

**R. (No. 14)**

*v.*

**IAEA**

**136th Session**

**Judgment No. 4703**

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourteenth complaint filed by Mr R. R. against the International Atomic Energy Agency (IAEA) on 3 December 2018 and corrected on 19 January 2019, the IAEA's reply of 15 May 2019, the complainant's rejoinder of 2 September 2019 and the IAEA's surrejoinder of 19 December 2019;

Considering the complainant's letter of 21 April 2023 to the Registrar of the Tribunal seeking the recusal of several judges;

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 to close the case arising from his reports of alleged misconduct and to reject his request to be provided with an unredacted version of the final investigation report.

At the material time, the complainant was employed within the Office of the Deputy Director General, Department of Nuclear Energy (O/DDG-NE), under the supervision of Mr K.

On 9 January 2017, the complainant reported misconduct, including harassment, against his supervisor Mr K.

On 20 January 2017, the complainant reported numerous allegations of misconduct against four IAEA staff members, including Mr K. (for a second time).

On 7 February 2017, the complainant was informed that his allegations of 9 January and 20 January 2017 had been referred to the Director, Office of Internal Oversight Services (OIOS) for investigation, in accordance with paragraph 2 of the “Procedures to be Followed in the Event of Reported Misconduct”, contained in Appendix G to the Administrative Manual, Part II, Section 1 (AM.II/1, Appendix G). Subsequently, a decision was made by OIOS to conduct a single investigation into all the allegations made by the complainant on 9 and 20 January and for the investigation to be undertaken by an external investigative firm.

In April 2017, OIOS issued its final investigation report on the matter.

The complainant was informed on 9 May 2017 that the investigation into allegations of misconduct against Mr K. and others had been concluded.

On 6 September 2017, the complainant was informed that, based on the final investigation report of April 2017 and its addendum of August 2017 (hereinafter “the final investigation report”), OIOS had concluded that none of his allegations of misconduct of 9 January and 20 January 2017 were substantiated. Consequently, the Deputy Director General of the Department of Management (DDG-MT) had decided to close the case arising from the complainant’s reports of misconduct, in accordance with paragraph 4(d) of AM.II/1, Appendix G.

On 5 October 2017, the complainant requested the review of the decision to close the case. He claimed damages and further asked that his 2015 performance review report be set aside and replaced with a certificate of satisfactory service. He also asked to be provided with the final investigation report.

The Director General rejected the complainant's request for review on 3 November 2017. In that decision he nevertheless informed the complainant that OIOS would provide him with a redacted copy of the final investigation report.

By a letter of 28 November 2017, the complainant was informed that the IAEA was in the process of finalizing a redacted copy of the final investigation report and that, in light of the time taken, it was suspending the one-month time limit for filing an appeal under Staff Rule 12.01.1(D)(2) pending disclosure of the said report to the complainant. As such, he would have one month from the date of receipt of the final investigation report to file an appeal against the Director General's decision.

On 3 March 2018, the complainant reiterated his request to be provided with the final investigation report and requested moral damages for the delay in providing him with that report.

By a letter of 28 March 2018, the complainant was provided with a redacted copy of the final investigation report. The Director General did not consider the delay in providing the complainant with the final investigation report unreasonable as the voluminous documentation contained in the report and the complex and sensitive nature of matters contained therein required a careful review and appropriate redaction prior to its transmission to the complainant. Consequently, he denied the complainant's request for damages.

On 27 April 2018, the complainant lodged an appeal against the decisions of 3 November 2017 and 28 March 2018.

In its report of 3 August 2018, the Joint Appeals Board (JAB) recommended that the Director General maintain his decisions and dismiss the appeal. It concluded that the investigation had been properly conducted and that the decision to close the case was lawful. It also found that the complainant's allegation that he should have been provided with an unredacted version of the final investigation report was not supported by the applicable rules.

By a decision of 3 September 2018, the Director General decided to follow the JAB's recommendation and to dismiss the complainant's appeal. That is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision. He claims material, moral and exemplary damages, as well as costs, with interest on all amounts awarded.

The IAEA requests the Tribunal to dismiss the complaint as irreceivable in part and entirely unfounded.

### CONSIDERATIONS

1. The central question to be determined by the Tribunal is whether the Director General of the IAEA erred when he accepted the Joint Appeals Board's (JAB) recommendation to dismiss the complainant's internal appeal against the closure of the case arising from his reports of alleged misconduct dated 9 January 2017 and 20 January 2017. The Tribunal will also consider whether the complainant should have been provided with an unredacted version of the final investigation report.

2. The complainant impugns the decision on the following grounds:

- (a) the investigation was vitiated by an inordinate delay as the IAEA failed to promptly and thoroughly investigate his numerous reports of harassment made in 2015 and 2016;
- (b) the investigation was vitiated by lack of authority because the external investigative firm appointed by the Office of Internal Oversight Services (OIOS) had no lawful authority to conduct the investigation, pursuant to the provisions set forth in Annex II to AM.II/11 on "Consultants";
- (c) the IAEA has misused the purpose of the investigation so as to inform the non-renewal of his contract, in breach of the adversarial principle and the IAEA's Whistle-blower Policy, which amounts to an abuse of authority;

- (d) deliberate omissions, deficient reasoning and manifest illogicality vitiate the conclusions of OIOS in the final investigation report;
- (e) he was subject to institutional harassment in response to his attempts to have his allegations investigated.

3. The IAEA submits that the complainant's fifth ground concerning institutional harassment is a new claim that should have been raised internally and is therefore irreceivable. The complainant argues that his allegation of institutional harassment is a new plea that does not extend the scope of the claims already submitted during the internal appeal process. The Tribunal notes that the complainant has put forward a plethora of allegations of institutional harassment in his previous complaints before the Tribunal. The complainant's allegation of institutional harassment is obviously a new claim and is not a new plea that merely serves to strengthen the legal argument by providing an additional reason to support the claim. Precedent has it that a complainant may enlarge on the arguments presented before internal appeal bodies but may not submit new claims to the Tribunal (see, for example, Judgments 4522, consideration 3, 4467, consideration 5, and 3945, consideration 4). As the complainant did not raise the issue of institutional harassment in his request for review of 5 October 2017, nor in his appeal to the JAB, his claim is therefore irreceivable.

4. The Tribunal also notes that the complainant asks to set aside the 2015 performance review report and to substitute it with a certificate of satisfactory performance. Such a claim is not related to the impugned decision itself, thus being outside the scope of the present case. Additionally, the complainant's request for providing him with a certificate of satisfactory performance is beyond the Tribunal's competence (see, for example, Judgment 4029, consideration 22).

5. In his first ground, the complainant alleges that the IAEA failed to promptly and thoroughly investigate his numerous "reports of harassment" referenced in: (1) his email to Mr S. dated 20 April 2015; (2) his email to Mr S. dated 17 September 2015; (3) his email to Mr K. dated 1 December 2016; and (4) Mr K.'s calendar meeting invite to

Ms F. dated 25 May 2016. This issue does not arise from the decision to close the case concerning his reports of misconduct made in January 2017. It is therefore beyond the scope of this complaint and is accordingly irreceivable.

6. The complainant advances various arguments to support his second ground that OIOS's use of the services of an external investigative firm to assist in its investigation was in violation of IAEA policies and applicable rules. His arguments are unfounded. The OIOS Charter, contained in AM.III/1, provides in its Article 2 that, although OIOS reports directly to the Director General, it shall carry out all assignments free from managers' interference in determining the scope and in performing the work. There is no rule that prohibits OIOS from procuring the services of an investigative firm, which was within its operational independence in carrying out the work, and which is also permitted by AM.VI/1 on the "Procurement of Goods and Services".

7. The complainant's third ground states in part that the IAEA "misused the purpose" of the OIOS investigation so as to inform the non-renewal of his contract. This is outside the scope of this complaint and is therefore irreceivable. His further allegation that the investigation was an act of retaliation that violated the Whistle-blower Policy is unfounded, as the complainant has not furnished any persuasive evidence to prove that he has been the victim of retaliation. He also alleges that the adversarial principle was breached in that he should have been given the opportunity to challenge witness statements at the investigative stage. It is well-established case law that "the reporter of the misconduct, a potential victim of the harassment, is a witness and not a party in the proceedings" (see, for example, Judgment 4207, consideration 14). The JAB correctly noted that "there is no provision in [the OIOS Procedures for the Investigation of Staff Members in AM.III/4] for someone in the position of the [complainant] to 'put questions to the witnesses, or to ask for clarification.'" The complainant's allegations in the third ground are unfounded.

8. As regards the complainant's fourth ground, the general principle is that "[i]t is not the Tribunal's role to reweigh the evidence before an investigative body which, as the primary trier of fact, has had the benefit of actually seeing and hearing many of the persons involved, and of assessing the reliability of what they have said. For that reason [the findings of] such a body [are] entitled to considerable deference. So that where [an investigative body] has heard evidence and made findings of fact based on its appreciation of that evidence and the correct application of the relevant rules and case law, the Tribunal will only interfere in the case of manifest error" (see, for example, Judgments 4207, consideration 10, and 3593, consideration 12). The complainant does not provide any evidence to show that OIOS made a manifest error in fact or in law that would vitiate the conclusions reached in its final investigation report. The Tribunal is further satisfied that OIOS did not violate any applicable procedures in its investigation. The complainant's fourth ground must also be rejected.

9. Lastly, regarding the complainant's allegation that he should have been provided with an unredacted version of the final investigation report, no such right is conferred by the OIOS Charter or is found in the OIOS Procedures for the Investigation of Staff Members. In any event, the complainant was provided with a copy of the redacted version of the final investigation report and there is no right to an unredacted copy of the final investigation report under the Tribunal's case law (see, for example, Judgments 4471, consideration 23, and 3995, consideration 5).

10. In another judgment given this session, Judgment 4701, the Tribunal has addressed the question whether two of the judges of this panel should recuse themselves. It was decided that they should not.

11. It follows from the foregoing that the complaint must be dismissed in its entirety.

DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 9 May 2023, Mr Michael F. Moore, President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 7 July 2023 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

HONGYU SHEN

DRAŽEN PETROVIĆ