

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

FIFTY-FOURTH ORDINARY SESSION

In re POLLICINO

Judgment No. 635

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the Food and Agriculture Organization of the United Nations (FAO) by Mrs. Réjeanne Pollicino on 11 January 1984 and corrected on 23 February, the FAO's reply of 3 May, the complainant's rejoinder of 28 June and the FAO's surrejoinder of 20 July 1984;

Considering Article II, paragraph 5, of the Statute of the Tribunal, Articles I and X of the FAO Staff Regulations, FAO Staff Rules 303.01 .03 and .311 and FAO Manual provisions 304.42 and 330.12, .13 .15, .212, .241, .325 and .326;

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 Canadian, joined the FAO in Rome as a grade G.3 secretary in 1968 and got a permanent contract in 1970. She rose to G.5 and became head of the secretariat of a division known as DDF. Mr. Skoufis, the Assistant Director-General for Administration and Finance, wrote to her on 30 September 1981 "on 22 September 1981 you were observed to be typing documents not related to your work. I was informed that this was not an isolated incident and this practice has been recurring for some time now". The complainant replied on 5 October: "on approximately the date you mention I did private work during my late lunch hour". The same day Mr. Skoufis wrote again to say that her reply was unsatisfactory and suspend her from duty from 6 October but with pay, under Rule 303.03: "If a charge of misconduct is made against a staff member and the Director-General so decides, the staff member may be suspended from duty, with or without pay, pending investigation..." On 16 October the complainant wrote to Mr. Skoufis to protest against the suspension, explaining that she sometimes spent her lunch hour doing voluntary unpaid work and alleging that everybody occasionally used FAO time and materials for private purposes. On 2 November Mr. Skoufis retorted that she had "spent much more than a reasonable amount of office hours over and above a lunch hour" on private work; her suspension would not end until he knew how much time she had spent on it during office hours and who had asked her to do it. Having got no answer he wrote again on 2 December converting suspension with pay into suspension without pay under Rule 303.03 and asking her to come and see him on 14 December. On 9 December she replied that she had spent no working hours on voluntary private work and would not discuss its nature; she had done many hours of unpaid overtime in 1980-81; she asked for early reinstatement. At the meeting on 14 December Mr. Skoufis told her the investigation would go on until further notice. She was asked on other occasions to go to the office to help in the inquiry but she refused. On 27 January Mr. Skoufis imposed a written reprimand on her under Manual provision 330.212 for her "unco-operative attitude". On 15 February she wrote describing the financial hardship the suspension was causing her and claiming payment for the overtime. On 23 February Mr. Skoufis wrote her a minute referring to articles about her case which had appeared in the International Daily News of Rome on 5 January, 14/15 February and 16 February. The articles quoted from confidential FAO memoranda addressed to her and reported, sometimes promptly, on conversations she had had with officials about the inquiry. He cited Staff Regulation 301.015: "Staff members ... shall not communicate to any person any information known to them by reason of their official position which has not been made public...", and Manual provision 304.42: "It would obviously be improper for a staff member to attempt to use the Press ... to air his own grievances". He charged her with "unsatisfactory conduct" under Manual provision 330.15, proposed dismissing her and invited her to reply in accordance with 330.325. She did so on 9 March, denying the charge and saying there was no proof of her having confided in the press. She declined his invitation, made under 330.326, to see him on 19 March. On 31 March he wrote her two minutes. One said that the inquiry was dropped and she was put back on suspension with pay with effect from 2 December 1981. The other rejected her comments of 9 March and said she was dismissed for misconduct with effect from the date of notification, with payment of one month's salary in lieu of notice. On 21 June 1982 she appealed in vain to the Director-General against her dismissal and she went to the Appeals Committee. In its report of 29 August 1983 the

Committee held that she had committed misconduct and it recommended rejecting her appeal. By a letter of 18 October 1983, the decision impugned, a Deputy Director-General informed her that the Director-General endorsed that recommendation.

B. The complainant submits that the decision disregarded essential facts and is therefore unlawful. The FAO suspended her from duty, first with pay, then without it, supposedly to carry out an inquiry into charges trumped up against her. There was no justification in FAO rules for so treating her, and the purpose was to undermine her resistance by financial pressure. The FAO later acknowledged it had been wrong by restoring her pay with effect from 2 December 1982. She spoke of her unjust treatment to friends and colleagues on the FAO staff, but not to the press. Information on her meetings with officials was available to many people who could have leaked it. She asks the Tribunal to quash the decision of 18 October 1983, order her reinstatement or else damages amounting to two years' salary, and award her 10,000 French francs in costs.

C. In its reply the FAO relates the events leading up to the complainant's dismissal, which, it submits, show that she had ample opportunity to express her views at all times and the correct procedure was followed. The substantive requirements of the rules were also met. The FAO appends copies of the press articles. The first, dated 5 January, with its many details of what went on between Mr. Skoufis and the complainant on 14 December 1981, raised the presumption she had leaked information to the press, but there was no proof and nothing was done at the time. But further articles in February gave so much detail on recent events that Mr. Skoufis rightly concluded she had given it or had it given to the press. There was breach of her obligations as a staff member under Staff Regulation 301.15 and Manual provision 304.42. An article of 4 March 1982 contained information which had obviously come from the complainant herself since it gave the date on which she had received Mr. Skoufis' minute of 23 February -- 3 March -- and which no one else could then have known. That was wilful misconduct. Only she stood to benefit from the leaks, the sole purpose being to attack the Organization and protect her interests by bringing outside pressure. From personal motives she acted to the detriment of the FAO's reputation.

D. In her rejoinder the complainant observes that there is not a shred of proof of her having done private work at the office; yet that is the core of the FAO's case against her. The four months' suspension without pay was a disciplinary measure imposed on her in utter disregard of the rules of procedure and of her right to defend herself; indeed its unlawfulness was later admitted and she was paid her salary in full. Naturally she spoke of the injustice to other staff members, but she never got in touch with the press. The alleged leaks are just a pretext for putting pressure on her.

E. In its surrejoinder the FAO submits that the contentions in her rejoinder are tendentious and false. It has never suggested she was dismissed for doing private work. The suspension was imposed because she refused to co-operate in the inquiry into the charges against her. It was not four months' "injustice" that compelled her to leak information to the press, since she was suspended without pay on 2 December 1981 and the first press article appeared as early as 5 January 1982. Whether she gave the information herself or through someone else is immaterial. That she did favour discussion of her case by the press to discredit the FAO is clearly established and fully warranted her dismissal.

CONSIDERATIONS:

1. The complainant joined the FAO in 1968 and was serving as head of the secretariat of the DDF Division in 1981. On 30 September 1981 she was suspended from duty with full pay on charges of having, on 22 September and during working hours, typed documents not related to her work. The official who took the decision felt that it had not been an isolated occurrence and he informed her that an inquiry would be made to ascertain the extent and frequency of the illicit work.

2. The complainant protested for reasons which she set forth in a letter dated 16 October. The FAO found her answer unsatisfactory and on 2 November sent her a minute asking for further explanation. Having received no answer it decided on 2 December to convert the suspension with pay to suspension without pay.

That decision did nothing to put the parties on better terms and they never managed to have any proper discussion of the matter in dispute.

3. There then appeared three articles in the International Daily News which shifted the focus of the dispute.

The first was published on 5 January 1982 under the heading "FAO -- an inside story", the second, appearing on 14/15 February, was headed "FAO snarl nears showdown"; and the third, which came out on 16 February, read "Saouma trying for a quick confession".

The articles gave precise details of the proceedings and the FAO took the view that the source had been the complainant herself or else someone she had asked to pass the information on. Disciplinary proceedings were introduced on 23 February 1982. On 9 March the complainant answered the charges against her, but the Director-General found what she said unconvincing and decided to terminate her appointment on the grounds of misconduct on account of the publication of the articles in the International Daily News. At the same time he withdrew the decision of 2 December 1981 to suspend her without pay and ordered payment of her remuneration from the month of December. The two decisions were notified to her on 31 March 1982.

4. The complainant lodged an internal appeal against the first of those decisions. Without having given her a hearing the Appeals Committee, in its report of 29 August 1983, recommended rejecting her appeal, and the Director-General did so. The complainant is challenging his decision on the grounds that she committed no misconduct.

The decisions to suspend her from duty are no longer under challenge.

5. The Tribunal's ruling will turn on its answers to a question of law and to a question of fact.

6. The FAO contends that the complainant's attitude was in breach of the obligations incumbent on any staff member, and in support it cites Staff Regulation 301.015 of Article I: "Staff members shall exercise the utmost discretion in all matters of official business. They shall not communicate to any person any information known to them by reason of their official position which has not been made public, except in the course of their duties or by authorization of the Director-General. Nor shall they at any time use such information to private advantage. These obligations do not cease upon separation from the Organization".

The particular dispute between the FAO and the complainant was not about any matter of FAO policy or of "official business" within the meaning of 301.015. The staff member believed rightly or wrongly, that she had suffered injustice and she was not bound to absolute secrecy. In any case fellow staff and her family and friends outside the FAO must have known she had been suspended from duty. The reason why the articles which led to the disciplinary sanction made a wider impact than her own particular position was that the journalist made use of an unremarkable incident to challenge the FAO Administration. What is held against the complainant is not the contents of the articles but the revealing of facts which prompted an attack on the Administration. Yet international civil servants have legitimate and effective ways within the Organization of making their views known. Any who think themselves wronged may avail themselves of internal appeal procedures, staff associations and staff unions, and independent appeal bodies. That is why, even though Article I of the Staff Regulations is not directly applicable, the staff are under a general duty of discretion, which varies in scope according to their grade and the circumstances.

Accordingly, if the author of the articles were shown to have obtained information from the complainant directly or through someone else the complaint would fail. The information was repetitive and, the atmosphere in the FAO being what it was at the time, whoever leaked it must have known he was helping to mount an attack on the Administration.

7. The Tribunal will therefore determine whether the charges against the complainant are founded. She denies that she was in gross breach of the duty of discretion: she never got in touch with Journalists and she approached the press neither herself nor through anyone else.

She can go no further than that since it is impossible to adduce evidence to rebut the charge. Her statement that she did not commit the misconduct she is charged with shifts the burden of proof to the Organization. The Tribunal will not require absolute proof, which is almost impossible to provide on such a matter. It will dismiss the complaint if there is a set of precise and concurring presumptions.

8. The FAO refers to the complainant's attitude, observing that, first, she did not disavow the articles hostile to the FAO; secondly, though warned by her superiors, she continued to keep other staff members abreast of what was happening in her case; and, thirdly, she refused to help the FAO with the inquiry. But these three arguments are

beside the point. First, she was suspended from duty and deprived of her remuneration, and it was therefore not incumbent on her to take the initiative of dissociating herself from a press campaign. Secondly, an official, especially when suspended from duty, cannot be expected to say nothing of her own predicament to other staff. Thirdly, the complainant's reluctance to co-operate, which was in any event understandable, is irrelevant to the charges against her. Accordingly, these submissions of the FAO's do not give rise to any presumption in its favour.

9. There is more cogent evidence in favour of the contention that the complainant was directly responsible for the leaks.

But she was not responsible for the first article, published on 5 January 1982, which reports in detail on a meeting held in December 1981. The FAO itself admits that there were too many present at the meeting for it to be able to affirm that the complainant was responsible.

So it was really the two articles published in February that led the Director-General to take his decision. The one published on 14/15 February refers to telephone conversations between the complainant and one of her superiors, and the article of 16 February gives details of a meeting held the day before. In its reply to the Tribunal the FAO speaks of another article which appeared in the same newspaper on 4 March 1982 under the heading "Saouma fires head of typist pool". But the first mention of it is in the present proceedings, there is no evidence to suggest that the complainant was given a hearing in respect of this article, and the Tribunal will take no account of it.

The FAO points out, correctly enough, that the three articles take the complainant's side and put the Organization in a bad light. But again this is not enough to create precise and concurring presumptions which might afford justification for the decision.

In support of its case the FAO observes that it made a thorough inquiry and that the Appeals Committee unanimously held that the evidence it had adduced was convincing. But the Tribunal has before it only the items of evidence in the dossier and these do not include the findings of the inquiry. Moreover, the Appeals Committee did not give the complainant a hearing and did not call for submissions from both sides.

10. At the conclusion of its submissions to the Tribunal the FAO acknowledges that it does not have irrefutable proof. Indeed the evidence before the Tribunal does not bear out the contention that the decision to dismiss the complainant was based on properly established facts, and dismissal is too drastic a measure for the staff member not to have the benefit of the doubt.

11. The decision being quashed, the complainant is entitled to straightforward reinstatement since the Tribunal sees no reason to award her damages in lieu.

Since she seeks damages only if not reinstated the Tribunal need not rule on this claim.

12. The FAO shall pay the complainant 10,000 French francs in costs.

DECISION:

For the above reasons,

1. The impugned decision is set aside.
2. The complainant is reinstated.
3. The FAO shall pay her 10,000 French francs in costs.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, Mr. Jacques Ducoux, Vice-President, and the Right Honourable Sir William Douglas, Deputy Judge, the aforementioned have hereunto subscribed their signatures, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 5 December 1984.

(Signed)

André Grisel

Jacques Ducoux

William Douglas

A.B. Gardner

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