

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

118th Session

Judgment No. 3365

THE ADMINISTRATIVE TRIBUNAL,

Considering the sixth complaint filed by Mr S. M.-S. against the World Health Organization (WHO) on 30 November 2011 and corrected on 10 February 2012, WHO's reply of 1 June, the complainant's rejoinder of 24 October, corrected on 12 November 2012, and WHO's surrejoinder of 15 February 2013;

Considering the eighth complaint filed by the complainant against WHO on 18 June 2012, WHO's reply of 5 October 2012, the complainant's rejoinder of 21 January 2013 and WHO's surrejoinder of 15 February 2013;

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

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

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

A. Information regarding the complainant's career at WHO is to be found in Judgments 2913 and 3364. It should be recalled that the complainant, who was serving in the WHO Regional Office for Africa (hereinafter "the Regional Office") in Brazzaville (Congo), was

informed on 26 September 2008 that the Regional Director had decided to dismiss him for misconduct. On 3 October 2008 he challenged this decision before the Regional Board of Appeal (RBA). On 29 June 2009 he was advised that the Regional Director, acting on the basis of the RBA's report, had upheld the aforementioned decision. On 30 July the complainant referred the matter to the Headquarters Board of Appeal (HBA). In the formal Statement of Appeal which he submitted to the HBA on 24 August 2009 he alleged *inter alia* that he had been harassed by several officers of the Regional Office, including his former supervisor. On 16 September 2010 the HBA stayed the appeal and referred the aspect of the appeal relating to the allegations of harassment to the Director of Internal Oversight Services (IOS), in accordance with a provisional addendum to its Rules of Procedure.

On 22 December 2010 the Director of the Human Resources Management Department (HRD) informed the complainant that, after examining his allegations, the IOS had decided not to conduct a "more in-depth" investigation in that connection and that the Director-General had closed the matter in accordance with paragraph 7.11 of the Policy on the Prevention of Harassment at WHO. On 14 January 2011 the complainant filed a statement of intention to appeal against that decision with the HBA. In his formal Statement of Appeal dated 12 February 2011 he requested the dismissal of the officers whom he accused of harassment and an award of damages for the moral injury suffered.

In the report which it submitted to the Director-General on 21 June 2011 the HBA, emphasising that it had not examined the complainant's allegations of harassment, recommended that his appeal of 30 July 2009 should be rejected. On 11 August 2011 the Director-General advised the complainant that she had decided to follow the HBA's recommendation and to dismiss his appeal of 30 July 2009 in its entirety. In addition she explained that she had also examined his appeal of 12 February 2011, but that none of the submissions in that appeal had led her to alter her view that the allegations of harassment must be rejected. She held that "further consideration" of those

allegations by the HBA would be superfluous and would only delay her final decision thereon. She had therefore decided to reject his allegations as well as the requests which he had made in his appeal of 12 February 2011. That is the decision which the complainant impugns in his sixth complaint.

On 8 September 2011 the complainant appealed to the Director-General, contending that he had been the victim of a denial of justice, since there had been no response to a complaint of harassment and discrimination on the part of his former supervisor which he had submitted to the Chairman of the RBA on 24 October 2007. On 8 December 2011 the Director of the Human Resources Management Department replied that his claims could not be allowed. On 7 February 2012 the complainant submitted a statement of intention to appeal against the decision of 8 December 2011 to the HBA. On 18 April 2012 the Director-General explained that, as he was no longer a staff member of WHO, he no longer had access to internal means of redress and that, as he had already raised the issue of denial of justice in the complaints which he had filed with the Tribunal on 30 November 2011, he could not pursue the same claim simultaneously before another body. For that reason his “appeal” of 7 February 2012 would not be submitted for consideration by the HBA. That is the decision which the complainant impugns in his eighth complaint.

B. In his sixth complaint the complainant denounces a breach of the adversarial principle, due to the fact that WHO never replied to the formal Statement of Appeal which he filed on 12 February 2011. He also contends that, in breach of its Rules of Procedure, the HBA never submitted its report on this appeal to the Director-General and that the Director-General’s decision of 11 August 2011 was therefore taken in breach of Staff Rule 1230.3.1, since it was not based on the findings and recommendations of the HBA. He submits that the Director-General decided to close the proceedings regarding his allegations of harassment on the basis of a report allegedly prepared by the Director of the IOS but that, notwithstanding several express requests, he never received that report, which, in his opinion, constitutes a breach of his

rights of defence. He also objects to the fact that the Director-General chose to deal with his two appeals in a single decision, i.e. that of 11 August 2011.

The complainant alleges that three officers of the Regional Office, including his former supervisor, harassed him. He explains that his state of health deteriorated from 2001 onwards and that his supervisor took advantage of his “physical incapacity” to subject him to a “pace of work bordering on animosity and servitude”. He also submits that his state of health was incompatible with the performance of his duties. He taxes WHO with not conducting a “serious”, in-depth investigation into the allegations of harassment which he first made on 24 October 2007.

The complainant asks the Tribunal to set aside the decisions of 26 September 2008, 29 June 2009, 22 December 2010 and 11 August 2011 and to order the transfer or dismissal of the officers whom he accuses of harassment. He also claims 4 million United States dollars in damages and 50,000 dollars in costs. Subsidiarily he asks the Tribunal to order WHO to produce “the procedure in force regarding the intervals between medical examinations”.

In his eighth complaint the complainant submits that the Director-General breached paragraph 48 of the HBA’s Rules of Procedure by denying him access to the internal means of redress. He adds that these rules do not specify that a “dismissed member of staff” has no access to the internal means of redress of WHO. As he considers that there is no link between the decision of 11 August 2011 and his appeal of 8 September 2011, he maintains that the *lis alibi pendens* objection raised by the Director-General in her decision of 18 April 2012 was groundless. He endeavours to show that he suffered a denial of justice because the RBA never examined his complaint of 24 October 2007. Lastly, he submits that the decisions of 8 December 2011 and 18 April 2012 have no legal basis.

The complainant asks the Tribunal to set aside the decisions of 8 December 2011 and 18 April 2012. He also claims one million United States dollars in damages and 50,000 dollars in costs.

C. In its reply to the sixth complaint, WHO explains that, in accordance with the Policy on the Prevention of Harassment at WHO, which entered into force on 7 September 2010, after a preliminary review of the complainant's allegations of harassment, a decision was taken to close the matter because he had not produced sufficiently strong evidence in support of his complaint. As it had thus been decided not to open a formal investigation, WHO states that "no adversarial proceedings were required in this case" and it emphasises that the IOS did not draw up an investigation report. However, it comments that, through the decision of 22 December 2010, the complainant was given "relevant information" regarding the preliminary review conducted by the IOS and it adds that, in her decision of 11 August 2011, the Director-General had clearly explained that the decision to deal with his two appeals at the same time had been taken for reasons of procedural economy because, in the opinion of WHO, they were "obviously" interconnected.

WHO considers that the complainant's allegations of harassment are extremely vague and it points out that he was advised of the reasons for their rejection in the decisions of 22 December 2010 and 11 August 2011. Furthermore, it states that the Regional Office has confirmed that the complainant was found to be fit for duty until his separation from WHO.

In its reply to the eighth complaint, WHO submits that this complaint is time-barred since the complainant failed to challenge the alleged denial of justice in due time. In addition, it points out that the complainant had already raised this issue in his fourth complaint, so that the eighth complaint is irreceivable because, in accordance with the Tribunal's case law, the same claim may not be considered by the Tribunal in two separate complaints.

On the merits, WHO denies that it deprived the complainant of his right of appeal and draws attention to the fact that, as he was no longer a staff member, in accordance with Staff Rules 1230 and 1240 he no longer had access to WHO's internal means of redress. Furthermore, in his complaint to the RBA of 24 October 2007 the complainant presented "vague and confused arguments" and merely

asked for the holding of a public hearing which, in its opinion, is not “in any way” within the RBA’s terms of reference. It points out that the complainant had annexed to that complaint a confidential document the disclosure of which led to his dismissal for misconduct. In its view this complaint to the RBA could only give rise to disciplinary measures. Since it considers the complainant’s eighth complaint to be vexatious, WHO asks the Tribunal to order him to bear all or part of the costs of the proceedings.

D. In his rejoinders to his sixth and eighth complaints the complainant repeats his arguments.

E. In its surrejoinders to the sixth and eighth complaints WHO maintains its position.

CONSIDERATIONS

1. Information regarding the complainant’s career and relevant facts are to be found in Judgment 2913, delivered by the Tribunal on 8 July 2010 and in Judgment 3364, delivered on this day.

2. In his sixth complaint the complainant impugns the decision of 11 August 2011 insofar as it dismissed his appeals in relation to allegations of harassment and discrimination at work. In his eighth complaint he impugns the decision of 18 April 2012 in which the Director-General of WHO advised him that his appeal of 7 February 2012, in which he alleged that he had been the victim of a denial of justice, would not be submitted for the consideration by the HBA.

As stated in the aforementioned Judgment 3364, it is appropriate that these two complaints be joined to form the subject of a single judgment.

3. The complainant had challenged the decision imposing the initial disciplinary sanction imposed on him first before the RBA and then before the HBA. On 24 October 2007, while that appeal was

pending, he sent a letter entitled “Open complaint against [his supervisor] for harassment and discrimination at work” to the Chairman of the RBA. He forwarded a copy of this letter to the Administration of the Organization. He received no reply to this letter.

4. On 26 September 2008 a further disciplinary measure was imposed on the complainant, namely dismissal for misconduct, following the disclosure of confidential information. He challenged the decision notifying him of this measure before the RBA.

In its report of 24 June 2009 the RBA recommended that the Regional Director should maintain the disciplinary measure imposed for misconduct.

On 29 June 2009 the Regional Director decided to follow that recommendation and upheld the complainant’s dismissal. On 30 July 2009 the complainant lodged an appeal, registered as No. 733, with the HBA against the Regional Director’s decision. In his formal Statement of Appeal dated 24 August 2009 the complainant also made accusations of harassment and discrimination at work against three senior officers of the Regional Office, including his supervisor to whom reference had been made in the above-mentioned “open complaint”.

5. On 16 September 2010 the HBA referred the aspect of the appeal concerning harassment to the Director of the IOS.

6. On 22 December 2010 the complainant was apprised of the Director-General’s decision regarding the harassment allegations, namely that “[o]n the basis of [his] submissions to the Board in proceedings on [his] appeal No. 733, the [IOS] [had] examined [his] allegations of harassment, in order to ascertain whether they met the formal requirements of the Policy [on the Prevention of Harassment at WHO]”; that “[i]n accordance with paragraph 7.11 of [that] Policy, in view of [...] in particular the lack of any need for an investigation and disciplinary measures based on [his] allegations of harassment, the Director-General, after consulting the Director of IOS and [the

Director of the Human Resources Management Department], ha[d] decided to close the matter, since there was no receivable case of harassment”; and that “[f]or the above-mentioned reasons, it was unnecessary to have recourse to any of the other possible forms of action referred to in paragraph 7.11 of the Policy”.

7. On 14 January 2011 the complainant submitted to the HBA a statement of intention to appeal against that decision, in which he requested a complete review of the harassment aspect of the proceedings, the holding of an independent investigation and permission to file a formal Statement of Appeal and other additional documentation.

8. On 12 February 2011 the complainant filed his “formal Statement of Appeal against the final decision on harassment of 22 December 2010” in which he asked the HBA to find that “the crime of moral harassment was perpetrated by Mr [M.N], [Mr D.A.] and [Mr S. E. H.]”, to recommend the setting aside of that decision and, if necessary, to order an investigation and the hearing of witnesses. This appeal was registered as No. 794.

9. On 31 March 2011 the HBA set a time limit of 24 June for the submission of WHO’s reply.

10. On 10 May 2011 the complainant submitted a memorandum to the HBA concerning “objections prior to any consideration of the merits of the appeal”. He also asked it to “order an inspection of the site of the crime and an investigation”.

On 17 May he requested “an audit of the Personnel Service” of the Regional Office before any consideration of the merits of the appeal.

11. The HBA issued its report on 21 June 2011. It stated that it had “carefully examined all the documents furnished by the parties and [...] taken note of the Director-General’s decision of 22 December 2010 [...] to close the harassment complaint

proceedings owing to the lack of sufficient evidence in support of the complainant's allegations of harassment" and that "[i]n light of this decision the Board had considered that the complainant's allegations of harassment would not be addressed when the appeal was examined".

12. On 11 August 2011 the Director-General took a single decision on Appeals Nos. 733 and 794.

She said that "[a]fter carefully examining the submissions in support of [...] Appeal [No. 794], [she] consider[ed] that [the complainant] [had] not produced any conclusive evidence that would induce [her] to alter [her] opinion that [his] allegations of harassment [should] be dismissed. None of the evidence which [he] [had] produced during the proceedings on Appeal No. 794 [led] [her] to think that [his] allegations of harassment warrant[ed] submission once again [to IOS] or to the HBA". She dismissed the allegations of harassment and the requests contained in Appeal No. 794.

13. The complainant seeks the setting aside of the decision of 11 August 2011 and of the earlier decisions rejecting his accusations of harassment, an award of 4 million United States dollars for all damages incurred, the transfer or dismissal of the "alleged harassers" and costs in the amount of 50,000 dollars.

14. The complainant submits that the impugned decision is tainted with formal and procedural flaws.

15. The Policy on the Prevention of Harassment at WHO, which entered into force on 7 September 2010, provides in paragraph 8.5 that, "should the RBA or HBA receive an appeal which includes an allegation of harassment [...], it shall deal with this aspect of the appeal in accordance with its Rules of Procedure".

In addition, the Provisional Addendum of 22 November 2010 to the HBA Rules of Procedure (Revision 1) was introduced as a temporary measure applicable until such time as the HBA adapted its Rules of Procedure to the Policy on the Prevention of Harassment.

According to this addendum, if an appeal filed with the HBA contains an allegation of harassment, the Board must refer this aspect of the appeal to the Director of the IOS and hold the appeal in abeyance pending notification of the Director-General's final decision on the matter. Upon receipt of the Director-General's decision (including the IOS' report if applicable), the HBA recommences its consideration of the original appeal. The addendum states that the HBA "shall be guided" by the Director-General's decision with respect to the aspect of the appeal that concerns harassment.

16. It is clear from the submissions in the file that in the complainant's formal Statement of Appeal to the HBA he reiterated the allegations of harassment which he had already made in his appeal to the RBA and that on 13 September 2010 the HBA, acting in accordance with the first provisional addendum to its Rules of Procedure of September 2010, decided to hold the complainant's appeal in abeyance pending a final decision on his allegations of harassment. On 16 September 2010 the HBA referred the aspect of the appeal concerning harassment to the Director of the IOS.

17. At its meeting on 25 March 2011, the HBA concluded that the complainant's allegations of harassment would not be considered. It stated that it based its decision on all the documents supplied by the parties and that it had taken note of the Director-General's decision adopted after consultation with the Director of HRD and the Director of the IOS and forwarded to the complainant by the Director of HRD in her memorandum of 22 December 2010 which noted that there was no sufficiently strong evidence to corroborate the complainant's allegations of harassment.

18. Having examined the submissions, the Tribunal finds that the Director-General's decision of 22 December 2010 to "close the proceedings since there [was] no receivable case of harassment" rested on the findings of the IOS and that, it was on the basis of the report of the HBA, to which that decision had been forwarded, that

she took the final decision of 11 August 2011 to dismiss the allegations of harassment and the requests made in Appeal No. 794.

19. It may be concluded from the foregoing that the impugned decision, insofar as the allegations of harassment are concerned, was the outcome of proceedings conducted in accordance with the relevant provisions of the “Policy on the Prevention of Harassment at WHO” and the “Provisional Addendum to the HBA Rules of Procedure (Revision 1)” and that this decision is not therefore tainted with any flaw that would warrant setting it aside.

This plea is therefore groundless.

20. The complainant objects to the Director-General’s decision to join his two appeals Nos. 733 and 794 and to deal with them in a single decision.

The Tribunal considers that this joinder for the sake of administrative efficiency has not in fact caused the complainant any injury.

21. The complainant deplors the fact that he did not receive the IOS report. It is, however, plain from the submissions in the file that no report was drawn up in this case, as is permissible under the policy on harassment when the IOS considers allegations to be manifestly groundless. In these circumstances WHO is obliged only to inform the complainant of the IOS findings. This was done by the Director-General’s decision of 22 December 2010.

22. On the merits the complainant challenges the dismissal of his allegations of harassment. The Tribunal finds, after examining the submissions, that he produces no conclusive evidence of the substance of these allegations.

23. The complainant’s sixth complaint must therefore be dismissed.

24. In his eighth complaint the complainant taxes the RBA with not examining his complaint of harassment of 24 October 2007 which, in his opinion, constitutes a denial of justice. He submits that the decision of 18 April 2012 failed to state the reasons for the dismissal of his complaint of a denial of justice and that the Director-General did not forward his appeal of 7 February 2012 to the HBA.

25. WHO submits that the eighth complaint is irreceivable because it concerns an issue which the complainant has already raised before the Tribunal.

The Tribunal is of the view that, although the issue of a denial of justice was certainly raised in the sixth complaint considered above, the conditions in which the proceedings were conducted may nonetheless be challenged on the grounds that they did not comply with certain principles established by the case law.

26. Firm precedent has it that when an official makes allegations of harassment, she or he is entitled to have them dealt with in accordance with the rules and procedures in force (see Judgment 2642, under 8). If an organisation fails to do so, it breaches not only its own policies and rules, but also its duty of care towards the official.

In the instant case, the complainant first submitted his allegations of harassment on 24 October 2007 to the RBA. The latter took no action on that complaint. Furthermore, the Administration, which had received a copy of the complaint, likewise took no action thereon.

The Tribunal therefore considers that WHO neglected its duty of care to one of its officials (see Judgment 2910, under 13) and its duty to investigate allegations of harassment promptly and thoroughly (see, in particular, Judgment 3071, under 36).

27. There is, however, no reason to set aside the decision impugned in the eighth complaint because, as stated earlier, an investigation of the harassment was held at a later date in other proceedings.

28. On the other hand, there are grounds for awarding the complainant compensation for the injury suffered, and the Tribunal considers it fair to award him the sum of 5,000 United States dollars under that head.

29. As he succeeds in part, the complainant is entitled to costs, which the Tribunal sets at 1,000 United States dollars.

DECISION

For the above reasons,

1. WHO shall pay the complainant 5,000 United States dollars in compensation for the injury suffered, as indicated under 28, above.
2. It shall also pay him costs in the amount of 1,000 dollars.
3. The sixth complaint and all other claims in the eighth complaint are dismissed.

In witness of this judgment, adopted on 9 May 2014, Mr Claude Rouiller, Vice-President of the Tribunal, Mr Seydou Ba, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 9 July 2014.

CLAUDE ROUILLER
SEYDOU BA
PATRICK FRYDMAN
DRAŽEN PETROVIĆ