

111th Session

Judgment No. 3046

THE ADMINISTRATIVE TRIBUNAL,

Considering the eighth complaint filed by Ms M.d.R. C.e.S.d.V. against the World Meteorological Organization (WMO) on 23 March 2009, WMO's reply of 15 October 2009, the complainant's rejoinder of 20 January 2010 and the Organization's surrejoinder of 22 February 2010;

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

Having examined the written submissions;

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

A. Facts relevant to this case are to be found in Judgment 2861, delivered on 8 July 2009, concerning the complainant's first, third, fourth, fifth, sixth and seventh complaints. Suffice it to recall that the complainant, who was recruited by WMO on 1 June 2003 as Chief of the Internal Audit and Investigation Service, was summarily dismissed by the Secretary-General on 3 November 2006. Her internal appeal against her dismissal was rejected by a decision of 28 September 2007, which she successfully challenged before the Tribunal in her fifth complaint.

The Organization's reply to the complainant's fifth and seventh complaints was received by her on 2 September 2008. By a letter of 30 September 2008 she lodged an appeal with the Secretary-General contending that three of the supporting documents annexed to that reply were false, unfounded, highly offensive and defamatory. She asked him to issue letters of apology "nullifying" the documents in question and to grant her moral damages and costs.

In a letter dated 29 October 2008 addressed to the Registrar of the Tribunal and copied to the complainant, WMO's legal counsel objected to the complainant's letter of 30 September and the allegations contained therein. He stated that, if the complainant wished to call into question the evidence submitted with the Organization's reply, the appropriate place for her to do so was in her rejoinders, and he requested that his letter and the complainant's letter of 30 September be included in the proceedings before the Tribunal. The Tribunal acceded to this request and informed the complainant that the two letters would be treated as additional attachments to WMO's reply to her fifth and seventh complaints.

Having received no reply from the Secretary-General to her letter of 30 September, the complainant filed an appeal with the Secretary of the Joint Appeals Board on 16 December 2008 in respect of the "injurious content" of five documents, namely the three documents mentioned in her letter of 30 September, a fourth document that was also annexed to the Organization's reply to her fifth and seventh complaints, and the legal counsel's letter of 29 October 2008.

On 13 January 2009 the legal counsel replied on behalf of the Secretary-General to the complainant's letters of 30 September and 16 December 2008. Noting that she had presented her arguments with respect to the five documents in the rejoinders pertaining to her fifth and seventh complaints, he informed her that the Organization would address those arguments in its surrejoinders. Referring to a letter sent to her on 27 February 2007 by the Secretary-General, he also reminded her that WMO's internal appeal system was not available to her as she was no longer a staff member.

On 23 March 2009 the complainant filed the present complaint. Although she indicated on the complaint form that she was challenging the implied rejection of a claim submitted to the Organization on 16 September 2008, she stated in her brief that her complaint related to the appeal filed on 16 December 2008, which the Secretary-General had “refused to entertain”.

B. The complainant contends that the five documents at issue are offensive, defamatory, illegal and/or false. She puts forward two pleas in support of her complaint. Firstly, she submits that by using those documents the Organization caused her irreparable harm and that, in light of the case law established by Judgments 442, 1340, 1609 and 1875, she is clearly entitled to redress for the moral injury she has suffered. Secondly, she relies on Judgments 67, 809 and 1496, and submits she is also entitled to redress on the grounds that WMO breached its duty to show due respect for her and to treat her with dignity. She emphasises that her professional reputation has been “irrevocably compromised” as a result of the Organization’s actions.

By way of relief, she seeks letters of apology from the Secretary-General of WMO, the withdrawal of the contested documents from proceedings before the Tribunal, an order that disciplinary measures be taken against the legal counsel, moral damages, costs, interest at the rate of 8 per cent per annum on all amounts awarded to her, and “such other relief as the Tribunal deems fair, just and necessary”. She also asks the Tribunal to order the production of various documents and to hold an oral hearing.

C. In its reply WMO submits that it is not clear what decision the complainant is seeking to challenge and that it is therefore difficult to address the merits of her complaint. However, it contends that the complaint is in any case irreceivable by virtue of the principle of *res judicata*, since all of the facts and arguments that it contains have already been ruled upon by the Tribunal in Judgment 2861. Indeed, the Organization responded to her allegations in respect of the documents at issue in its surrejoinder to her fifth and seventh complaints.

D. In her rejoinder the complainant explains that the confusion as to the impugned decision is simply the result of a typographical error. She submits a corrected complaint form indicating that she is challenging the implied rejection of the appeal that she submitted on 16 December 2008, and she points out that each of the five documents that were the subject of that appeal involved a decision of the Secretary-General.

She argues that the principle of *res judicata* is not applicable because the present complaint does not have the same purpose as her earlier complaints and is not based on the same cause of action. Furthermore, she modifies her claim for moral damages and withdraws her claim for the removal of the disputed documents from proceedings before the Tribunal.

E. In its surrejoinder WMO states that the complainant's belated correction of her complaint form does not alter its view that the complaint is irreceivable. It therefore maintains the position set forth in its reply.

CONSIDERATIONS

1. The complaint before the Tribunal concerns four written communications that WMO attached to its pleadings in proceedings initiated in the Tribunal by the complainant, and a fifth addressed to the Tribunal by WMO's legal counsel and treated by the Tribunal as an attachment to its pleadings. Those proceedings led to Judgment 2861. The complainant seeks moral damages with respect to those communications and various other orders, including that certain documents be withdrawn and that the Secretary-General issue apologies to her with copies to other specified persons.

2. WMO contends that the complaint is irreceivable, relying on the doctrine of *res judicata* and, also, arguing that there is no final decision to which the complaint relates. It is convenient to deal first with the question whether there was a decision.

3. As already indicated, four of the documents in question were attached to WMO's pleadings in the earlier proceedings before the Tribunal. Obviously, there was a decision that they should be used in that way. That decision came to the notice of the complainant when WMO filed its reply on 2 September 2008. On 30 September 2008 she wrote to the Secretary-General seeking review of the decision to use three of the documents attached to its reply in those proceedings and asking that the documents be withdrawn. The legal counsel for WMO wrote to the Tribunal on 29 October, attaching a copy of the complainant's letter and claiming, amongst other things, that the proper course was for her to rebut or otherwise make submissions with respect to the documents in her rejoinder. That letter, the fifth document in question in these proceedings, is properly to be seen as a rejection of the complainant's request for review. On 16 December 2008 the complainant purported to lodge an internal appeal with respect to the decision to attach the first four documents to WMO's reply and the decision to write the letter of 29 October 2008 to the Tribunal. Having received no response to her purported appeal, the complainant filed her complaint on 23 March 2009. So far as all five documents are concerned, there was a decision that they be used in relation to the proceedings commenced by the complainant. And insofar as three of the documents are concerned, that decision was the subject of a request for review and an attempt was made to initiate an internal appeal. It may be that, at least to that extent, there was a final decision and that the complainant has exhausted internal remedies. However, that question, particularly whether there was a final administrative decision, need not be decided. There is a more fundamental difficulty with the complaint.

4. At this stage, it is convenient to note that the complainant claims that certain of the documents were used and/or circulated in circumstances extraneous to their use in the proceedings before the Tribunal. However, the papers do not reveal that a request was made for review of the decision or decisions to use them in that way. Accordingly, it is not possible to conclude that internal remedies have been invoked, much less exhausted, in respect of the decision or

decisions in that regard. It follows that, for that reason, the complaint is not receivable with respect to any such decision.

5. In support of her claims, the complainant points out that an international organisation has a duty to treat its officials with respect and that its officials are entitled to protection against criticism, including criticism that is an affront to their personal and/or professional dignity. And as pointed out in Judgment 1376, under 16, that duty may extend to protection against false allegations made by third parties. However, a distinct question arises in relation to statements made or used in the course of proceedings before the Tribunal. Contrary to what is claimed by WMO, the question is not one of *res judicata*. However, the complaint raises a question with respect to another concept that, to some extent, serves the same purpose as *res judicata*.

6. The doctrine of *res judicata* is one of the legal concepts that serve to ensure that judicial decisions are final and binding and that litigation is brought to a final conclusion. Another such concept is “absolute privilege” insofar as it relates to statements made in legal proceedings. So far as is presently relevant, absolute privilege attaches to statements made in, and in the course of, legal proceedings, including statements by the parties, their legal representatives and their witnesses so that, save in the case of perjury or interference with the course of justice, those statements may not be the subject of separate proceedings. Absolute privilege serves another important function. It enables the parties to present their cases fully so that a decision can be reached on the whole of the available evidence.

7. Absolute privilege also operates to ensure the independence and impartiality of the judicial process. A tribunal would not be independent and impartial, nor seen to be so, if it were to assume the role of dictating to the parties the evidence and arguments that they can advance in their cases. That is not to say that a tribunal cannot control its own proceedings by, for example, excluding irrelevant evidence or striking out scandalous pleadings. Nor does it mean that a tribunal cannot draw inferences by reason of the nature of the

evidence or argument presented, including in appropriate cases, adverse inferences as to the motive of the party relying on that evidence or argument. But if the evidence or argument is relevant to the issues to be decided, it is for the parties alone to determine whether they will rely on it. And because the parties must have that freedom or privilege, a tribunal cannot apply sanctions in separate proceedings with respect to the evidence or arguments advanced, particularly not after the proceedings have been completed. Were it otherwise, there would be no finality to litigation.

8. Article II, paragraph 5, of the Statute of the Tribunal relevantly provides that it is competent to hear complaints “alleging non-observance, in substance or in form, of the terms of appointment of officials and of provisions of the [applicable] Staff Regulations”. The real question raised by this complaint is whether those words extend to decisions taken with respect to the conduct of proceedings before the Tribunal. The complainant points to nothing in the Staff Regulations limiting the right of WMO to choose the manner in which it may defend proceedings brought against it by an official. And although the Tribunal accepts that various international norms and other general legal principles form part of an official’s terms of appointment, it would be inconsistent with fundamental legal principles and incompatible with the role of the Tribunal to import a term which impinged on the right of an international organisation to choose the manner in which it defends proceedings brought against it in the Tribunal, whether by way of evidence or argument or by way of communication with the Tribunal relating to the proceedings. It follows that the complaint is not one “alleging non-observance [...] of the [complainant’s] terms of appointment [or] the [applicable] provisions of the Staff Regulations” and, thus, is not one that the Tribunal is competent to hear.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 20 May 2011, Ms Mary G. Gaudron, President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Ms Dolores M. Hansen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 6 July 2011.

Mary G. Gaudron
Giuseppe Barbagallo
Dolores M. Hansen
Catherine Comtet