

**NINETEENTH ORDINARY SESSION**

***In re* AMBROZY**

**Judgment No. 119**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the United Nations Food and Agriculture Organization (FAO) drawn up by Mrs. Elisabeth Ambrózy on 9 July 1967 and the reply of FAO dated 29 September 1967;

Considering Article II, paragraph 5 and Article VII, paragraph 1 of the Statute of the Tribunal, the deceleration of the United Nations Food and Agriculture Organization recognising the jurisdiction of the Administrative Tribunal of the ILO and Article 303.131 of the FAO Staff Rules;

Having examined the documents in the dossier, oral proceedings having neither been requested by the parties nor ordered by the Tribunal;

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

A. During 1959 and 1960, while employed as a typist in the United Nations Food and Agriculture Organization's Regional Office for Latin America (Eastern Zone), Mrs. Ambrózy took extended periods of sick leave on account of an affection of the spinal column. On 8 March 1961 she had a fall in her office and suffered contusions at various points on the spinal column. After this incident she was again absent on sick leave for a total of 59 days in the same year. In April 1962, in accordance with the Organization's Staff Regulations, the Director-General requested her to undergo examination by a medical board in order to ascertain her fitness for work. This board, consisting of a medical practitioner selected by complainant, another selected by the Organization, and a third chosen by the latter two, recommended in June 1963 that complainant should not carry out office work for a certain period of time. Notwithstanding this recommendation, Mrs. Ambrózy continued to work. Towards the end of 1965 she again had to take long periods of sick leave, and the same occurred in the following year. In January and February 1967, at the Organization's request, she was examined by a number of specialists selected by the Organization, as a result of which the Organization concluded that complainant was fit for work, and accordingly requested her to resume her duties, warning her of the possible consequences of not doing so. As Mrs. Ambrózy did not comply with this instruction she was separated from service for abandonment of post under the terms of Staff Manual section No. 314.33, on 7 June 1967.

B. Complainant strongly protested against the conclusions reached as a result of the medical examinations performed in January and February 1967 to the effect that she was fit to resume work. She asserts that the contrary is true, as she is unable to remain sitting for any length of time. She points out that the medical practitioners who carried out the examinations did not include a practitioner chosen by herself, and that in spite of her protest the Organization did not, as it ought to have done, order a counter-examination. She submits that she should be paid compensation for the corporal damage suffered in the performance of her official duties and the resulting loss of earning capacity, and further that she should be paid a disability pension from the United Nations Joint Staff Pension Fund.

C. In its reply the respondent Organization does not deal with the merits of the case and submits that the complaint is irreceivable, since Mrs. Ambrózy has not availed herself of the internal appeals procedure open to her, and thus has not complied with Article VII, paragraph 1 of the Statute of the Tribunal which requires that all internal means of resisting the decision shall have been exhausted. In regard to the claim for a disability pension the Organization submits that the Tribunal is not competent.

**CONSIDERATIONS:**

On the submission concerning payment of a pension by the United Nations Joint Staff Pension Fund:

1. In accordance with the decision taken by the FAO Conference at its VIIth Session, the Tribunal is competent to hear complaints from staff members of the Organization alleging non-observance of their terms and conditions of appointment, with the exception of complaints concerning the benefits of the United Nations Joint Staff Pension Fund. It follows that in the present case the Tribunal is not competent to rule on the complaint insofar as it relates to the payment of such benefits. Complainant has moreover submitted another claim to this effect which has been referred to the competent FAO body.

On the submission concerning payment of compensation by FAO

2. Under the terms of Article VII, paragraph 1, of the Statute of the Administrative Tribunal, a complaint is not receivable unless the person concerned has exhausted such other means of resisting the decision impugned as are open to him under the applicable Staff Regulations. In the case at issue complainant did not lodge an appeal either with the Director-General or with the FAO Appeals Board, as laid down in FAO Manual section 303.131, in respect of payment of compensation by the Organization. Consequently, to the extent that it seeks relief in the form of payment of such compensation the complaint is irreceivable.

DECISION:

For the above reasons,

1. The submission praying for the award of a pension by the United Nations Joint Staff Pension Fund is dismissed as outside the competence of the Tribunal.
2. The remainder of the complaint is dismissed as irreceivable.

In witness of this judgment, delivered in public sitting in Geneva on 18 March 1968 by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures, as well as myself, Lemoine, Registrar of the Tribunal.

(Signed)

M. Letourneur  
André Grisel  
Devlin  
Jacques Lemoine