

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

## SIXTIETH ORDINARY SESSION

In re PETRUC (No. 3)

Judgment No. 778

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Mr. Théodore Claude Petruc against the Food and Agriculture Organization of the United Nations (FAO) on 5 December 1985 and corrected on 10 January 1986 and the FAO's reply of 24 March 1986;

Considering Articles II, paragraph 5, and VII, paragraph 1, of the Statute of the Tribunal and FAO Manual provision 342.721;

Having examined the written evidence and disallowed the complainant's application for oral proceedings;

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

A. Facts relevant to this case appear in Judgments 501 and 502, under A. From July 1966 to February 1976 the complainant who was born in 1920, served as an FAO expert on projects of the United Nations Development Programme (UNDP) in several countries. He held fixed-term contracts at grade P.5. He fell ill in Senegal in 1973. He spent three weeks in the main hospital of Dakar in December 1973 suffering from colitis, but on 26 June 1974 underwent a medical check-up in Rome and was put in the highest health category, 1A. On 9 January 1975, while still in Senegal, he suffered a heart attack and spent seven weeks or so in the same hospital. On 9 June 1975 the medical officer of the FAO declared him to be in health category 1B and fit to go back to work in Senegal: "No objections to his return to present post. Any transfer or extension subject to prior medical clearance". He went back to work on 11 June.

In a letter of 26 June to New York of which the FAO got a copy, the Resident Representative of the UNDP in Senegal said that the complainant was unlikely to withstand the physical demands of his duties and should undergo a medical check-up in Rome. In a telex of 14 August to the UNDP the FAO answered: "Travel Rome Petruc for medical examination considered unnecessary. In medical officer's opinion complete medical check-up including electrocardiogram necessary only January 1976. No objection extension 31 January 1976 provided under same working conditions". His appointment was so extended. At the end of January he left Senegal for a check-up in Rome -- the scope of which is in dispute -- and was again classified 1B. The FAO found no suitable vacancy for him but at his request put him on unpaid leave from 1 February 1976 up to 31 October 1976.

There followed the lengthy correspondence and proceedings described in Judgment 502, under A. The upshot was that he filed his first two complaints with the Tribunal, one on 26 August 1980 and the other on 28 April 1981. In the latter he sought compensation for service-incurred illnesses. Though it dismissed the complaint in Judgment 502, on 3 June 1982, the Tribunal held that further administrative action was not precluded.

In a letter of 17 June 1982 to the Director-General the complainant asked for appointment of a medical board under Manual provision 342.721. The answer, on 2 August, was that the board could not be convened until the FAO Staff Pension Committee had met and that he should first apply for a disability benefit. On 16 November 1982 he lodged another internal appeal objecting to the FAO's "disgraceful tactics" since July 1975 and demanding the appointment of the board and referral to the Staff Pension Committee of his claim to a disability benefit. In an undated report submitted in mid-1983 the Appeals Committee recommended dealing with his case more speedily. The Deputy Director-General wrote to him on 8 July 1983 to say his claim was being referred to the Staff Pension Committee. The Committee rejected it after a first hearing as irreceivable and after a second on the merits, and he was so informed by a letter of 11 June 1984. On 13 July he wrote to the Committee asking it to reconsider.

He had submitted to the Director-General on 20 February 1984 another internal appeal pressing his various claims. The Director-General having rejected it, he appealed to the Appeals Committee on 19 April 1984. In its report, again undated, the Committee observed, among other things, that his claim to a disability benefit was not within its

competence and was being dealt with under the proper procedure. In a letter of 3 September 1985, which he received on 9 September and is appealing against, the Deputy Director-General, writing on the Director-General's behalf, repeated that observation; rejected his claim to costs and moral damages; and said he would decide on the claim to compensation for service-incurred illnesses only after further consulting the Advisory Committee on Compensation Claims.

B. The complainant explains that the purpose of his complaint is not to seek compensation for service-incurred illnesses or a disability benefit. He narrates the facts at length. He submits that it was gross negligence on the FAO's part to classify him 1A in June 1974 when he was suffering from a disease whose effects, though spasmodic, can be serious. In his case the bouts became more and more frequent and severe from December 1974, his working conditions were hard, and on 9 January 1975, in his office he had his heart attack, which was also very severe. It was a second grave mistake to authorise his return to work on 11 June 1975. The third was to decide that neither check-up nor electrocardiogram was needed until January 1976. The FAO did not fulfil its promise of a full check-up either in January 1976 or indeed at any later date. In particular no electrocardiogram was made and he had no proper check-up on leaving the Organization. The FAO was therefore in breach of its obligations towards him under the rules and his contract and he submits that he should be treated as being still a member of its staff because the end-of-service formalities were not carried out properly. With detailed references to the history of the dispute he accuses the Organization of being obstructive, in bad faith, in some respects downright dishonest and at all times dilatory. In support of those charges, which he develops at length, he cites the arguments in his internal appeal of 16 November 1982 and the Appeals Committee's unanimous report of mid-1983, which was severely critical of the Organization's attitude and behaviour. He invites the Tribunal to declare that the Organization was guilty of gross negligence in failing to give him a complete medical check-up and in keeping him in a tropical climate when he was physically unfit, and of putting constant moral pressure on him for over ten years, and that he is still a staff member. He seeks (a) payment of his remuneration as from 1 November 1976, (b) 100,000 United States dollars in damages under two heads and (c) 515,000 in costs.

C. In its reply the FAO gives its own version of the facts, which differs in several points of substance from the complainant's. In particular it affirms that the check-up the complainant underwent in Rome in January 1976 was his first end-of-service examination. It was supplemented by another on 21 March 1977 and by an examination on 28 March by an independent specialist, Professor Angelo Fiori, of Rome, whose findings the FAO medical service invited and later endorsed.

His claim to treatment as a staff member is irreceivable because it did not form part of any of his internal appeals, the letter of 3 September 1985 -- the decision impugned -- does not refer to it, and he has therefore failed to exhaust the internal means of redress. In any event the claim is unsound. The negligence he accuses the FAO of, even if it were established -- which it is not -- would not have the effect of extending his appointment. The end-of-service formalities were properly carried out. Electrocardiograms, which the Organization has produced at the Tribunal's order, were made on 30 January 1976 and 21 March 1977 over and above several made between 1968 and 1975.

His claim to moral damages is also devoid of merit. His lengthy account of often unrecorded incidents in the history of the dispute affords no proof of his gratuitous charges of gross negligence and moral pressure. It was the FAO's medical officer, not the UNDP representative, who was competent to determine whether a check-up was needed in August 1975, and there was no flaw in his decision that it was not. Besides, it is not customary to bring an official to headquarters just for a check-up, and the complainant had had one in June 1975 anyway. Though then authorising his return to Senegal, the medical officer knew he would spend only a few more months there.

#### CONSIDERATIONS:

The claim to payment of salary

1. Observing that the Organization's refusal of a complete medical check-up amounted to gross negligence and that he is therefore still a staff member, the complainant claims, under (a), payment of his remuneration as from 1 November 1976, the date on which his unpaid leave expired, up to the date of the formal termination of his appointment.

The Organization retorts that the claim is irreceivable because there was no internal appeal on the point.

In his appeal of 20 February 1984 to the Director-General the complainant does say he is still on the staff and entitled to his remuneration for as long as he is. But it appears that he did not press the point before the Appeals Committee. The text of the only internal appeal he appends to his complaint does not claim status as a staff member or remuneration as such: nor does the Committee cite the claim in any summary. The Tribunal concludes that, since he failed to exhaust the internal means of redress, claim (a) is irreceivable under Article VII(1) of the Statute.

The claim to compensation on the grounds of extension of appointment

2. While stationed in Senegal the complainant contracted spasmodic colitis. He was in the main hospital in Dakar from 1 to 23 December 1973. He had a check-up in Rome on 26 June 1974, was declared fit for service and was put in the highest health category, 1A. He suffered a heart attack on 9 January 1975 and was in the same hospital until 28 February. On 9 June the medical service of the Organization put him in health category 1B with the comment: "No objections to his return to present post. Any transfer or extension subject to prior medical clearance". Several times the Resident Representative of the UNDP in Senegal told the FAO that he doubted whether the complainant could carry on there and thought he should undergo a complete check-up in Rome. The head doctor at the hospital in Dakar advised "sedentary work in a temperate climate". But in a telex of 14 August 1975 the medical service said: "Travel Rome Petruc for medical examination considered unnecessary. In medical officer's opinion complete medical check-up including electrocardiogram necessary only January 1976. No objection extension 31 January 1976 provided under same working conditions".

The complainant stayed on in Senegal until 26 January 1976 when he went to Rome for the check-up. He maintains that it was again gross negligence to keep him so long in Senegal and that the telex of 14 August 1975 overlooked the medical service's warning of 9 June that any extension of his appointment should be subject to "prior medical clearance". Those are the first pleas in support of his claim to damages under (b).

There is no need to rule on them. However valid they may be they do not warrant awarding him damages for the extension of the appointment in Senegal. There is no proof of any change in the state of his health between June or August 1975 and January 1976. Though he was in hospital in Paris from 2 January to 25 February 1977, there is no evidence to suggest that his illness at the time was attributable to the decisions taken by the medical service in 1975. Claim (b) fails insofar as it rests on his assignment to Senegal in the second half of 1975 and early in 1976.

The claim to moral damages

3. The second part of claim (b), which is a claim to moral damages, rests on the plea that for ten years the Organization put him under relentless moral pressure. He accuses it of prevarication, inaccuracy, forgery, trickery, bad faith, wiles, sharp practice and lying, all obstacles in the exercise of his rights. Whatever the FAO may say, such terms, though perhaps excessive, are not entirely unwarranted.

The medical service's telex of 14 August 1975 said the complainant should have a complete medical check-up with an electrocardiogram, in January 1976, and indeed, according to the text of a report the Tribunal has before it, he was put through laboratory tests on 30 January 1976. But the chest X-ray is described in the report as "technically unsatisfactory" and there is a blank opposite the heading "electrocardiogram". The complainant infers that the electrocardiogram was not made, and besides he must have realised that himself. The FAO's submissions to the Appeals Committee on his first two internal appeals do not answer his allegations, and in the case the Tribunal ruled on in Judgment 502 the Organization implied there had been no electrocardiogram and said it "would have added nothing to the evidence anyway". Yet in a brief they submitted to the Appeals Committee on 5 October 1984 and again in their reply to this complaint they say that electrocardiograms were made on 30 January 1976 and 21 March 1977 and at the Tribunal's instance they have disclosed "ECG" diagrams which are dated 30 January 1976 and bear the complainant's name. Since, even if accepted as true, their later statements are at odds with their earlier ones, it seems that they did not always give the complainant's case proper attention.

Their handling of his claim of 28 March 1977 to a disability benefit is another source of embarrassment. First, in its report of 12 April 1983 the Appeals Committee found that they had not yet referred his claim to the Staff Pension Committee. Secondly, in a letter of 13 May 1980 they had told him to write to the United Nations Staff Pension Board whereas -- says the Appeals Committee -- the proper body was the Staff Pension Committee. Thirdly, the deputy secretary of the Staff Pension Committee was absent on the day on which she had an appointment with him. And fourthly, the FAO argued before the Appeals Committee on 8 June 1984 that his claim was time-barred: yet

according to a letter to him of 23 April 1984 the Standing Committee of the United Nations Pension Committee had on 29 March 1984 declared his claim receivable and referred it back to the FAO Staff Pension Committee.

The impression of carelessness that all this conveys is strengthened by the Organization's evasiveness over his claim to compensation for service-incurred illness. He wrote to them, but to no avail, on 14 September and 23 November 1977 and on 22 April, 11 July and 3 November 1978. On 26 December 1978 he appealed to the Appeals Committee. It did not report until 12 February 1980, the FAO having taken months to reply. In compliance with Judgment 502 the complainant sent them, on 30 June 1982, the name of his appointee on the medical board. Yet he says, and they do not deny, that the board did not meet until July 1983. Indeed on 12 April 1983 the Appeals Committee had observed that "three years after the original consideration of the case the medical board has still not reported".

What makes the FAO's attitude all the more reprehensible is the strong criticism expressed by the Appeals Committee in every one of its reports. As long ago as 12 February 1980 it "deplored the administrative dilatoriness in dealing with Mr. Petruc's case". On 12 April 1983 it "wondered whether the extraordinary number of mistakes the Organization had made in their correspondence with the complainant and the unusual slowness of the proceedings did not conceal bad faith on their part". It recommended that "the Organization do its utmost to show greater diligence in such cases and try to help and advise the official instead of letting him flounder in proceedings which its own vagueness and sometimes even inaccuracy complicated even further". On 18 February 1985 the Appeals Committee "unanimously held it had no reason to alter the recommendations it had made in 1983". The comment was a fair one, and the Tribunal made one of its own in Judgment 502, yet the shilly-shallying went on.

4. Such an attitude was grievously harmful to the complainant's personal interests. Having fallen ill while on duty in Senegal, he made several claims which, whether valid or not, deserved prompt and diligent handling. Sent from pillar to post and infuriated by the Organization's silence and invincible inertia, he was understandably distressed. For the moral injury he has suffered he is entitled to compensation set ex aequo et bono at 20,000 United States dollars. The amount takes account of the fact that the complainant could have speeded up the proceedings to some extent and also himself had an electrocardiogram done in Dakar in 1975.

#### Costs

5. That the complainant became embroiled in proceedings of unusual length and complexity was mainly if not wholly the organization's fault. Though his claim to payment of salary fails and he gets only a fifth of the amount sought, he is awarded \$5,000, or part of the sum he claims, in costs.

#### DECISION:

For the above reasons,

1. The FAO shall pay the complainant \$20,000 in moral damages.
2. It shall pay him \$5,000 in costs.
3. His other claims are dismissed.

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

Delivered in public sitting in Geneva on 12 December 1986.

(Signed)

André Grisel

Jacques Ducoux

Mohamed Suffian

A.B. Gardner

