

The Administrative Tribunal,

Considering the complaint filed by Mrs J.M. W. against the Food and Agriculture Organization of the United Nations (FAO) on 16 December 2005 and corrected on 19 January 2006, the FAO's reply of 11 May, the complainant's rejoinder of 23 June and the Organization's surrejoinder of 4 October 2006;

Considering Articles II, paragraph 5, and VII 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, a Canadian citizen born in 1946, joined the FAO in 1993, at grade P-5, as Chief Librarian in the David Lubin Memorial Library which is part of the Library and Documentation Systems Division (GIL). She obtained a continuing appointment in 1999. From March 2002 until January 2005 she was a member of the Executive Board of the Association of Professional Staff (APS) which is one of three staff representative bodies in the Organization.

On 30 June 2004 the complainant submitted a formal complaint alleging harassment and abuse of authority on the part of the Director of GIL who had been her supervisor since 1996. She filed it under the FAO's new "Policy on Prevention of Harassment" which had been announced to staff in an Administrative Circular (No. 2003/17) of 26 June 2003 and came into effect on 1 July 2003.

On 14 July 2004 the Director of the Human Resources Management Division (AFH) acknowledged receipt of the complaint of harassment and indicated that it would be forwarded to her supervisor. On 18 August 2004 the complainant's supervisor submitted his response to the complaint. Under cover of a memorandum of 30 August, the Director of AFH forwarded that document to the complainant, saying that the matter would be referred to an Investigation Panel. She was told that she would soon be notified about the composition of the Panel.

Following receipt of the submissions from her supervisor, on 27 September the complainant sent the Director of AFH a document headed "Initial clarification of matters appearing in the response and relevant factual information for consideration by the Investigation Panel". In a memorandum of 28 October, the Director of AFH informed her that Administrative Circular No. 2003/17 did not specifically provide for a right of rebuttal by a complainant, but said that her document was being passed on to the Investigation Panel.

In an e-mail of 12 November 2004, the Secretary of the Investigation Panel apologised to the complainant for the delay in processing her complaint of harassment, explaining that it was due to the unavailability of some of the members of the Panel. Thereafter, there was an ongoing exchange of correspondence between the complainant and the Panel's Secretariat.

On 30 March 2005 the complainant sent the Officer-in-Charge of AFH a document headed "Second additional clarification of matters appearing in the response and relevant factual information for consideration by the Investigation Panel".

The Investigation Panel was established in June 2005, but at that stage the Panel's Rules of Procedure had not been finalised. In an e-mail of 4 August the complainant was asked to consider whether she wanted the Secretariat of the Investigation Panel to schedule a meeting with the Panel in the last week of August, or whether she wished to wait until the Rules had been adopted. It was said in that e-mail that the Rules were expected to be adopted during the month of September. On 11 August the complainant indicated that in the absence of those Rules she would not yet appear before the Panel. A hearing was later scheduled for 18 or 19 October 2005.

The complainant was provided with a copy of the "Rules of Practice and Procedure of the Investigation Panel" on

14 October. She took issue with the Rules and in an e-mail of 18 October advised the Panel's Secretariat that owing to the late circulation of the Rules the meeting "would need to be cancelled". Replying at length on 18 November, an official from the Secretariat of the Investigation Panel informed the complainant that it would still be possible for the Panel to carry out its investigation and meet with her; however, as an alternative, she said the complainant might wish to follow the appeal procedures provided for in section 331 of the FAO Administrative Manual, which would be applicable to those aspects of her case that did not concern harassment.

On 16 December 2005 the complainant filed her complaint under Article VII(3) of the Tribunal's Statute, giving 30 June 2004 as the date when she had notified her claim to the Organization.

B. The complainant, regarding the receivability of her complaint to the Tribunal, points out that she repeatedly requested reassurance from the FAO that the complaint of harassment she filed on 30 June 2004 would be dealt with; however, despite those requests, at the time when she filed her complaint to the Tribunal there was still no end in sight for the internal procedure. The FAO had taken no steps to address the allegations she made. It had merely established an Investigation Panel that in December 2005 had not yet commenced its investigation tasks.

The complainant alleges non-observance by the FAO of the terms of her appointment as well as the relevant provisions of the FAO Administrative Manual. She considers that there was a grave breach of the Organization's duty of good faith towards her as, despite the abusive treatment she was exposed to over many years, it failed to take effective action to resolve her situation.

She contends that over a period of several years she was the victim of harassment and abuse of authority on the part of her supervisor. Referring to the "Policy on Prevention of Harassment" issued by the FAO, she asserts that she was the victim of degrading public tirades, deliberate insults related to her professional competence, disparaging remarks, "continual exclusion" from decision-making duties, and harassment on the basis of gender and age. It appears to her that her supervisor was intent on diminishing the role of the library where she worked and was diverting its resources and staff so that it could be superseded by another project. She argues that the FAO has not put in place the appropriate mechanisms to deal with the type of situation she was confronted with, in the sense that it has no independent Ombudsperson or Staff Counsellor, and no external mediator or independent investigation panel.

She alleges that as a result of her hostile work situation she suffered ongoing stress and damage to her health. Moreover, her professional reputation was damaged as a result of the disparaging remarks and unlawful conduct she was exposed to. Her expected career path was "derailed", as she would otherwise have had a reasonable opportunity for promotion and should have been promoted to D-1 level.

The complainant claims compensation for "losses due to destruction of career path", and more specifically in respect of: (i) lost benefits, allowances and salary over the period until June 2008 (mandatory retirement date); (ii) lost pensionable remuneration; (iii) future pension losses; (iv) the cost of additional medical insurance; and (v) loss of income from an intended future consultancy practice. She reserves the right to claim further salary losses if she is "forced to leave her post before retirement". She seeks 500,000 United States dollars in damages "for pain and suffering [...] and moral injury" and also claims costs. In addition she seeks various "workplace remedial orders". Under that heading, she wants the FAO to take sanctions against those responsible for misconduct, including her supervisor; ensure that there is "an effective, fair, timely and transparent procedure" for handling complaints such as hers; institute "a neutral Ombudsperson process"; establish "workplace harassment prevention training"; and permit her to carry out her post description as Chief Librarian and move forward with the library's mandate. She further wants the Tribunal to direct the FAO to issue a public apology to her for its misconduct and take steps to ensure that her reputation is restored.

C. In its reply the FAO argues that the complaint is irreceivable on the grounds that the complainant has failed to exhaust the internal remedies. Firstly, she has brought her case to the Tribunal without waiting for the outcome of the investigation that was to be conducted by the Investigation Panel. The delays in starting the procedure before the Panel were not excessive and were due to reasons beyond the control of the Organization as, for one reason or another, prospective panel members declined to participate. This was largely due to the particular circumstances of the case, which gave rise to questions of conflict of interest. It argues that the complainant, too, was responsible for the fact that her grievances were not assessed within the framework of the Administrative Circular on the Policy on Prevention of Harassment. By imposing "inappropriate conditions" on her cooperation with the Investigation Panel, she significantly delayed the start of the internal proceedings. Secondly, she failed to avail herself of the internal

appeals procedure provided for in section 331 of the Administrative Manual. If she considered that any specific decision was in conflict with the terms of her appointment, or with any particular Staff Regulation or Rule, she should have filed an internal appeal. Numerous allegations that she put forward were outside the scope of the Administrative Circular, and on those issues too the complainant disregarded the internal appeal procedure that was available to her.

The Organization further submits that the complaint is devoid of merit and that the complainant has failed to demonstrate any wrongful act on the part of the defendant. It categorically rejects the accusations she puts forward, pointing out that some accusations have arisen from managerial disagreements between her and her supervisor, and have nothing to do with “harassment” or “abuse of authority”. It is clear that her complaint has also arisen from misgivings she had about the Organization’s policies. The FAO argues that her allegations are baseless and the substance of her complaint does not justify an award of damages. Moreover, it considers that her claims for redress are based on “wrong assumptions”. Not only does she appear to believe that she would have a right to promotion, but she also wrongly assumes that the Organization is responsible for her health problems and her “ill-feeling”.

D. In her rejoinder the complainant enlarges on her pleas. She argues that it was up to the FAO to ensure that it instituted the necessary decision-making process to address the “breadth and complexity” of her complaint of harassment. It is, she claims, the responsibility of the FAO to have in place effective internal remedies.

She contends that the objections she raised concerning the Rules of Procedure were justified. Her concerns could not be deemed “inappropriate”; she was concerned about the possibility of retaliation against witnesses, and wanted to make sure that clear anti-retaliation protection measures were in place.

E. In its surrejoinder the Organization maintains its position, arguing that the complaint is irreceivable and unfounded. The complainant, it points out, had every opportunity to have her complaint of harassment considered in internal proceedings, but due to a mistaken understanding of the applicable rules, she chose to bypass those procedures.

The complainant’s attitude when the Organization sought to initiate the proceedings of the Investigation Panel was completely inappropriate. By her intervention she implied that she would refuse to participate in the investigation until she had agreed to the substance of the Rules of Procedure. She wrongly assumed a role in defining those Rules. By so doing she sought to “control” the investigation process.

## CONSIDERATIONS

1. The complainant is employed by the FAO as Chief Librarian in the David Lubin Memorial Library which is in the Library and Documentation Systems Division (GIL). She was appointed to that position in 1993. On 30 June 2004 she lodged a formal complaint of “Long term harassment, abuse of authority and contravention of the FAO Administrative Manual” against her supervisor, the Director of GIL. The complaint was made pursuant to the FAO’s “Policy on Prevention of Harassment”. In that complaint, she asked that, in accordance with that Policy, disciplinary proceedings be taken against her supervisor and that the matter be referred to an Investigation Panel. She also sought agreed termination and, amongst other things, material damages and general compensation for pain and suffering, physical and mental and moral injury. In the alternative and on the assumption that her supervisor was to retain his position, she sought compensation, transfer to a position in another United Nations Agency, and costs. The Director of the Human Resources Management Division (AFH) acknowledged receipt of the complaint on 14 July 2004 and informed the complainant that it would be forwarded to her supervisor for his comments.

2. The FAO’s new “Policy on Prevention of Harassment” was announced to staff by an Administrative Circular (No. 2003/17) of 26 June 2003 and came into effect from 1 July of that year. The circular provides for, amongst other things, formal complaints which are to “be dealt with rapidly [and] in the strictest confidence”. It requires that a copy of the complaint be forwarded by the Director of AFH to the “alleged offender who will be given the right to respond in writing [...] within a specified time”. In the present case, the Director of GIL did not receive the complaint until his return from annual leave on 2 August 2004 and he was given until 19 August to provide his response. The complainant objected to the amount of time allowed to her supervisor for responding. He did, however, submit his response by the specified date, as he submitted it on 18 August. A copy was forwarded to the complainant on 30 August and she was then informed that her complaint would be referred to the Investigation Panel in accordance with Part II(b)(iii)(b) of the circular.

3. Administrative Circular No. 2003/17 provides for the establishment of an Investigation Panel composed of three members and three alternate members appointed for a period of two years. The Panel is to:

“conduct the investigation and fact-finding which, normally, will include interviews with the complainant, the alleged offender, any witnesses and others who could be able to provide relevant information.”

The circular requires the Panel to submit a written report to the Director of AFH “normally no later than two months from receipt of the complaint”. These provisions notwithstanding, the complainant was informed on 12 November 2004 that the Investigation Panel had not been able to process her complaint “due to the unavailability of some of the members [...] due to missions abroad, unpredictable personal inconvenience or a heavy workload”. Meanwhile, she had forwarded her comments on the response of her supervisor and had complained about the delay. Additionally, she had enquired of the Director of AFH as to the procedures for the Investigation Panel.

4. There were further difficulties as to the availability of members and no Investigation Panel was established until 10 June 2005. In the meantime, the complainant had presented further written comments on the response of her supervisor and, apparently, had ascertained that the Panel did not have established rules or procedures for the investigation of complaints. On 23 June, the Secretary of the Panel contacted the complainant to arrange a hearing. However, the complainant wished to be informed, amongst other things, whether there were Rules of Procedure and, if not, what procedures would be followed. She informed the Secretary by e-mail that she would not confirm her availability until she had answers to her questions. On 30 June the Secretariat informed the complainant that draft Rules of Procedure existed but had not been finally agreed with staff representatives. It also informed her that the Panel would like to set up meetings for the week commencing 11 July.

5. On 11 July 2005 the Secretariat of the Panel enquired of the complainant whether she would be available for a meeting with the Panel on 13 or 14 July. The complainant replied the next day stating that she had “been advised that under no circumstances should [she] appear before the Investigation Panel without having had the opportunity to review and be advised upon its Rules of Procedure”. She also raised other issues, including her concerns about confidentiality and the protection of witnesses from retaliation. The Secretariat replied to the complainant on 4 August, indicating, amongst other things, that it was expected that Rules of Procedure would be finalised in September and asking her whether she wished to await the adoption of those Rules or would be prepared to meet with the Panel in the last week of August. The complainant replied on 11 August, reiterating that she had been advised not to appear before the Panel until she had had the opportunity to review and be advised upon the Rules of Procedure and noting that the other requirements in her e-mail of 12 July had not been satisfied. Because of these matters, she stated her regret that she could “not yet appear before the Investigation Panel”.

6. The Secretariat of the Investigation Panel again contacted the complainant on 22 September 2005 indicating that a meeting was scheduled with the Panel for 18 or 19 October. There was further correspondence as to the Rules of Procedure which were expected to be finalised by the end of September. The Secretariat invited the complainant to a meeting with the Panel on 18 October. On 14 October the complainant was provided with the Rules. On 18 October she sent a further e-mail to the Secretariat, stating, amongst other things, that due to the late provision of the Rules the proposed meeting with the Panel would have to be cancelled. She also stated that because of the delays she had experienced and the unfair process she would seek legal advice as to what further steps she should take “to ensure that [her complaint could] be fairly and appropriately addressed and resolved in a timely manner”.

7. On 18 November 2005 the Secretariat of the Investigation Panel wrote to the complainant summarising events, noting her misgivings concerning the Rules which had been finalised on 14 October and stating that it was still possible for the Panel to conduct its investigation and to meet with her without delay. Additionally, the complainant was informed that she could follow the internal appeal procedures with respect to those aspects of her complaint that did not deal with harassment. On 5 December the complainant replied indicating that she was obtaining legal advice. On 16 December 2005 she filed the present complaint with the Tribunal.

8. No express final decision is identified in the complaint. Rather, it is claimed that there was a failure to take a decision within a reasonable time on the claim notified to the Organization in the complaint of harassment of 30 June 2004. The complainant asks the Tribunal to make a finding of harassment against the Director of GIL and seeks substantial compensation, material and moral damages and costs. Additionally, she seeks various other orders, including a direction to the FAO to ensure “an effective, fair, timely and transparent procedure” for complaints of harassment, to institute “a neutral Ombudsperson process” and to establish “workplace harassment

prevention training”. These latter claims are clearly irreceivable. As pointed out in Judgment 2306, a case also involving the FAO, such claims do not concern the non-observance of terms of appointment or of the provisions of Staff Regulations which are the only matters upon which this Tribunal is competent to adjudicate.

9. The complainant contends that her complaint is receivable in accordance with the established case law of the Tribunal which allows that the requirement to exhaust internal remedies, contained in Article VII of the Tribunal’s Statute, cannot have the effect of paralysing the exercise of a complainant’s rights (see Judgment 2039). On the other hand, the FAO contends that the complaint is not receivable because much of the delay associated with the investigation of the complaint of harassment was the result of the complainant’s own actions and, in any event, she did not initiate an internal appeal in accordance with Manual section 331.

10. The delay in establishing an Investigation Panel was egregious. Almost 12 months elapsed between the lodging of the complaint of harassment and the constitution of a Panel on 10 June 2005. The complainant was in no way responsible for that delay and in no position to advance the investigation. Certainly, at any time between November 2004, when she was informed of the unavailability of Panel members, and 23 June 2005, when the first attempt was made to arrange a hearing, the complainant could have treated the failure to constitute a Panel as an implied decision by the Director of AFH under Part II(b)(iv)(e) of the Administrative Circular on the “Policy on Prevention of Harassment” to close the case. Such a decision is expressly made “subject to appeal in accordance with Manual Section 330”. However, the complainant did nothing at that stage to indicate that she had elected to treat that delay as an implied decision. Rather, she waited until a Panel was constituted and ready to proceed with its investigation before taking any step that might be treated as an election to treat the failure to proceed as an implied decision to close the case. Even then, such steps as were taken seem not to have been based on delay but on the absence of settled Rules of Procedure. It may be that it was then too late to elect to treat the undeniable delays that had gone before as an implied decision. Moreover, it is by no means clear that the absence of settled Rules of Procedure provided any basis for the course that was later taken by the complainant.

However, those matters need not be pursued and the matter can be approached on the basis that the delays did constitute an implied decision by the Director of AFH, taken sometime within 90 days before the filing of the present complaint, or a failure on his or her part to take a decision on a claim made by the complainant not more than 150 days before the complaint was filed with the Tribunal. See Article VII(2) and (3) of the Tribunal’s Statute which respectively require that for a complaint to be receivable it must be filed within 90 days of the notification of the impugned decision and, in the case of the failure to take a decision on a claim within 60 days of the date of the claim, it must be filed within 90 days from the expiration of that 60-day period.

11. Even on the assumptions outlined above, the proper course for the complainant was to lodge an internal appeal with the Director-General, with respect to the implied decision of the Director of AFH to close the case or the latter’s failure to take a decision, and then, if necessary, to pursue an internal appeal with the Appeals Committee. At the very least, those steps had to be taken before it could be said, either in accordance with Article VII(1) of the Statute, that the complainant had exhausted the means available to resist the decision, or as in, for example, Judgment 2039 that she “ha[d] done [her] utmost, to no avail, to accelerate the internal procedure”. It follows that, although the initial delays were egregious and no fault of the complainant, the complaint is irreceivable and must be dismissed. That being so, it is unnecessary to consider the merits of the complainant’s claims.

## DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 9 November 2006, Mr Michel Gentot, President of the Tribunal, Ms Mary G. Gaudron, Judge, and Mr Giuseppe Barbagallo, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 7 February 2007.

Michel Gentot

Mary G. Gaudron

Giuseppe Barbagallo

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 15 February 2007.