 31 January 1975 the complainant held appointments under a special services agreement. Since she did not hold a short-term appointment at the material time she is not directly covered by the rule.

6. The complainant argues that her appointments under a special services agreement were in breach of the rules, that she should have been granted a short-term appointment instead, and that she is therefore entitled to benefit under the rule as it applies to short-term staff.

In fact it is beside the point whether it was in keeping with the rules to grant her appointments under a special services agreement. As from 3 February 1975 they were succeeded by a short-term appointment, then by a fixed-term one and lastly by a continuing one. They ended long ago, were not challenged while in force, and are beyond challenge now.

The Tribunal would rule otherwise only if they had been tainted with a flaw so serious and flagrant as to make them inoperative or void. But they were not.

Besides, there is no inconsistency in entertaining a complaint which challenges the appointment of June 1977 yet declining to rule on the correctness of the appointments under

a special services agreement. Unlike the earlier appointments, the appointment of June 1977 is still of legal effect.

7. The point at issue is this. Even though she held appointments under the special services agreement, had the complainant been informed or might she have been of her eligibility for non-local status, or, in other words, did she stand to benefit from the expectations short-term staff members had or might have been given? If the answer is yes, she is entitled under the principle of good faith to the fulfilment of her expectation.

In the circumstances of the case the complainant did have good reason to expect non-local status on obtaining a fixed-term appointment. It is true she has not produced any items of evidence on which such expectation might have been founded. But she states that her husband's supervisor gave her to understand that she would be granted non-local status; that the official with whom she discussed the matter of her appointment said the same thing; and that the Forestry Department had proposed granting her a fixed-term appointment, with non-local status, from 15 January 1975. Her situation being what it was at the time, the Tribunal accepts the truth of those statements. It was only reasonable that the FAO should feel inclined to treat favourably someone whose husband had been forced by

poor health to give up work and who was not entitled to the education allowances. Accordingly she is entitled to be assimilated to short-term staff who before the end of October 1974 had or might have been given an expectation of non-local status.

It is immaterial whether the supervisors with whom she talked of her prospects were in fact competent to promise her non-local status. She will succeed under the principle of good faith if she had reason to believe that her supervisors were competent to do so. The Tribunal holds it most likely that she did.

8. The Tribunal concludes that the complainant is entitled to the same treatment as staff who qualified for non-local status either on completion of 12 months on short-term appointments or on being granted a fixed-term or continuing appointment. The complainant qualified on 1 October 1975, the date as from which she was granted a fixed-term appointment, and she is entitled to che benefits of non-local status as from that date.

DECISION:

For the above reasons,

1. The complainant shall be granted non-local status as from 1 October 1975.

2. The FAO shall grant her the benefits of non-local status as from 1 October 1975.

3. It shall pay her 2,000 United States dollars as costs.

4. Her other claims are dismissed.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, Mr. Jacques Ducoux, Vice-President, and Mr. Hector Gros Espiell, Deputy Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 19 June 1985.

(Signed)

André Grisel

Jacques Ducoux

H. Gros Espiell

A.B. Gardner

1. Manual provision 319.1.11 reads: "The holder of a special services agreement is referred to as a 'subscriber'. A subscriber is in no way considered to be a member of the Organization".

Updated by PFR. Approved by CC. Last update: 7 July 2000.