

The Administrative Tribunal,

Considering the complaint filed by Mrs C.E. I. against the Food and Agriculture Organization of the United Nations (FAO) on 10 August 2004 and corrected on 17 November 2004, the FAO's reply of 18 February 2005, the complainant's rejoinder of 25 May and the Organization's surrejoinder of 5 September 2005;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

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

A. The complainant, an American citizen born in 1956, joined the World Food Programme (WFP) – an autonomous joint subsidiary programme of the United Nations and the FAO – on 17 February 2001 as a Logistics Officer at grade P-3, based in Djibouti. She was appointed under a non-core project contract for a fixed term of one year, which constituted a probationary period.

On 20 October 2001 the complainant's direct supervisor, Mr W., completed a first probationary performance appraisal report (PPAR) based on an initial work plan dated 23 April 2001. He noted that most of the tasks defined in the work plan had been completed satisfactorily by the complainant, whilst recommending that she spend additional time on certain tasks in order to gain further experience. He also commented that the complainant lacked practical knowledge and experience of logistical operations, and that she was inclined not to follow the required internal reporting and communication lines. The Head of Logistics, WFP Ethiopia, added his own comments to the report on 13 November. Noting that the working relationship between the complainant and her direct supervisor "could have been more cordial", he stated that for the remaining part of her probationary period her performance should be "carefully evaluated, with the full and continuing interest of a third party, for example, Djibouti Country Director". These comments were endorsed by the Deputy Country Director, Djibouti, on 14 November. This first PPAR also contained a revised work plan.

The complainant's 10-month PPAR, which was written on 20 December 2001, likewise indicated that she was performing most of her duties satisfactorily. Nevertheless, Mr W. observed that her attitude towards him was argumentative and that she had "repeatedly ignored requests to follow correct lines of reporting". He also considered that she required "constant supervision". He recommended that the complainant's probationary period be extended to 18 months. This report also contained comments by the Country Director, Djibouti, who, endorsing Mr W.'s recommendation, noted that whilst the complainant had "the competence to perform the work assigned to her", she needed to learn to be less argumentative with her direct supervisor.

The complainant commented on this appraisal at length in an e-mail sent to the Country Director on 28 December. She disputed Mr W.'s assessment of her performance of certain tasks and criticised him for failing to define the reporting lines clearly. She also asserted that she had received no guidance during her probationary period. The Country Director replied, on 30 December 2001, that the complainant's PPAR was by no means entirely negative, but that improvement was required in two areas.

The complainant received confirmation of the extension of her probationary period from the Representative and Country Director, Ethiopia, on 11 January 2002. During that extension her direct supervisor assessed her performance on 10 April 2002, on the basis of a work plan covering February and March, and again on 1 June 2002, on the basis of a work plan covering April and May. Mr W. signed the complainant's 15-month PPAR on 2 June 2002. Taking into consideration the complainant's performance throughout her entire probationary period, he concluded that she was "not practically suited or sufficiently experienced [...] for a professional logistics post". The Country Director, Djibouti, for her part, commented that over the past six months the complainant had followed the reporting lines and had shown a less argumentative attitude. However, she agreed with Mr W.'s assessment of the complainant's overall performance as a logistics officer and wrote that she would not recommend maintaining the

complainant in her current position. The Head of Logistics for Ethiopia, who also commented on the appraisal, stated that whereas WFP would expect logistics officers recruited at P-3 level to apply prior professional experience and adapt to WFP procedures and practices during their probationary period, the complainant did not appear to have done so.

In a memorandum of 11 June 2002 addressed to the Country Director, Djibouti, the complainant requested “an official review of [her] whole appraisal” on the grounds that her final PPAR had not been discussed with her and that there were contradictions in the various appraisals she had received during her probationary period. She also disputed many of the criticisms expressed by Mr W.

The recommendation not to confirm the complainant’s appointment was endorsed by the Representative and Country Director, Ethiopia, who forwarded the PPAR, together with the complainant’s comments and those of the Head of Logistics, Ethiopia, to the Regional Office in Kampala (Uganda) on 27 June 2002. The Regional Office was instructed to convene an ad hoc committee to examine the complainant’s case. An ad hoc Panel met on 17 and 19 July and issued an opinion on 23 July in the form of a Note for the Record. Although the Panel felt that certain comments in the PPAR “seemed a little contradictory” in that they referred to improvements in the complainant’s performance, it concurred with the recommendation not to confirm her appointment, emphasising that it had been “endorsed not only by her direct supervisor, but also by three senior staff based in Djibouti and Ethiopia”.

The Director of the WFP’s Human Resources Division informed the complainant by a memorandum of 31 July 2002 that, having reviewed all the above-mentioned documents, she concurred with the Panel’s recommendation. The complainant was invited to comment within five working days, which she did by a letter of 5 August. However, the Director of Human Resources replied, in a memorandum dated 9 August, that the issues raised by the complainant were not new and had already been taken into account. She therefore maintained her decision not to confirm the complainant’s appointment, which, she said, was based on the complainant’s “unsatisfactory performance and poor inter-personal skills”.

Having been separated from service on 8 September 2002, the complainant challenged this decision by appealing on 16 September to the Executive Director of the WFP. Her appeal was dismissed on 30 September by the Deputy Executive Director, who stated that the contested decision had been “correctly taken” in accordance with the applicable rules. She then appealed to the FAO Appeals Committee on 25 November 2002. In its report of 30 December 2003 to the Director-General, the Appeals Committee recommended that her appeal be dismissed as unfounded. It considered that the WFP had complied with the appraisal procedures and that it had even provided additional procedural safeguards, such as the “multiple levels of review” and the ad hoc Panel.

By a letter of 13 May 2004 the Director-General of the FAO informed the complainant that he had decided to accept the recommendation of the Appeals Committee. That is the impugned decision.

B. The complainant contends, firstly, that she has been denied due process. In her opinion the Administration did not provide her with “proper conditions for probation”. She points out that according to her job description she was to work under the direct supervision of the Country Director, Djibouti, whereas she in fact worked under the direct supervision of Mr W. This leads her to conclude that her performance appraisals were written by an official who was not competent to act as her direct supervisor. She submits that in any case Mr W. did not comply with the applicable rules, particularly by disregarding the reporting schedule provided for in Manual paragraph 305.5.241. Indeed, she observes that she received a 12-month work plan nine weeks after her entry on duty, whereas she ought to have received a 6-month work plan within three weeks of taking up employment, and that her first PPAR was written eight months after her entry on duty, whereas it ought to have been written six months after her entry on duty. She also argues that her final PPAR ought to have been shown to her and discussed with her.

In the complainant’s view, the delays in the appraisal process, and her supervisors’ absences during her probationary period, altered the appraisal process. She explains that because her first PPAR was delayed by two months, her second PPAR was due only two months later and thus covered only 50 per cent of the reporting period. Consequently, she did not have sufficient time, between her first and second appraisals, to improve what her supervisor considered to be her weaknesses. In addition, she asserts that the Country Director, Djibouti, was absent for approximately 70 per cent of the period between her first and second appraisal reports, and that Mr W. was absent for 44 per cent of her 18-month probationary period. In view of these absences she considers that her supervisors were not in a position to make a reliable assessment of her performance.

Secondly, the complainant contends that in taking the impugned decision the Director-General drew false conclusions from the file, since he implicitly agreed with her supervisors' view that she was not suitable for her post, which, in her opinion, is contradicted by many facts. In support of this argument she relies in particular on the comments submitted to the Human Resources Division by Mr M., an official who had supervised her when the Country Director, Djibouti, had been absent. Mr M. had expressed the view that the complainant had performed her duties satisfactorily and in a timely manner. He had also cast serious doubts on the objectivity of her PPAR. The complainant also points to inconsistencies in her appraisal reports. She states that in her second PPAR her performance was deemed satisfactory, but improvements in inter-personal skills were requested. On 1 June 2002, however, although her supervisors acknowledged improvements in both the quality of her work and her inter-personal skills, they decided not to confirm her appointment. She adds that the ad hoc Panel noticed these contradictions, but failed to draw any conclusion from them.

Lastly, the complainant contends that her supervisors were prejudiced against her. In this regard she refers again to the comments of Mr M., who expressed the view that there might have been personal conflicts unrelated to professional performance between the complainant and her supervisors. She also asserts that on joining the WFP she was warned by Mr W. that her terms of reference conflicted with his, and this situation had a negative impact on their relations.

The complainant, who states that she has suffered both material and moral injury, asks the Tribunal to set aside the Director-General's decision of 13 May 2004 and to order the defendant to pay her an amount equal to two years' salary, including all benefits and allowances, in compensation under all heads. She also claims costs.

C. In its reply the FAO submits that the complainant has failed to demonstrate any breach of due process. With regard to the authority of her direct supervisor, it explains that Mr W. was effectively coordinating the complainant's work, in accordance with her terms of reference, and that all her appraisal reports were completed by him and approved and commented on by the Country Director, Djibouti. It asserts that the decision to extend her probationary period was taken in accordance with Manual paragraph 305.5.22; it was intended to provide her with an opportunity for improvement and to give her supervisors additional time to assess her overall performance. According to the defendant, the delay in preparing her first PPAR "was intended to ensure that the decision was fair and well-informed". It emphasises that the complainant was given the opportunity to comment at each stage of the appraisal process.

The FAO argues that the decision not to renew a staff member's appointment is discretionary. Referring to Judgment 1418 it recalls that such decisions are subject to only limited review, particularly in the case of a decision not to confirm the appointment of a probationer. It submits that the reasons supporting the impugned decision are amply documented and pertain to the complainant's unsatisfactory performance and lack of inter-personal skills. Rejecting the allegation that the complainant's appraisal reports contained contradictions, it argues that, on the contrary, in referring to the complainant's qualities as well as the numerous areas where improvement was needed, the reports reflect a well-balanced appraisal.

The defendant denies that there was bias against the complainant and submits that her allegations in this respect are unsubstantiated. It emphasises that Mr M. supervised the complainant for less than three months, and that his comments were taken into account by the ad hoc Panel which recommended that the complainant's appointment should not be confirmed.

D. In her rejoinder the complainant presses her pleas. She submits that the defendant has not properly addressed her arguments, which, she says, are essentially based on her appraisal reports and on the comments of Mr M. She states that the "additional" procedural safeguard of the ad hoc Panel did not offset the previous irregularities.

E. In its surrejoinder the FAO maintains its position.

## CONSIDERATIONS

1. The complainant was recruited by the WFP for a fixed term of one year, which constituted a probationary period. That period was later extended to 18 months. Because of negative comments on her performance it was decided that her appointment would not be confirmed upon expiry of her probationary period.

The reasons given were “unsatisfactory performance and poor inter-personal skills”. In this regard, it was said in her final Probationary Performance Appraisal Report that she did not have enough experience; that she showed little “awareness of potential problems”; that she was “inclined not to follow the required and requested internal reporting and communication lines”; that her attitude towards her supervisor was “argumentative”, which had “caused a considerable lowering of morale and disruption within a previously very motivated and successful logistics unit”; that she was not prepared to accept the supervisory system; and that she was reluctant to be “open to change” and to “gather new knowledge”. Her supervisors concluded that she was not suitable for a professional logistics post.

2. In a letter to the Director of Human Resources dated 5 August 2002 the complainant challenged the decision not to confirm her appointment, pointing out that she had had to face a “hostile environment”, that she had not received adequate guidance because her supervisors had been absent at certain times for various reasons, and that the overall performance appraisal process had been “full of intimidation and contradiction”.

The case was referred to the FAO Appeals Committee, which found that there had been “multiple levels of review” of her performance, and that the appraisal procedures had been followed; it recommended that the appeal be dismissed as unfounded.

In her complaint before the Tribunal the complainant puts forward the same pleas, but also contends that she did not benefit from due process of law, that false conclusions were drawn from the file, and that her supervisors were prejudiced against her.

3. In its submissions the Organization rebuts all her pleas and points out that her supervisor’s recommendation not to renew her contract had been endorsed by three senior staff members; that the Appeals Committee established that the appraisal procedures had been followed; and that the Committee concluded that there was no substantial evidence that her supervisors had dealt with her performance appraisal in a biased, arbitrary or unfair manner.

4. Although there is some evidence of hostility on the part of the complainant’s direct supervisor, the evidence is not capable of sustaining a finding that the decision not to confirm her appointment was the result of prejudice, unfairness or bias. This is particularly so given that her case was reviewed, at the request of her second-level supervisor, by an ad hoc panel. So, too, in the context of that review, it cannot be concluded that the irregularities in the completion of her performance appraisal reports, or the fact that the reports were completed by a supervisor who was not always present, were material to the decision not to confirm her appointment or otherwise resulted in a denial of due process.

5. The conclusion is that the complainant’s pleas are devoid of merit and her complaint cannot succeed.

## DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 28 October 2005, Mr Michel Gentot, President of the Tribunal, Ms Mary G. Gaudron, Judge, and Mr Agustín Gordillo, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 1 February 2006.

Michel Gentot

Mary G. Gaudron

Agustín Gordillo

