

T. (No. 2)

v.

WHO

130th Session

Judgment No. 4309

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr V. T. against the World Health Organization (WHO) on 17 July 2018 and corrected on 17 August, WHO's reply of 11 December 2018, the complainant's rejoinder of 14 March 2019 and WHO's surrejoinder of 20 June 2019;

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

Having examined the written submissions and disallowed the complainant's application for oral proceedings;

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

The complainant challenges the decision to reject his complaint of harassment.

Facts relevant to this case are set out in Judgment 4149, delivered in public on 3 July 2019. In that judgment, arising from the complainant's first complaint, the Tribunal found that by limiting the complainant's reassignment options only to positions within the Convention Secretariat of the WHO Framework Convention on Tobacco Control, WHO had acted in breach of Staff Rule 1050. The Tribunal awarded the complainant 60,000 Swiss francs in material damages for the loss of a valuable opportunity of appointment to another position due to a flaw in the reassignment process following the abolition of his position which, ultimately, resulted in his separation from WHO on 31 August 2015.

Prior to that, on 17 May 2015, the complainant submitted to the Office of Internal Oversight Services (IOS) a formal complaint of harassment alleging that he had suffered harassment as a result of the reclassification of positions and the change of supervisory lines in his unit, the abolition of his post, slander, irregularities in selection processes, mobbing, unethical conduct, refusal of duty travel, and waste of resources.

Following an investigation, in the course of which the complainant was interviewed IOS submitted its report to the Director-General on 17 June 2016. IOS considered that the complainant had not provided sufficient information to support his allegation of wrongdoing and that he had not submitted his allegations of slander, spreading of rumours, and mobbing within the time limit of 180 days provided for in the Policy on the Prevention of Harassment at WHO. IOS concluded that the complainant's allegations did not merit further investigation and recommended that the case be closed.

The Director-General immediately forwarded the IOS report to the Global Advisory Committee on future actions in harassment complaints (GAC). The GAC reviewed the IOS report and recommended to the Director-General that the case be closed with no further action. By a letter of 21 November 2016, the Director-General informed the complainant that she had decided to close the case without further action, as his allegations of harassment had not been substantiated, no wrongdoing had occurred and, in fact, some of his allegations were outside the scope of the Policy on the Prevention of Harassment at WHO.

Following the rejection of his request for administrative review of the 21 November decision, the complainant lodged an appeal with the Global Board of Appeal (GBA). In its report of 19 February 2018, the GBA concluded that the decision to close the complainant's case was not in breach of the complainant's terms of appointment, including the Staff Regulations and Staff Rules, notwithstanding that the modification of the reporting lines in his unit had been implemented in a manner that could reasonably be expected to cause him humiliation and was unacceptable. The GBA recommended that the appeal be rejected. By a letter of 20 April 2018, the Director-General notified the complainant of his decision to accept the GBA's recommendation. That is the impugned decision.

The complainant asks the Tribunal to quash the impugned decision, to find he was harassed and to remit the case to WHO for the initiation of disciplinary proceedings against his harassers. He seeks reinstatement in his former post or another appropriate position, retroactive payment of all salaries, benefits, step increases, pension contributions and emoluments he would have received had he not been separated from service. Alternatively, in addition to the abovementioned redress, he seeks payment of two years' salary. He claims exemplary damages in an amount not less than 250,000 Swiss francs, moral damages in an amount not less than 150,000 Swiss francs, costs, and interest on all amounts awarded.

WHO asks the Tribunal to dismiss the complaint in its entirety as devoid of merit.

CONSIDERATIONS

1. The complainant was formerly a member of staff of WHO. He separated from service on 31 August 2015. After unsuccessfully exhausting internal review and appeal procedures concerning his separation, he filed a complaint with the Tribunal (his first) that led to Judgment 4149. In those proceedings the complainant established that the separation was infected by legal error and he was awarded 60,000 Swiss francs as material damages as well as 8,000 Swiss francs in costs. As part of his case in those proceedings, the complainant alleged that he had been the victim of harassment and/or malice and prejudice for some considerable period before his separation, and that had a bearing on the decisions that led to his separation, namely the decision to abolish his post and the decision to separate him from service. The complainant was, in this regard, unsuccessful and the Tribunal said in consideration 8 of Judgment 4149 that these allegations were unfounded on the facts and also, there was no evidence of a causal connection between the alleged conduct and the decision to abolish the complainant's position.

2. Only months before his separation, the complainant lodged, on 17 May 2015, a formal complaint of harassment with IOS. The complaint was, in substance, mainly repetitive of the allegations made in the proceedings referred to in the previous consideration. In a report dated 17 June 2016, IOS concluded the allegations did not merit

further investigation and recommended that the case be closed. After the matter had been considered by the GAC (which recommended that the case be closed with no further action), the Director-General informed the complainant, by letter dated 21 November 2016, of her decision to close the case without further action. This led to an unsuccessful request for administrative review and an appeal to the GBA. While the GBA concluded that one aspect of the conduct complained of could reasonably be expected to have caused the complainant humiliation and was unacceptable, the GBA nonetheless recommended that the appeal be rejected. This was accepted by the Director-General and communicated to the complainant by letter dated 20 April 2018.

3. The relief sought by the complainant in these proceedings includes reinstatement to his abolished post or an alternative post, though if such an order is not made, payment of an amount equal to two years of his salary, exemplary compensation of not less than 250,000 Swiss francs, moral damages in the sum of not less than 150,000 Swiss francs and costs.

4. The claim for reinstatement or the payment of salary in lieu is plainly *res judicata* having regard to the issues raised in the earlier proceedings and determined in Judgment 4149 (see, for example, Judgment 4097, considerations 3 and 4).

5. Moreover there is a general principle of law that a person cannot simultaneously litigate the same issues in separate or concurrent proceedings (see Judgment 4085, consideration 7). The complainant elected to raise in the earlier proceedings a factual issue, said to have legal consequences, that he had been harassed in the workplace. Over the opposition of WHO, the Tribunal concluded in Judgment 4149 that the complainant was entitled to do this referring to Judgment 3688, consideration 1. While there was not complete synchronicity between the conduct said to be harassing conduct in the earlier proceedings and the conduct identified in these proceedings, the allegations were, in substance, the same.

6. In addition, paragraph 7.4 of the Policy on the Prevention of Harassment at WHO provides that:

“Formal written complaints must be received by Director IOS within 180 calendar days of the date upon which the alleged harassment occurred. In the case of alleged harassment of an ongoing nature, the limitation period shall begin on the date of the most recent act of harassment.”

7. The complainant identifies two events which occurred within 180 days prior to the lodging of his complaint. One concerned the abolition of his post which, as explained in Judgment 4149, was not a manifestation of harassing conduct. The other was the refusal to approve his travel. This was justified by WHO. All other events complained of occurred outside the period of 180 days prior to the lodging of his formal complaint of harassment and are therefore time-barred.

8. In the result, the complaint raises matters which are *res judicata*, or not pursued within the time specified by the WHO’s Policy on the Prevention of Harassment, or are without merit. Accordingly, the complaint should be dismissed.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 8 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