

The Administrative Tribunal,

Considering the complaint filed by Mrs Saideh von Keitz against the World Health Organization (WHO) on 29 September 2000 and corrected on 15 January 2001, the WHO's reply of 11 April, the complainant's rejoinder of 12 July, and the Organization's surrejoinder of 27 September 2001;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and disallowed the complainant's application for the hearing of witnesses;

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

A. The complainant was born in 1957 and is of German nationality. She joined the WHO in February 1997 as a short-term professional at grade P.5, and worked as a system analyst at the WHO's Centre for Health Development, in Kobe, Japan. In April 1997 she was transferred to a P.4 post, retaining her P.5 grade on a personal basis. She was granted a two-year fixed-term contract due to expire on 14 May 1999.

Between 19 November 1998 and 12 February 1999 the complainant was away from Kobe on home leave that merged into certified sick leave from mid-December onwards. The Director of the Centre retired at the end of 1998, and a new Director officially took up his functions on 1 January 1999 thus becoming the complainant's first-level supervisor.

In a letter of 12 May 1999 a Personnel Officer in WHO headquarters informed the complainant that although, because of her leave a full assessment of her performance had not been possible, the new Director had concerns about her performance and thought it did not warrant a two-year extension; it had therefore been decided to grant her only a one-year extension. On 24 May 1999 she signed the contract extension form filled out by her supervisor on 26 February. On 27 May 1999 she received her completed appraisal for the period from 1 May 1998 to 30 April 1999, in which she was assessed by both the former Director of the Centre as well as by his successor.

By a statement dated 9 July 1999 the complainant notified her intention to appeal against the appraisal report and the one-year contract extension. In her appeal she alleged psychological harassment on the part of her new first-level supervisor. On 26 July 1999 she was temporarily assigned to the WHO's Regional Office for the Eastern Mediterranean (EMRO) in Alexandria, Egypt. After nine months at EMRO her contract was extended by another three months. She was then transferred to WHO headquarters with effect from 1 September 2000.

The Headquarters Board of Appeal reported on her case on 10 April 2000. It recommended that the challenged appraisal report should be maintained and the decision to grant her a contract for only one year be allowed to stand; it thought, however, that she should be granted 20,000 Swiss francs in moral damages. It also recommended that an investigation be carried out into her allegations of harassment. In a letter of 27 June 2000, the impugned decision, the Director-General did not agree to awarding the complainant moral damages, but adopted the Board's recommendation regarding the appraisal report and the length of contract. Moreover, she said that the harassment issue was to be referred to the Chairperson of the Working Group on Harassment who would arrange for the complainant's case to be examined, and for a report and recommendation to be provided.

B. The complainant submits that the grounds for her complaint are the Organization's failure to observe the Staff Rules and Staff Regulations, incomplete consideration of the facts and prejudice on the part of responsible officials.

She has five pleas. First, she claims that while under the supervision of the new Director in Kobe she was the victim of psychological harassment and sexual discrimination. Upon her return from sick leave on 15 February 1999, she was improperly denied work assignments. Computer passwords were "stripped away" from her, as were her work projects. Her supervisor took the decision to reduce her contract after supervising her for only nine working days. The psychological harassment inflicted on her by her supervisor and others constituted serious moral injury.

Secondly, she submits that despite being informed of the problems, the WHO allowed the harmful work environment to persist and did not take appropriate action. Furthermore, the investigation into her harassment claim, announced in the impugned decision, has not yet taken place.

Thirdly, she states that, as a result of her new supervisor's actions, she was wrongfully denied a two-year extension of her contract. The decision to limit her contract to one year was, moreover, put into effect before her challenged performance appraisal was completed. The appraisal itself had no basis in law or in fact: it was "false and erroneous".

Fourthly, she submits that she was not notified of her one-year extension until after her previous contract had expired. The Organization did not give her sufficient warning of her change in status: indeed, under Staff Rule 1040, she should have received three month's notice. The lack of notice constituted a procedural error and caused her contract to be renewed, by implication, for a further two-year term

Fifthly, she avers that it is a long-established practice for the WHO to grant a two-year extension upon the expiry of an initial two-year contract, and that practice should have held good in her case.

The complainant seeks: the withdrawal of her 1998-99 appraisal report and its replacement by an objective appraisal; the setting aside of the impugned decision and the extension of her present contract for an additional two-year term; an investigation into the actions of her first-level supervisor and, if justified, disciplinary actions against him; apologies from both her first and second-level supervisors; her transfer to a regular budget post at headquarters with retroactive effect from 14 May 1999; an award for "out of pocket losses" as a result of her "forced and illegal removal from Kobe"; costs; interest on any sums awarded; 100,000 Swiss francs in compensation for moral and "personal" injuries; and any other relief deemed necessary by the Tribunal.

Lastly, she wants the Organization to produce all documents or correspondence that would in any way shed further light on the subject matter of her grievances.

C. In its reply the Organization points out that delays have occurred in initiating the investigation decided upon by the Director-General. As the Director-General has not yet taken a final decision on the harassment allegations, the complainant shows no cause of action and the claims arising therefrom are irreceivable. In cluster note 2001/9 of 23 March 2001 it informed staff of its policy on harassment established by the Working Group on Harassment. It made known therein that it intended putting in place a Grievance Panel to take up harassment cases.

On the merits the WHO contests the accuracy of some of the statements made by the complainant. It rejects the complainant's allegation that it took no early action on the harassment issue; her change of duty station came about as a result of steps taken while she was still in Kobe.

The decision to extend the complainant's contract for one year instead of two was a proper exercise of its discretionary authority. There were concerns about her performance and a longer extension would have run contrary to the Organization's interest. By at least allowing her an extension, it gave the complainant the opportunity to improve her performance. The rules do not provide for an automatic right to the renewal of a contract, nor to an extension of a particular duration. The three-month notice period mentioned in Staff Rule 1040 applies only in the event of non-renewal, which is not the case here. The complainant received the written notification about her reduced contract on 14 May 1999, the day her contract expired. It was faxed to her in Kobe.

The decision to limit the duration of her contract was not based on her new first-level supervisor's evaluation alone; comments of the previous Director were also taken into account. The assessment made by the new Director covered the period from 15 February to 29 April 1999 and was therefore not based, as implied by the complainant, on a nine-day period. Contrary to her assertions, there was a factual basis to the decision.

The Organization points out that although the complainant asks for disciplinary measures to be taken, such

remedies do not fall within the competence of the Tribunal. It rejects her claims to financial compensation as being without merit: she had no wish to stay in Kobe. It sees no reason to produce further correspondence and documentation, being of the opinion that the extensive submissions already put forward should suffice.

D. In her rejoinder the complainant refers to a letter sent by her counsel to the Director-General on 16 July 1999 asking for an investigation to be conducted into the harassment issue. As no definitive answer was received from the Organization within three months she concludes that her request was denied and her claims regarding harassment are therefore receivable.

She contests some aspects of the Organization's rendering of the facts. She argues that she was victimised twice - firstly by officials in Kobe and secondly by others at high level in headquarters. Such treatment has caused her even further moral injury. She contends that it was not poor performance which led to the truncating of her contract, but the prejudice and bias of her supervisor and others. She says that the Organization has produced nothing in its reply to show that the new Director assigned any work to her.

E. In its surrejoinder the Organization presses its pleas and states that the investigation into the harassment issue is under way. It has appointed a Grievance Panel which has begun its work. It was due to hold its first meeting in October 2001. The Panel's task was rendered more complex because the complainant filed a second complaint of harassment against another official, and it is considering both cases at the same time.

The WHO takes the view that the complainant, in spite of her assertions to the contrary, did have work in Kobe. She had a post description with terms of reference set in March 1997.

CONSIDERATIONS

1. The complainant joined the WHO in February 1997 at grade P.5, in the Centre for Health Development in Kobe, Japan. In April 1997 she was appointed to a P.4 post, keeping grade P.5 on a personal basis, and was given a two-year fixed-term contract due to expire on 14 May 1999.
2. She was absent from 19 November 1998 to 12 February 1999 on home leave that merged into certified sick leave. The Director of the Centre, Dr W., retired at the end of December 1998 and was replaced by Dr K., who took over from him as the complainant's first-level supervisor. On 12 April the complainant received her performance evaluation form from Dr K., for her to complete. She returned the form the next day, completed as requested, with an attachment listing activities undertaken during the reporting period. On 28 April Dr K. informed her that Dr W. would appraise her performance from 1 May to 31 December 1998 and he himself would cover the period from 1 January to 30 April 1999.
3. By a letter of 12 May the complainant was informed by a Personnel Officer that her contract would be renewed for one year only. Dr K. had concerns about the complainant's performance and the one-year extension would allow time for a full assessment to take place.
4. On 27 May 1999 the complainant received her annual appraisal completed by Dr W. and Dr K., both of whom made negative comments.
5. In an appeal lodged with the Headquarters Board of Appeal the complainant contested her appraisal report and the fact that her contract was renewed for one year instead of two. She contended that it was extended by implication for two years due to the Organization's failure to give her adequate notice. She alleged prejudice by her new supervisor in his evaluation of her performance and said that the Organization had failed to take steps to protect her from his misconduct and the psychological harassment she suffered.
6. The Headquarters Board of Appeal reported on 10 April 2000. It expressed dismay at the length of the pleadings submitted by the complainant's counsel and the repetitive style adopted therein; they were not presented in a "succinct and readily understandable manner". The Tribunal can only endorse the Board's remarks.
7. The Board considered it plausible that the complainant's performance had indeed deteriorated since her previous appraisal and that her former supervisor, Dr W., had legitimately changed his opinion of her work. It found the appraisal had been completed in accordance with Staff Rule 530.2 and WHO Manual paragraph II.5.50 which

require supervisors to draw up performance evaluations. The Board considered that it was reasonable for the Organization to extend the complainant's contract for one year in the light of the doubts expressed by Dr W. regarding her performance; it allowed her time to improve. It noted that under the Staff Rules three months' notice is required in the event of termination of a fixed-term contract of more than one year; the Rules, however, do not stipulate that notice is required when a contract is extended.

8. The Board concluded that the appraisal report for May 1998 to April 1999 was valid. The doubts expressed by Dr W. were sufficient to justify an extension of contract for only one year. Even if the complainant was notified of the one-year extension after her contract had expired, under the Staff Rules and Regulations that cannot result in the automatic renewal of her contract for a two-year period.

It further concluded that during the period from February to August 1999 while she was still in Kobe, the complainant's work situation was not clearly explained to her. She suffered as a result of poor management practice and this required compensation.

9. The Board said that the complainant had documented a situation that could constitute harassment if proven and concluded that a full investigation should be carried out.

10. The Board recommended that the contested appraisal report be maintained and the decision to renew her contract for one year be allowed to stand. It also recommended that an immediate investigation be carried out into the allegations of harassment and that further action be taken as appropriate. It recommended paying her a sum of 20,000 Swiss francs as compensation for moral injury and a sum for legal expenses.

11. The Director-General, by a letter of 27 June 2000, accepted the Board's recommendation to hold an investigation and said that she had asked the Working Group on Harassment to examine the complainant's allegations and provide her with a report, including a recommendation. She accepted the Board's conclusion that the appraisal report was valid, having been completed in accordance with the Staff Rules and Regulations, and agreed with its recommendation that the report should be maintained. She also accepted the Board's recommendation that the extension of contract for one year be allowed to stand. However, she did not concur with the recommendation to pay the complainant moral damages and deferred the decision on the payment of legal costs pending the outcome of the harassment examination. That is the decision impugned.

12. The Organization raises the question of receivability in relation to the allegation of harassment, since pending the outcome of the investigation no final decision has yet been taken.

13. Only final decisions are appealable to the Tribunal, therefore the aspects of this complaint which relate to allegations of harassment are irreceivable and must await a final decision.

14. This leaves only the issue of the validity of the appraisal report and the renewal of the complainant's contract for a period of one year only.

15. The appraisal report was carried out in accordance with the Staff Rules and Regulations. The complainant's first-level supervisor, Dr W., who covered the period from 1 May to 31 December 1998 acknowledged that his appraisal of her work after her first year was very positive. However, he also mentioned several negative aspects which became manifest after she received her fixed-term appointment, and cited examples. He said he was not intending to extend her contract.

16. Dr K. dealt with the period from 1 January to 30 April 1999. The complainant had been at work only from 15 February to 29 April 1999. He commented that her performance had been disappointing. He concluded that it would be in the interests of the Organization to extend her contract for one year only, in order for him to evaluate her performance during that period.

17. The complainant had the opportunity to comment on both these evaluations in accordance with the Staff Rules.

18. In evaluating the performance of staff members, the Tribunal has always taken the view that supervisors should be able to express their views openly and honestly subject to the official concerned being able to comment. The Tribunal finds that the assessment was carried out in accordance with the Staff Rules and Regulations and there is no reason to set aside the assessment. This is without prejudice to the complainant's right to prove the existence of harassment influencing the assessment.

19. In taking the decision to renew the complainant's contract for one year only, the Organization acted within its rights and properly exercised discretionary authority. The renewal for one year was in the best interest of the Organization. It also allowed the complainant time to show an improvement in her performance. Nothing in the rules stipulates that notice has to be given when a contract is renewed.

20. The other claims of the complainant are either dependent on the outcome of the harassment investigation or are irreceivable because they did not form part of the internal appeal.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 9 November 2001, Mr Michel Gentot, President of the Tribunal, Miss Mella Carroll, Vice-President, and Mr James K. Hugessen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 30 January 2002.

Michel Gentot

Mella Carroll

James K. Hugessen

Catherine Comtet