

The Administrative Tribunal,

Considering the complaint filed by Mr E. E.-A. H. against the International Fund for Agricultural Development (IFAD) on 19 October 2005 and corrected on 1 December 2005, IFAD's reply of 14 February 2006, the complainant's rejoinder of 23 March, the Fund's surrejoinder of 2 May, the complainant's further submissions of 23 June and IFAD's comments thereon of 22 September 2006;

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

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

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

A. The complainant is a Ghanaian national born in 1966. He worked for IFAD as a Finance Officer from 17 March 2002 to 16 February 2003. On 24 March 2003 he was appointed under a temporary contract for a fixed term of one year as a Finance and Budget Officer, at grade P.3, in the Office of the Controller, in the Finance and Administration Department. By a letter of 4 March 2004 from the Office of Human Resources the complainant was offered a one-year extension of his appointment, which he accepted on 8 March.

The complainant's performance for 2004 was evaluated under the "performance evaluation system" (PES). In the appraisal report, completed in early March 2005, his supervisor rated his performance as only "partly successful" and she recommended not extending his contract. On 14 March 2005 the Management Review Group (MRG) endorsed the rating whilst recommending that an investigation be carried out to assess the validity of the information contained in the complainant's rebuttal comments on his supervisor's evaluation.

On 21 March 2005 the Fund issued a letter addressed "To whom it may concern", which gave the dates of the complainant's assignments with IFAD and indicated that he would be separating from service upon the expiry of his contract, on 23 March. By an e-mail of 23 March 2005 to the President of the Fund, the complainant pointed out that his questions to the Office of Human Resources regarding notice of separation, the performance evaluation rebuttal process and his separation entitlements, had remained unanswered. He was subsequently informed by the Director of Human Resources that as he held a temporary contract notice of non-renewal was not necessary, that his separation entitlements were being processed and that the management's decision on his rebuttal would be conveyed to him once the investigation had been completed.

On 22 April 2005 the complainant wrote again to the President of the Fund stating that the same issues remained unanswered and appealing against his performance evaluation report and separation from service. In a letter of 6 July 2005 the President informed him that an administrative review had been undertaken and it had been found necessary "to recommence [his] PES 2004 evaluation". That evaluation would be done on the basis of a "list of outputs" that the complainant had supplied as a work plan for 2004.

The complainant's report was thereafter reissued and his performance was reassessed by his supervisor. The revised evaluation was sent to the complainant on 13 September 2005 under cover of a letter from the Director of Human Resources. He was invited to complete Part III of the evaluation form and return it to IFAD so that it could be submitted to the Management Review Group for review. However, on 15 October the complainant wrote to the President and, referring to the letter of 13 September, stated that he disagreed with the "proposed solution", which he considered to be simply a repeat of his previous evaluation and not a solution responding to the appeal that he had filed on 22 April 2005. It is the letter of 13 September 2005 that the complainant identifies as the impugned decision.

B. The complainant contends that his separation from service resulted not from the expiry of his contract but from a calculated decision to dismiss him. He argues that IFAD's actions constituted a violation of his right to due process, especially in that he was not given proper notice or any opportunity to correct alleged performance

shortcomings.

In his view, the appeals process was seriously flawed, irregular and prejudicial. The only “remedial body” available to an aggrieved staff member – the Management Review Group – is “deficient in almost every respect”, particularly as it is composed exclusively of managers. In his case, there was no opportunity for him to appear before it in person. His supervisor was a member of the Management Review Group, which constituted a “major” conflict of interest as well as a breach of his right to a fair and unbiased hearing. It allowed her to “review and vote on her own decision”. Moreover, the evidence used as “an excuse” to terminate his contract was false; it was at variance with the facts and possessed no probative value. He asserts that the Fund has no review body, such as a Joint Appeals Board, made up of both management and staff members.

The complainant submits that his performance evaluation for 2004 constitutes an “aberration” in his “unblemished employment record”. He accuses his supervisor of wanting to get rid of him for personal rather than professional reasons and contends that her assessment of his performance “bears no relationship whatsoever to the facts”. To refute her assessment he provides statements from other staff members concerning his performance as well as his performance evaluation for 2003, which had been written by his previous supervisor.

He seeks the “quashing [of] the results of the administrative review and rescission of [his] performance evaluation report (PES 2004)”. He asks the Tribunal to order that his 2004 performance evaluation and any other related documents be removed from his personnel file. He asks for the results of his 2004 performance evaluation to be reversed to comport with his 2003 performance evaluation. He requests compensation for unlawful termination in an amount equal to three years’ salary, and moral damages for the harm inflicted on his professional reputation, dignity and psychological well-being. He also seeks an apology and a letter of recommendation from the Fund. Lastly, he claims costs.

C. The Fund confines its reply to the issue of receivability. It submits that the Management Review Group’s decision of 14 March 2005 was quashed by the President’s decision of 6 July. Consequently, the present complaint “challenging the composition and decision of the [MRG]” is “without any object and is therefore moot”. Furthermore, it argues that any appeal against the revised evaluation report would be irreceivable as that report did not constitute a final decision. IFAD points out that the complainant never completed the staff member’s portion of the revised evaluation report, nor did he sign it. Thus, his complaint to the Tribunal is premature because he is contesting an incomplete report and not a decision by the Management Review Group. The complainant has not demonstrated that he exhausted the internal performance evaluation process prior to lodging his complaint with the Tribunal. In addition, he failed to use the mandatory facilitation process, which was introduced within IFAD in July 2005 and which constitutes the first step in the grievance process.

According to IFAD, the complainant’s refusal to comply with the performance evaluation process prevented the Fund from submitting the revised evaluation to the Management Review Group for a decision. It points out that the MRG does not necessarily endorse all recommendations made by supervisors in performance evaluation reports.

The Fund asks the Tribunal to dismiss the complaint as irreceivable or, alternatively, to grant it an extension of 30 days in which to file a reply on the merits.

D. In his rejoinder the complainant asserts that the Fund’s arguments on receivability are nothing more than a “transparent attempt” to delay the resolution of his complaint.

The complainant contends that despite the President’s decision of 6 July 2005 that his performance evaluation would be reviewed, he was subsequently presented with a revised evaluation which was nearly identical to the original one. This, he says, shows that IFAD had no intention of dealing with his case fairly; in any event, IFAD does not have, nor does it recognise, “a real due process appeals apparatus”. He considers the Management Review Group to be “a biased, unbalanced [...] and unrepresentative group composed of only management personnel”.

E. In its surrejoinder the Fund says that the facts and legal issues in this dispute were adequately addressed in its reply and that it will not revisit them.

It explains that the Management Review Group is not an appeal committee but an administrative body with a mandate to review all performance evaluations. Pursuant to the grievance procedure set out in the Human Resources Procedures Manual, appeals against administrative decisions are to be submitted to the Joint Appeals

Board (JAB), made up of representatives of staff and management. It contends that the complainant decided to ignore the Fund's procedures and internal remedies, including the mandatory facilitation process, when he filed his complaint directly with the Tribunal.

It adds that, contrary to the complainant's allegations, the revised evaluation was not identical to the one quashed by the President.

F. In his further submissions the complainant contends that IFAD did not have a functioning Joint Appeals Board either at the time his appointment was terminated or at the time he filed his complaint with the Tribunal.

G. In its comments on those submissions, the Fund argues that its statements concerning the Joint Appeals Board were correct. It asserts that the complainant has failed to provide evidence that he abided by the provisions set out in the Human Resources Procedures Manual and exhausted all internal means of redress prior to filing his complaint. It reiterates that his complaint is irreceivable and premature. It also draws the attention of the Tribunal to the offensive remarks and accusations contained in the complainant's pleadings and deplores them.

CONSIDERATIONS

1. The complainant was employed by IFAD as a Finance and Budget Officer, at grade P.3, on a one-year contract as from 24 March 2003. After receiving a positive performance evaluation report (PES) for the year 2003, his contract was renewed from 24 March 2004 to 23 March 2005. Following a negative performance evaluation for the year 2004, the complainant's contract was not renewed. It was stated in a letter issued by the Office of Human Resources on 21 March 2005 and headed "To whom it may concern" that he was being separated from service on the "expiry date of his temporary fixed term contract", i.e. on 23 March 2005.

In a letter of 6 July 2005 the President of the Fund informed the complainant that, following an administrative review, it had been decided that his performance for 2004 was to be re-evaluated. Another report was thereafter drawn up. The complainant's performance was reassessed by his supervisor and the revised evaluation was sent to him on 13 September 2005 under cover of a letter from the Director of Human Resources. He was invited to complete Part III of the evaluation form and return it to IFAD so that the report could be submitted to the Management Review Group for review. On 15 October 2005 the complainant, referring to the letter of 13 September, stated that he disagreed with the "proposed solution", which he considered to be a mere repeat of his previous evaluation.

2. In his complaint, the complainant identifies the letter of 13 September 2005 as the impugned decision. His claims for relief are set out under B above.

3. The complainant points out that this was a case of abuse of power and disregard for the principle of due process of law. He claims that it was a "relentless revenge campaign" stemming from problems with his supervisor who, he contends, had been promoted from a G.7 position to a supervisory position without being prepared "for greater responsibilities". He also claims that having found a "substantial error in a critical financial report", and having refused "to adhere to his superior's orders to effectively bury it", that "a veritable torrent of abusive characterizations was heaped upon him and cost him his career".

4. The defendant organisation states that the complaint is irreceivable pursuant to Article VII of the Statute of the Tribunal because the complainant is not challenging a final decision and has not exhausted all internal remedies. It submits that the Management Review Group's decision of 14 March 2005, confirming the supervisor's rating and recommendation against the renewal of the complainant's contract, was quashed by the President of the Fund on 6 July 2005. The President made it clear that the review process for the 2004 performance evaluation would be recommenced taking into account the "list of outputs" provided by the complainant. IFAD states that the complaint is therefore without object and hence moot. The Tribunal considers that submission to be correct. The defendant adds that the complainant failed to avail himself of the internal mandatory facilitation mechanism to resolve the dispute.

5. The Tribunal is of the opinion that the complaint is irreceivable according to Article VII(1) of the Statute, as the complainant is not impugning a final decision on his 2004 performance evaluation, given that the final decision has not yet been made. It has not been made because the complainant failed to complete and comment on

the revised evaluation report, despite being invited to do so by the Director of Human Resources in her letter to him of 13 September 2005. He did not sign the revised evaluation nor did he transmit it to the defendant organisation. That prevented the Management Review Group from carrying out the review of the report and making a decision. In addition he has not exhausted all consequent internal remedies such as the mandatory administrative review and the subsequent appeal process before the Joint Appeals Board (JAB), as underlined in Chapter 10 of the Human Resources Procedures Manual. As regards the contested existence of the JAB, the Tribunal notes that, as the JAB is listed in the Human Resources Procedures Manual, the fact that a JAB was not active at the material time would not have prevented the complainant from filing an internal appeal, as allowed by the said Manual, and then, if necessary, he could have filed an appeal with the Tribunal, challenging an implied negative decision under Article VII(3) of the Statute. However, this contention is irrelevant.

6. The complainant justifies preventing the review process from being completed by claiming that the process was flawed and that the Management Review Group was biased and disregarded the requirements of due process; however, his argument is not relevant, because it is necessary to complete the process regardless of the flaws. Also, the complainant is overlooking the fact that the MRG is a purely administrative (not quasi-judicial) body which is responsible for the final stage of the review process of performance evaluations and is therefore not bound to comply with the requirements of due process.

7. In view of the above considerations, the Tribunal must conclude that this complaint is irreceivable because the complainant is not impugning a final decision as stipulated in Article VII(1) of the Statute of the Tribunal.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 9 November 2006, Mr Michel Gentot, President of the Tribunal, Ms Mary G. Gaudron, Judge, and Mr Giuseppe Barbagallo, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 7 February 2007.

Michel Gentot

Mary G. Gaudron

Giuseppe Barbagallo

Catherine Comtet