Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

L.

v.

IFAD

129th Session **Judgment No. 4217**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms J. L. against the International Fund for Agricultural Development (IFAD) on 21 June 2017 and corrected on 16 August, IFAD's reply of 27 December 2017, the complainant's rejoinder of 18 May 2018 and IFAD's surrejoinder of 29 August 2018;

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 may be summed up as follows:

The complainant challenges the decision not to provide her with the record of the investigation that ensued after she filed a harassment complaint against her supervisor, and the fact that she received no compensation for the moral harassment that she claims to have suffered.

The complainant was recruited by IFAD in August 2014 under a two-year fixed-term contract and was appointed to a Treasury Officer post at grade P-2. By an email of 13 November 2014, she filed a harassment complaint against her supervisor – Ms V. – with the Ethics Office which, after a preliminary review, forwarded it to the Office of

Audit and Oversight (AUO). Meanwhile, the complainant was placed under the supervision of the Director of the Treasury Services Division.

On 27 November 2015 the AUO informed the complainant that it had completed its investigation, which had revealed that by calling her credentials into question and failing to provide a non-hostile work environment, Ms V. had shown "unsatisfactory conduct" and "unacceptable behaviour". The report of the AUO was submitted to the Sanctions Committee, which made a recommendation to the President of IFAD. On the basis of this recommendation, he decided to impose a sanction on Ms V. The complainant was advised of this by a memorandum of 10 December entitled "Communication of outcome of your harassment complaint".

By email of 14 December addressed to the Ethics Office, the complainant asked to be informed of the sanction that had been imposed on Ms V. and to receive a copy of the investigation report that had been submitted to the Sanctions Committee. On 21 December 2015 she was advised that, in accordance with President's Bulletins PB/2007/02 and PB/2007/03 and the provisions of Chapter 8 of the Human Resources Implementing Procedures, her requests could not be granted for reasons of confidentiality.

In January 2016, writing to the Office of the President and the Vice-President, the complainant reiterated her request for a copy of the investigation report, indicating that she wished to "challenge the outcome of the investigation performed by AUO". She also requested that a facilitation process be organised. She was told that she could not be provided with the report in question for reasons of confidentiality and that, since the outcome of an investigation was not an administrative decision which could be the subject of a facilitation process, her request for facilitation was irreceivable. On 25 April, after she had made it clear that she was requesting facilitation because she had not been provided with the investigation report, the complainant was authorised, on an exceptional basis, to refer the matter directly to the Joint Appeals Board. She was told that she could be represented by a lawyer at her own expense.

On 26 September 2016 the complainant lodged an appeal with the Joint Appeals Board, stating that she was challenging the decision of

10 December 2015 insofar as it denied the harassment she claimed to have suffered and did not award her compensation for moral injury, as well as the decision of 21 December 2015 refusing to provide her with the investigation report. She requested the withdrawal of these decisions, disclosure of the evidence gathered during the investigation, including the investigation report, compensation for moral injury and costs. The Board issued its report on 10 February 2017. It found that the appeal was irreceivable to the extent that it concerned the disclosure of the investigation report and that the harassment complaint had been handled properly. By a letter of 14 March 2017, which constitutes the impugned decision, the President informed the complainant that he had decided to dismiss her appeal as devoid of merit.

The complainant asks the Tribunal to set aside the impugned decision as well as the "initial decisions", to order the disclosure of the investigation file and to award her compensation in the amount of at least 60,000 euros for injury under all heads, as well as 7,000 euros in costs for the internal appeal proceedings and the proceedings before the Tribunal.

IFAD asks the Tribunal to dismiss the complaint. In the light of Judgment 3995, delivered in public on 26 June 2018 in another case involving IFAD, the latter produced a redacted version of the investigation report as an annex to its surrejoinder.

CONSIDERATIONS

1. The complainant impugns before the Tribunal the decision of 14 March 2017 by which the President of IFAD dismissed her appeal challenging the decision of 10 December 2015 insofar as it denied the harassment she claimed to have suffered and did not award her compensation for moral injury, and the decision of 21 December 2015 refusing to provide her with the report of the investigation into her harassment complaint.

2. The complainant alleges, among other things, that her right to due process had been violated as a result of IFAD's refusal to provide

her with the investigation file containing, in addition to the investigation report itself, the minutes of the meetings held and the statements gathered. IFAD submits that it was not able to provide the file in question because the purpose of an investigation is not to share the findings with the person who lodged the complaint but to establish the facts. Nevertheless, it produced a redacted copy of the investigation report as an annex to its surrejoinder.

3. In view of the fact that it did so, the Tribunal considers that there is, in any event, no need to grant the request for disclosure of the other elements of the investigation file, which is not necessary to resolve the dispute.

4. The Tribunal considers that IFAD erred in refusing to grant the complainant's request for a copy of the report established by the AUO at the end of the investigation in respect of the supervisor mentioned in her harassment complaint.

The Tribunal has consistently held that a staff member must, as a rule, have access to all the evidence on which the competent authority bases its decision concerning her or him (see, for example, Judgments 2229, under 3(b), 2700, under 6, 3214, under 24, or 3295, under 13). This implies, among other things, that an organisation must forward to a staff member who has filed a harassment complaint the report drawn up at the end of the investigation of that complaint (see, for example, Judgments 3347, under 19 to 21, and 3831, under 17).

Of course, this obligation to disclose must be balanced against the need to respect the confidential nature of some aspects of an inquiry, particularly the witness statements gathered in the course of the inquiry. As the Tribunal's case law has confirmed, such confidentiality may be necessary in order to ensure witnesses' protection and freedom of expression (see, in particular, Judgments 3732, under 6, and 3640, under 19 and 20). Moreover, in this case the confidentiality of some information related to the investigation was expressly required by the provisions on this matter contained in section 4 of Annex I to

the President's Bulletin PB/2007/02 of 21 February 2007 concerning investigation processes.

Although it is true that IFAD produced a redacted copy of the investigation report as an annex to its surrejoinder, by refusing to provide the complainant with the report in question during the internal appeals procedure it nevertheless unlawfully deprived her of the possibility of usefully challenging the findings of the investigation. In this case, the fact that the complainant was ultimately able to obtain a copy of the report during the proceedings before the Tribunal does not remedy the flaw tainting the internal appeal process. Indeed, the Tribunal's case law recognises that, in some cases, the nondisclosure of evidence can be corrected when this flaw is subsequently remedied, including in proceedings before it (see, for example, Judgment 3117, under 11), that is not the case where the document in question is of vital importance having regard to the subject matter of the dispute, as it is here (see Judgments 2315, under 27, 3490, under 33, 3831, cited above, under 16, 17 and 29, or 3995, under 5).

5. It follows from the above that the decision of 14 March 2017, having been taken at the end of an unlawful internal appeal process must be set aside, without there being any need to examine the complainant's other pleas regarding that decision.

6. Furthermore, it also follows from the above that the decision of 21 December 2015, whereby IFAD refused to provide the complainant with the investigation report drawn up by the AUO, is unlawful and must, therefore, be set aside.

7. At this stage of the proceedings, the Tribunal would normally have referred the case back to IFAD in order that the internal appeal proceedings might be resumed in a lawful manner. However, in view of the time which has elapsed since the events, the Tribunal considers it more appropriate, in the particular circumstances of the case, to deal directly with the merits.

8. The Tribunal notes that, according to the report drawn up at the end of the investigation, the conclusions reached by the AUO included the following:

> "Based on the testimonial and documentary evidence gathered, AUO finds that the open or implied questioning of [the complainant's] credentials by [...] or, with [...] knowledge by TRE staff reporting to [...], inappropriately influenced the perception of others about [the complainant] and resulted in [her] feeling undermined and humiliated, and thus subjected her to a hostile working environment. AUO additionally finds that the repeated, inappropriate and often non-private nature in which [...] commented on [the complainant's] perceived lapses in performance resulted in [her] loss of confidence and impacted her overall well-being."

The facts thus described in the investigation report demonstrate the existence of harassment as defined in sections 8.3.1 and 8.3.2 of the annex to Chapter 8 of the Human Resources Implementing Procedures.

9. Under these circumstances, the Fund erred in refusing to grant the complainant compensation for the injury caused to her by this harassment.

According to the Tribunal's case law, by virtue of the principle that an international organisation must provide its staff members with a safe and healthy working environment, it is liable for all injuries caused to a staff member by a supervisor when the victim is subjected to treatment that is an affront to her or his dignity (see, for example, Judgments 1609, under 16, 1875, under 32, 2706, under 5, or 3170, under 33).

10. It follows from the foregoing that the decision of 10 December 2015 must be set aside, since it did not recognise the harassment reported by the complainant and did not grant her compensation for moral injury.

11. The harassment suffered by the complainant caused her substantial moral injury, exacerbated by the unlawfulness of the decisions noted above, which warrants an award of compensation. In the circumstances of the case, the Tribunal considers that all the injury suffered by the complainant may be fairly redressed by awarding her compensation in the amount of 30,000 euros.

12. Since the complainant succeeds for the most part, she is entitled to an award of costs in respect of the proceedings before the Tribunal, in the amount of 6,000 euros. However, the Tribunal considers that there are no grounds for awarding costs in respect of the internal appeal proceedings. Such costs may only be awarded under exceptional circumstances, which do not exist in the present case.

DECISION

For the above reasons,

1. The decision of the President of IFAD of 14 March 2017, as well as the decision of 10 December 2015 insofar as it did not recognise the moral harassment suffered by the complainant and did not grant her compensation for moral injury, and the decision of 21 December 2015 are set aside.

2. IFAD shall pay the complainant 30,000 euros in moral damages.

3. It shall also pay her 6,000 euros in costs.

4. All other claims are dismissed.

In witness of this judgment, adopted on 14 November 2019, Mr Patrick Frydman, President of the Tribunal, Ms Fatoumata Diakité, Judge, and Mr Yves Kreins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 10 February 2020.

(Signed)

PATRICK FRYDMAN FATOUMATA DIAKITÉ YVES KREINS

DRAŽEN PETROVIĆ