

B.
v.
WHO

130th Session

Judgment No. 4303

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms K. B. against the World Health Organization (WHO) on 16 November 2018 and corrected on 4 January 2019, WHO's reply of 16 April, the complainant's rejoinder of 15 July and WHO's surrejoinder of 15 October 2019;

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 amount of compensation awarded for the unlawful abolition of her post.

The complainant joined WHO in 2000 as a National Foundation Fellow of the Center for Disease Control and Prevention in the Unintentional Injury Prevention (UIP) Unit at WHO's Headquarters in Geneva. She successfully competed for a P.3 Technical Officer position in 2002 within UIP and, in September 2003, was assigned to the WHO Country Office in Mozambique. In 2006 she returned to her P.3 position in UIP at Headquarters and was granted a continuing appointment in June 2007. In 2010, she successfully competed for the position of Technical Officer in the UIP Unit at grade P.4.

At a meeting with her first and second-level supervisors in June 2013 the complainant was informed that her post would not be funded

by the donor in the next funding cycle and would likely be abolished. In November 2013 she requested the assistance of the Ombudsman in addressing concerns relating to her treatment by her first and second-level supervisors, respectively, the Coordinator of the UIP Unit and the Director of the Department of Management of Noncommunicable Diseases, Disability, Violence and Injury Prevention (NMH/NVI).

On 2 July 2015 the complainant was informed of the abolition of her post. The letter stated that a programmatic financial and strategic review of NMH/NVI had taken place and that the proposal to abolish her post had been reviewed by the Road Map Review Committee (RMRC) and subsequently approved by the Assistant Director-General. As she held a continuing appointment, efforts would be made to reassign her through the process conducted by the Global Reassignment Committee.

In August 2015 the complainant appealed against the decision to abolish her post with the Headquarters Board of Appeal (HBA).

On 21 December 2015 the complainant accepted an offer of reassignment to a position of Editor at grade P.4 in the Bulletin of the World Health Organization.

On 23 December 2015 the complainant filed a formal complaint of harassment with the Office of Internal Oversight Services (IOS) against her former first and second-level supervisors alleging that the harassment had led to the abolition of her post within UIP. She explained in her complaint, referring to the HBA Rules of Procedure regarding appeals containing allegations of harassment, that she was bringing the “harassment part of the appeal and the overall situation to IOS for further investigation”.

In its report of 27 June 2018, the HBA found, by a majority, that the decision to abolish the complainant’s post was not justified on financial or strategic grounds. It also found that a number of factors pointed towards personal prejudice against the complainant in relation to the abolition of her post. The HBA majority recommended that she be granted 8,000 United States dollars for the stress caused by the improper abolition of her post, but took account of the fact that she had been successfully reassigned to a post at the same grade. It further recommended that her legal costs be reimbursed. A minority found that the decision to abolish her post may have been justified on strategic grounds, that there was insufficient evidence to reach a finding of

personal prejudice against the complainant and that no award of damages should be recommended. The HBA unanimously recommended that WHO take swift action to effectively address the complainant's longstanding complaint of harassment.

By a letter of 24 August 2018 the Director-General decided to follow the HBA's majority recommendations and awarded the complainant 8,000 dollars in moral damages and costs, up to a maximum amount of 3,000 Swiss francs. He also requested IOS to take swift action to address her harassment complaint. That is the impugned decision.

By a letter of 22 March 2019 the complainant was informed that, following an initial review of her harassment complaint by IOS to determine whether a formal investigation should be undertaken, the Director of Human Resources Management had decided to close the case, as the evidence did not disclose a *prima facie* case of harassment. The complainant has filed an appeal against that decision.

The complainant asks the Tribunal to award her 150,000 dollars in material damages on the ground that the opportunity for any senior level career in her field was unfairly and forcefully ended. She claims 50,000 dollars in moral damages for the injury suffered during the abolition process, which was only partially redressed in the impugned decision; 20,000 dollars for the undue delay in handling her harassment complaint which she alleges led to a partial internal appeal recommendation; and 75,000 dollars for the mental and physical suffering she endured. She further asks the Tribunal to recognize the harassment elements in the decision to abolish her post, "to sanction the Organization" and to award her compensation on that basis in the amount of 30,000 dollars. She claims costs and requests WHO to produce all documents relating to the process before the RMRC.

In her rejoinder she adds a claim for additional damages for the insensitive way IOS and WHO dealt with her harassment complaint.

WHO asks the Tribunal to disregard her claims regarding the delay in addressing her complaint of harassment, on the ground that they form part of separate proceedings. It submits that the complaint should be dismissed as entirely without merit.

CONSIDERATIONS

1. At relevant times the complainant was a member of the staff of WHO. On 16 November 2018 she filed a complaint with the Tribunal impugning a decision of the Director-General of 24 August 2018. Having regard to the pleas of the complainant, it is necessary to identify at the outset with some precision what was the administrative decision that has led to and founded the complaint to the Tribunal. It was a decision communicated to the complainant on 2 July 2015 that her post of Technical Officer in the UIP Unit was to be abolished. Thus the complainant could, as she did, challenge the legality of that decision. She could raise, as she did, that one aspect of the illegality of the decision was that it was based on prejudice towards her and more generally was an act of harassment as part of a course of harassing conduct occurring over a period of time. This was part of the case she advanced in the internal appeal she filed in August 2015 against the abolition decision.

2. The complainant also made a formal complaint, on 23 December 2015, to WHO of harassment. That complaint raised for consideration by WHO the question of whether the complainant had been harassed and, if so, how it should be dealt with by way of response from the Administration. But the consideration of that complaint raised, at least potentially, an enquiry and response which was different to the enquiry and response addressing her claim that the abolition of her post was unlawful. That latter enquiry would address the narrower question of whether the actual decision to abolish the post was based, in a whole or in part, on prejudice and was the manifestation of a course of harassing conduct. While there would obviously be an overlap, and potentially a significant overlap, between the facts which had to be considered in both enquiries and how conduct of other staff members should be characterised, the enquiries were different.

3. The distinction drawn in the preceding consideration is important in this case. That is because a majority of the HBA found, in a report dated 27 June 2018, that the abolition of the post was not justified on financial or strategic grounds. Moreover, the majority accepted that a number of factors pointed towards personal prejudice

against the complainant in relation to the abolition of her post. In determining what remedy it should recommend, the HBA observed that it was neither feasible nor beneficial to recommend quashing the abolition of the complainant's post. It noted that the post no longer existed, the complainant had long since been reassigned to another post in Geneva and the complainant had maintained a continuing appointment at her current level under equivalent terms and conditions. The majority recommended that the complainant be paid 8,000 United States dollars in moral damages, as well as costs. In his impugned decision, the Director-General accepted the conclusions of the majority of the HBA and accepted their recommendation concerning the award of moral damages. The Director-General also awarded the complainant a maximum of 3,000 Swiss francs for legal costs.

4. Given the subject matter of this complaint, namely the decision to abolish the complainant's post and the fact that she was successful in establishing the illegality of that decision, a number of the arguments she advances in her pleas in these proceedings are irrelevant. She challenges, for example, the failure of the HBA to address an argument that the RMRC process was flawed, argues that one member of the HBA was biased and should have recused herself and also argues that the harassment procedure should have been completed before the HBA issued its report. But the impugned decision was based on an affirmative finding that the decision to abolish the complainant's post was tainted by illegality including prejudice towards the complainant. In a case such as the present, a challenge to a final administrative decision is a challenge to the decision itself and at least ordinarily not the reasons on which the decision is based (see, for example, Judgment 3997, consideration 7), nor to any alleged procedural flaws leading to a decision which vindicates the complainant's grievance.

The complainant also seeks the disclosure of "all documentation related to the RMRC report". However, the Tribunal considers itself to be sufficiently well informed on the case by the written submissions and thus does not deem it necessary to grant this request.

5. The complainant also challenges the conclusion communicated to her in March 2019 that no further action was going to be taken in relation to her formal complaint of harassment lodged in December 2015.

But any flaws in that decision including the time taken to resolve her harassment complaint and the consequences of the decision (namely to provide no remedy for the alleged harassment) are not justiciable in these proceedings given that the subject matter is only the decision to abolish the complainant's post.

6. Three issues can be gleaned from the complainant's pleas that properly arise in these proceedings. They concern the relief she was provided. The complainant argues that as an international civil servant with a history of employment in, and expertise about, violence prevention, the abolition of her post denied her the opportunity of having a career in this field. However, even though criticisms can be made about the abolition of her post, as evident in the report of the HBA, there is really no firm factual foundation for a conclusion that her position, or a position in this field, would have remained available to the complainant to further a career as an expert in violence prevention. Moreover, this argument is substantially dependent on the complainant's belief (even if well founded) that senior officials in WHO would frustrate, and had frustrated, her career progression and would deny her the opportunity of securing appointment to such positions. But this is not a consequence, either direct or indirect, of the abolition of her position. There is no causal link that would justify an award of material damages on these grounds arising from the abolition of her post. Similar observations apply equally to an argument of the complainant that she lost the opportunity to apply for senior positions.

7. The complainant also appears to argue that the amount awarded by way of moral damages was inadequate, though she contests the notion that it is merely a question of amount and submits that it involves, additionally, recognition of "lifelong harm done". But the relief the Tribunal can provide is confined to "compensation for injury" in accordance with the terms of Article VIII of the Tribunal's Statute.

8. The complainant challenges the actual amount awarded by the Organization. While due regard should be paid to the assessment made by the HBA and adopted by the Director-General, an award of 8,000 dollars does not appear to the Tribunal to be, in all the circumstances, adequate compensation for the unlawful abolition

of the complainant's post. The abolition of the post was not for legitimate reasons and had the effect of removing the complainant from the field of expertise she had developed over several decades. It can be inferred that the sense of hurt and resentment she experienced was considerable. An appropriate amount for moral damages is 25,000 United States dollars. If the complainant has already been paid the 8,000 dollars, that can be deducted from the amount payable by virtue of this judgment. The complainant is also entitled to an award of costs in the sum of 6,000 dollars.

DECISION

For the above reasons,

1. WHO shall pay the complainant moral damages in the amount of 25,000 United States dollars, subject to any deduction as discussed in consideration 8, above.
2. WHO shall also pay the complainant 6,000 dollars for costs.
3. All other claims are dismissed.

In witness of this judgment, adopted on 6 July 2020, Mr Patrick Frydman, President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Mr Michael F. Moore, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 24 July 2020 by video recording posted on the Tribunal's Internet page.

PATRICK FRYDMAN

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

DRAŽEN PETROVIĆ