

The Administrative Tribunal,

Considering the complaint filed by Mrs L. R. against the World Meteorological Organization (WMO) on 29 May 2007, WMO's reply of 2 August, the complainant's rejoinder dated 21 September and WMO's surrejoinder of 13 November 2007;

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, a Danish national born in 1956, joined WMO in January 1989. With effect from 1 November 1998 she occupied a post of Administrative Assistant at grade G.6 in the Office of the then Secretary-General. Following a reorganisation within the Office, in February 2001 she began to perform the duties of Senior Administrative Assistant and was officially confirmed in that post at grade G.7 on 1 February 2003. The current Secretary-General began his term on 1 January 2004. On 5 January the complainant was transferred to the Office of the Deputy Secretary-General.

On 9 January, shortly after his retirement, the former Secretary-General signed a Performance Appraisal Report for the complainant in which he indicated that she had expressed interest in the post of Chief of the Registry and Archives Unit and that, in his opinion, she would be able to fulfil the responsibilities of that position. In June 2004 a competition for that post was advertised. The complainant applied but the recruitment process was interrupted and the post was later reclassified.

In a memorandum of 15 February 2005 addressed to the Secretary-General the complainant stated, inter alia, that she had been concerned about her transfer to the Office of the Deputy Secretary-General, which she considered a "step back"; she added that the Secretary-General had indicated that this transfer was temporary pending his planned reorganisation of WMO, which would provide an "adequate solution" corresponding to her career development plans and aspirations. She explained that while working in the Office of the former Secretary-General she had worked considerable overtime which, in contravention of WMO Staff Regulations and Staff Rules, had not been compensated except during Executive Council and Congress sessions. She had accepted this situation on the tacit understanding that, when she left the Office of the Secretary-General, her dedication would result in a promotion. However, she had not received a decision regarding her application for the post of Chief of the Registry and Archives Unit. The transfer had disrupted her career and she asked the new Secretary-General to clarify his intentions regarding her employment in WMO.

Having received no response, the complainant wrote to the Director of the Resource Management Department on 18 April 2005 asking, in accordance with Staff Rule 131.7(b), for compensation for the overtime she had worked between 1 November 1998 and 31 December 2003, excluding the periods for which she had already been compensated. He replied by memorandum on 19 April 2005, explaining that Staff Rule 131.7(b) stipulated that her supervisor would have had to authorise overtime and that therefore her request for additional compensation could not be considered. On 14 June she asked the Secretary-General to review the Director's decision. She asserted that the former Secretary-General had made a "standing request" that at least one staff member be present in the Office at all times during each working day, the length of which varied depending on his schedule. He did not provide prior authorisation to the Personnel Division for overtime. The Secretary-General replied on 29 June 2005 stating that, for the reasons given by the Director, it was not possible to provide compensation for "uncertified" overtime. However, he was prepared to review her case, identify the time recorded for her presence in the Office between 1 November 1998 and 31 December 2003 and consider, if warranted, some arrangement that did not include financial compensation. On 25 July 2005 the complainant agreed to such a solution.

On 15 November the complainant wrote to the Secretary-General asking when she could expect to receive his proposal for her overtime compensation. He replied on 17 November 2005 explaining that recovery of the

electronic records of her work hours for the period 1 March 1999 to 31 December 2003 was being prevented by technical difficulties and he requested that she forward any information that she had to the Human Resources Development Department. By a memorandum dated 13 December 2005 she communicated the information she had been able to recover for the period 15 July 2002 to 31 December 2003.

Having received no response, on 13 January 2006 she again asked the Secretary-General as to when she would receive his proposal; she reiterated her request on 9 May. On 23 May the Director of the Resource Management Department informed her that it was not possible to obtain complete information regarding the hours she had worked. However, the Secretary-General had decided to offer her, as an exceptional measure, a credit of 60 working days of compensatory leave to be taken before the end of 2007. On 26 May 2006 the complainant wrote to the Director indicating that there was too much of a difference between the Secretary-General's offer and a calculation made by the Administration, which resulted in a leave credit of 183.5 working days and already represented a compromise on her part in favour of WMO. She further stated that she was currently on 50 per cent sick leave due to a serious illness which was likely to have been triggered by working overtime for an extended period. She proposed compensation in the amount of 183.5 working days to be taken as half days.

In a memorandum dated 12 June 2006 the Director of the Resource Management Department stated that there were no grounds upon which to exceed the offer of 60 days of leave, which was already an exception to the Staff Rules regarding the one-year limitation on retroactivity of payments. On 15 June the complainant requested that the Secretary-General review the Director's decision, emphasising the effect that the overtime had had on her health. The Secretary-General replied on 29 August that her claim for overtime compensation was time-barred under Staff Rule 134.9 and that he saw no reason to exceed the exceptional offer that had been made to her. On 29 September 2006 the complainant filed an appeal against that decision with the Joint Appeals Board. In its report of 14 February 2007, the Board noted that the complainant failed to submit her claim for compensation for overtime within the time limit of 12 months prescribed by Staff Rule 134.9. It also noted that according to Staff Rule 151.1(c) no more than 60 credited days of leave could be carried forward beyond 1 January of any year. Consequently, it considered that the offer made by the Organization to compensate the complainant with a credit of 60 days of leave was fair and reasonable. It recommended that her appeal be rejected as devoid of merit. In a memorandum to the complainant dated 27 February 2007 the Secretary-General approved the Board's recommendation. That is the impugned decision.

B. The complainant submits that WMO deliberately breached the "conditions of service applicable to her post" with respect to her working hours. The former Secretary-General demanded hard work and long hours from the staff under his direct supervision, which he would reward with career development opportunities instead of overtime compensation. She asserts that she had a discussion about her career with him and the new Secretary-General shortly before the former's retirement, during which she was given a verbal promise that she would either be selected for the post of Chief of the Registry and Archives Unit when it fell vacant or be granted another opportunity within the planned reorganisation of the Office. She cites the former Secretary-General's comments in her Performance Appraisal Report as additional evidence of his intentions regarding her career and she provides examples of colleagues who were promoted after satisfactory service in his Office. Moreover, the new Secretary-General assured her that her transfer to the Office of the Deputy Secretary-General was temporary. In the absence of such assurance, she would not have accepted a position with fewer responsibilities – a "de facto demotion" – without filing a formal complaint.

She contends that the Chief of the Human Resources Management Division, the Director of the Resource Management Department and the executive management were aware that she had to do continuous overtime in breach of the Staff Rules and her terms of appointment, but they did not fulfil their duty towards her by ensuring observance of the Staff Rules. They were also aware that the former Secretary-General granted overtime compensation in exceptional circumstances only. He was the ultimate authority in the Organization and opposing him could have led to the loss of her employment.

She argues that Staff Rule 131.7(b), which requires authorisation for overtime from the director concerned, cannot be strictly applied to staff working in the Office of the Secretary-General where there is no such director. Staff Rule 134.9, which deals with the retroactivity of payments, is not relevant because it addresses allowances, grants or payments and not compensatory leave. Furthermore, in her view it is unfair on the part of WMO to rely on Staff Rule 151.1(c) to justify limiting her overtime compensation to 60 days.

The complainant seeks "[r]eparation for the breach of [her] conditions of service as regards working hours for a

period of 5 years and consideration of the damage to [her] career development”. She asks the Tribunal to award her “fair reparation”, including 183.5 days of compensatory leave.

C. In its reply WMO submits that the present case is limited to the question of whether the complainant is barred from claiming overtime compensation and, subsidiarily, whether its decision to grant her 60 days of leave when under no obligation to do so can be referred to the Tribunal’s review under Article II, paragraph 5, of the Statute of the Tribunal. The Organization contends that the complainant has no cause of action as she does not put forward a prejudice resulting from its voluntary gesture. Furthermore, WMO submits that as her claim for reparation of the damage to her career development did not form part of the internal appeal, it is irreceivable.

The defendant argues that the complainant has not provided any evidence of a verbal promise of a promotion from either the former or the current Secretary-General. It emphasises that the latter has denied being party to any arrangement whereby she would receive compensation for her service in the Office of the former Secretary-General in the form of a promotion or otherwise. In addition, no promise can be inferred from comments made in her Performance Appraisal Report. The Organization asserts that such a promise could not have been made, as the Staff Rules do not provide for any reward in the form of an automatic and arbitrary career progression. The promotions of other staff members cited by the complainant occurred in accordance with the Staff Rules and policy; even if this was not the case, she would not be entitled to base a claim to advancement on an arbitrary decision made in relation to third parties. WMO adds that the complainant was transferred from the Office of the Secretary-General to a post at the same grade with similar responsibilities. She did not oppose the transfer at the time and only raised an objection when she did not receive a promotion.

The Organization contends that the complainant’s claim for overtime compensation is time-barred by Staff Rule 134.9. It asserts that she was aware of the time limit applicable to her claim and that, even if making such a claim during the former Secretary-General’s tenure might have negatively affected her career or placed her employment at risk, there was no justification for her failure to submit her claim at the time of his retirement. WMO argues that although excessive overtime is contrary to its staff’s conditions of work, the responsibility for ensuring that working conditions are respected lies also with staff members. It submits that the complainant has not established that she was prevented from abiding by the rules governing overtime set out in Staff Rule 131.7 and in paragraphs 4.4.7 and 4.4.8 of the WMO Standing Instructions.

According to the Organization, the Secretary-General’s willingness to review the case and consider the possibility of some compensation is a unilateral act creating no right for the complainant and was clearly not meant to lead to a detailed examination of her hours of presence between 1998 and 2003. The exceptional leave granted to her – the maximum credit that can be carried over from one year to the next according to Staff Rule 151.1 – was a recognition of her dedication in the Office of the former Secretary-General and of the demanding conditions of work in that office. In its view, going beyond that limit would have sent the wrong message to other staff members.

D. In her rejoinder the complainant argues that her request for compensation was not time-barred since WMO *de facto* agreed on the legitimacy and receivability of her request at the time it was made. She emphasises that her complaint is not directed against the 60 days’ leave credit already granted by WMO but is a request for the complementary 123.5 days to reach the “compromise assessment” of 183.5 days. It does not include any new claim for reparation of the damage to her career development.

The complainant objects to the fact that, in its reply, WMO describes the compensatory leave granted to her as an exceptional leave in recognition of her dedication in the Office. She stresses that she was not expecting an “automatic promotion” but rather opportunities for career development in full compliance with the WMO rules.

E. In its surrejoinder the Organization contends that the complainant may only challenge before the Tribunal the voluntary gesture made on 12 June 2006, as her initial request for compensation of uncertified overtime was rejected by the Secretary-General on 29 June 2005.

It maintains that even if the complainant’s claim were not time-barred, it would appear unreasonable as granting her a compensation equivalent to ten months of salary and entitlements would result in an enormous burden for the Organization and might be perceived as setting a precedent.

CONSIDERATIONS

1. The complainant was employed in the Office of the Secretary-General of WMO from 1 November 1998 to 4 January 2004. During that period, she worked considerable overtime, some of which was certified and compensated. It is not disputed that for the period 15 July 2002 to 31 December 2003 she performed a considerable amount of overtime which was neither certified nor compensated. Following the appointment of a new Secretary-General, she was moved, on 5 January 2004, to the Office of the Deputy Secretary-General.

2. A compensatory arrangement was proposed by the Organization to which the complainant replied in a memorandum dated 26 May 2006 to the Director of the Resource Management Department. She stated that, according to a calculation made at her request by the Organization, she had worked 979 hours of overtime in the period 15 July 2002 to 31 December 2003 and that the compensation she had forgone was equivalent to 183.5 working days. Whether or not this is correct, the issue is whether she is presently entitled to compensation in excess of the leave credit of 60 working days offered to her as an exceptional measure on 23 May 2006.

3. The overtime was worked by the complainant as a result of the former Secretary-General's requirement. His practice was not to certify that overtime was worked – indeed, it seems that he sometimes refused to do so – but to compensate for it by opportunities for promotion or career development. The complainant accepted this practice. However, her hopes for promotion and/or career development were later dashed. Accordingly, on 18 April 2005, a little over 15 months after she had ceased working in the Office of the former Secretary-General, she sought compensation for the overtime she had worked during the five years that she had spent in that Office. Further correspondence ensued between her and the Administration and, on 29 June 2005 she was informed that the Secretary-General was prepared to review her case and “consider, if warranted, some compensatory arrangement [which] would, however, exclude the possibility of financial compensation”. The complainant responded on 25 July expressing her agreement “to a solution that excludes financial compensation”. In the result, after delays relating to the ascertainment of the overtime worked, the offer of 60 days' compensatory leave credit was made. This offer is considered by the Organization as generous and as an exception made in view of the special circumstances of the complainant's case.

4. On 15 June 2006 the complainant requested the Secretary-General to review the decision to offer her only 60 days' leave credit and, after that request was rejected, she filed an appeal with the Joint Appeals Board. On 14 February 2007 the Board recommended that the appeal be rejected as “devoid of merit”. The Secretary-General accepted that recommendation and the complainant was so informed on 27 February 2007.

5. The Board considered that the complainant's claim for compensation for overtime worked between 1 November 1998 and 31 December 2003 was precluded by Staff Rule 134.9. That rule relevantly provides:

“A staff member who has not been receiving an allowance, grant or other payment to which he is entitled shall not receive retroactively such allowance, grant or payment unless he has made written claim:

[...]

(ii) [...] within one year following the date on which he would have been entitled to the initial payment.”

Whatever the reason for the complainant's failure to submit a claim within the prescribed time limits, her claim for compensation for overtime worked during her employment in the Office of the former Secretary-General was undoubtedly time- barred when she first submitted it on 18 April 2005.

6. It is not disputed that the overtime worked by the complainant in the relevant period was neither authorised by the former Secretary-General nor notified in advance to the Personnel Division as required by Staff Rule 131.7(b). The effect of this was that the complainant had no entitlement under paragraph 4.4.8 of the Standing Instructions to receive annual leave credits by way of compensation for overtime.

7. Given that the complainant was precluded from claiming financial compensation by Staff Rule 134.9 and that there was no obligation on the part of WMO to compensate her by crediting days of annual leave, the Secretary-General rightly endorsed the recommendation of the Board, which concluded that the offer made to her was fair and reasonable.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 16 May 2008, Ms Mary G. Gaudron, Vice-President of the Tribunal, Mr Agustín Gordillo, Judge, and Mr Giuseppe Barbagallo, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 9 July 2008.

Mary G. Gaudron

Agustín Gordillo

Giuseppe Barbagallo

Catherine Comtet