

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

Z.

v.

WHO

132nd Session

Judgment No. 4407

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms P. Z. against the World Health Organization (WHO) on 26 March 2019 and corrected on 26 April, WHO's reply of 30 July, the complainant's rejoinder of 22 November 2019, WHO's surrejoinder of 24 February 2020, the complainant's additional submissions of 12 March and WHO's final comments thereon of 31 March 2020;

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 award her moral damages higher than 20,000 Swiss francs for the moral injury she alleges to have suffered as a result of the personal prejudice and bias she endured during her probation.

The complainant joined WHO in May 2015. On 11 July 2016, following a competitive selection process, she was appointed to the position of Assistant, at grade G.4, at the WHO Headquarters Staff Association's Secretariat under a fixed-term appointment subject to a one-year probationary period.

On 14 July 2016 the complainant's first-level supervisor sent the complainant a list of standard Performance Management and Development System (PMDS) objectives and competencies asking her to modify

them “based on her views”*. On 18 July he sent her a list with different tasks of the Staff Association’s Secretariat. On 17 October 2016, the first-level supervisor went on extended sick leave and the Vice-President of the Staff Committee assumed the role of the complainant’s first-level supervisor (“interim first-level supervisor”).

During the complainant’s Mid-Year PMDS review discussion, held on 9 February 2017, the interim first-level supervisor told the complainant that the feedback she had received from the complainant’s second-level supervisor and the Staff Committee members was that more had been expected from her during the Staff Association Annual Assembly in November 2016. The complainant contested this criticism arguing that she had not received proper guidance. In March 2017 the first-level supervisor acknowledged that the tasks included in the complainant’s PMDS had never been discussed and agreed upon. Further to the intervention of the Office of the Director-General (ODG), the complainant’s PMDS objectives were revised. Between April and June 2017 the complainant’s Mid-Year PMDS was discussed and revised several times and, although a first version was signed on 5 May 2017, the parties were unable to complete the complainant’s Mid-Year PMDS because of a disagreement regarding the inclusion of specific comments.

In a memorandum of 4 July 2017 to the Coordinator, Human Resources Policy and Administration of Justice, the interim first-level supervisor indicated that a review of the complainant’s situation and working context leading to the mid-term review suggested that the complainant might not have received clear instructions on tasks from the outset. The interim first-level supervisor expressed the view that this, coupled with the failure to agree on the complainant’s PMDS objectives, the first-level supervisor’s extended sick leave and the change of supervisors within a short time, had prevented the complainant from receiving the necessary support to settle into the job and had negatively impacted her output. Soon after, the President of the Staff Association Committee assumed the role of the complainant’s first-level supervisor. On 10 July 2017 the complainant’s probationary period came to an end.

* Registry’s translation.

In an email of 19 July 2017 the complainant was notified of the decision of the Executive Director, Office of the Director-General (EXD/ODG), to close her End-Year PMDS with “no rating” and to extend by six months her probationary period in order to provide enough time for a proper assessment of her performance. This decision was confirmed in a memorandum of 25 July 2017.

The complainant requested an administrative review of this decision on 13 September 2017. Further to its rejection, she submitted an appeal to the Global Board of Appeal (GBA) on 2 February 2018. In its report, submitted on 2 November 2018, the GBA found that the decision to close the complainant’s End-Year PMDS with “no rating” and to extend her probationary period were taken pursuant to the WHO regulatory framework and were within the WHO’s discretion. The GBA did not find evidence of bias or personal prejudice but it did find that there was mismanagement in the supervision of the complainant’s performance during her probationary period and that the appraisal procedure was flawed. It recommended: (i) to remove the complainant’s Mid-Year PMDS from her personal file and replace it with a statement that, due to circumstances beyond her control, her PMDS evaluation was not completed; (ii) to consider reassigning her to a different unit where she could benefit from better supervision and guidance; (iii) to take measures to strengthen the Staff Association Secretariat’s performance supervision system and internal procedures for staff/supervisor replacement. The GBA also recommended that the complainant be awarded moral damages and costs but there was no consensus as to the amount; two GBA members recommended the amount of 15,000 United States dollars whereas one member recommended the amount of 7,000 dollars.

By a letter of 27 December 2018, the Director-General informed the complainant that he had decided to accept the GBA’s recommendations and to award her 15,000 dollars in moral damages. This is the impugned decision.

By a memorandum of 19 February 2019, the Director-General notified the complainant of his decision to consider her probationary period as completed and to confirm her appointment and extend it by two years.

The complainant asks the Tribunal to recognise that WHO did not observe its internal rules and to acknowledge that the GBA failed to observe its rules and obligations; that it ignored and/or misread essential

events and facts; and that it ignored and/or minimised essential information in not finding evidence of bias and prejudice against her. She also asks the Tribunal to reassess the amount of compensation owed to her and to award her 50,000 Swiss francs for WHO's breach of confidentiality and her rights as a staff member, 50,000 francs for WHO's breach of its duty of care, 50,000 francs in moral damages, and any additional amount it may consider appropriate in the circumstances.

WHO asks the Tribunal to dismiss the complaint in its entirety.

CONSIDERATIONS

1. According to her complaint, the complainant challenges "the Global Board of Appeal (GBA) of the World Health Organization (WHO) Final Report sent to the Director-General", citing the 27 December 2018 decision as the impugned decision. She asks the Tribunal to:

- "Recognize the non-observance of internal rules[;]
- Reconsider and acknowledge essential events and facts ignored/misread by the [GBA]: [specifically, the statement that] 'the Board did not find evidence of bias or prejudice'[;]
- Reassess the compensation amounts for damages and moral prejudice accordingly[;]
- Recognize the non-observance of internal justice/GBA's obligations/rules;
- Reconsider and acknowledge the missing events and facts ignored/misread by the [GBA]: [specifically, the statement that] 'the Board did not find evidence of bias or prejudice';
- Reassess the compensation amounts [considering breach of confidentiality, breach of duty of care, moral damages, and any additional award the Tribunal might consider]".

2. WHO contests the receivability of the complaint on the ground that it is not directed at the Director-General's final decision of 27 December 2018 but, rather, at the GBA's report to the Director-General, as per the complainant's admission in the complaint form – notwithstanding that she identifies therein the 27 December 2018 decision as the impugned decision. Nor is it directed at the 19 February 2019 decision, by which the Director-General revised the 27 December

2018 decision and, *inter alia*, considered the complainant's probationary period completed, confirmed her appointment, and extended her fixed-term contract by two years. WHO argues that instead of challenging the final decision on her appeal, the complainant essentially challenges the GBA's report, which is not appealable before the Tribunal. Moreover, WHO submits that the complaint is moot as "[f]urther to [the 19 February 2019] revision and complement, all the complainant's concerns were attended to by the Director-General, and in the manner that she had requested". Lastly, WHO contests the complainant's submissions insofar as "the technique of incorporation by reference of arguments from the internal appeal used by the complainant [...] is inadequate and must not be accepted given that the arguments of facts and law must appear in the complaint to the Tribunal".

3. As the complaint is unfounded on the merits, the Tribunal will not deal with WHO's objections to receivability and will consider the complaint as being directed at the 27 December 2018 decision. The Tribunal finds that the Director-General did not err insofar as he accepted, in the impugned decision, the GBA's conclusion that it did not find evidence that the decision to close the complainant's End-Year PMDS with "no rating" and to extend her probationary period was tainted with bias or prejudice. In accordance with its case law, "the Tribunal shall not reweigh the evidence but shall limit itself to evaluating the lawfulness of the [...] findings and conclusions on the evidence" (see, for example, Judgment 4347, consideration 27, and the case law cited therein). The Tribunal finds that the GBA's report in the present case is a balanced and thoughtful analysis of the issues raised in the internal appeal and, on its analysis, the conclusions and recommendations of the GBA were justified and rational. It is a report of a character which engages the principle discussed by the Tribunal in Judgment 3608, consideration 7, that the report warrants "considerable deference" (see also, for example, Judgments 3400, consideration 6, and 2295, consideration 10).

4. The GBA correctly found that "the supervision of the [complainant]'s performance during the probationary period was mismanaged and the appraisal procedure was flawed". In the complainant's request for review of the decision to extend her probationary period for an additional six months and to close her End-Year PMDS with "no rating" (conveyed to the complainant on

19 July 2017 and confirmed on 25 July 2017), it is observed that the complainant described an “unusual and uncomfortable” environment in the WHO Headquarters Staff Association’s Secretariat from the moment she arrived. The situations she describes in her submissions to the Tribunal show clear issues of mismanagement but do not support a finding of personal prejudice and/or bias against her specifically. With regard to her argument of a breach of confidentiality, the Tribunal finds that the privileged and confidential sharing of the GBA report within the Office of the Legal Counsel, Director-General’s Office, in order to provide advice and assistance to the Director-General, was lawful.

5. In light of the above considerations, the complaint must be dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 10 June 2021, Ms Dolores M. Hansen, Vice-President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 7 July 2021 by video recording posted on the Tribunal’s Internet page.

DOLORES M. HANSEN

GIUSEPPE BARBAGALLO

HUGH A. RAWLINS

DRAŽEN PETROVIĆ