

**112th Session**

**Judgment No. 3096**

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourteenth complaint filed by Mrs K. J.L. against the World Health Organization (WHO) on 29 July 2010, WHO's reply of 15 February 2011 and the complainant's letter of 6 March 2011 informing the Registrar of the Tribunal that she did not wish to file a rejoinder;

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. Facts relevant to this case are given in Judgment 2839, adopted on 14 May 2009 and delivered on 8 July, on the complainant's first complaint, and in Judgments 3094 and 3095, also adopted this day. Suffice it to recall that, following the delivery of Judgment 2839, in which the Tribunal ruled that the complainant was entitled to have the allegations of harassment that were raised in her internal appeal considered by the Grievance Panel if she so wished, the complainant submitted complaints of harassment to the Panel against a number of staff members, including Dr D., who, at the relevant time, was

Regional Director of WHO's Regional Office for Europe (EURO). She alleged that a "very unhealthy work environment" had developed under his leadership and that she had been subjected to "a series of intense acts of bullying, marginalization, deceit and intimidation directly orchestrated by [him]". She emphasised that it was Dr D. who was responsible for commissioning an investigation by an external consultant into the Organization's rules and policies on spouse employment, which the Tribunal described in Judgment 2839 as "an affront to [her] dignity". She also accused Dr D. of having insulted and intimidated her at a meeting on 5 September 2005 when he had informed her of the decision to reassign her to the Division of Country Support, and she asserted that, following the filing of her internal appeal against that decision, he continued to harass her through public verbal attacks against her husband, particularly during a retreat for EURO's senior managers in December 2005, when Dr D. had referred inappropriately to her pending appeal. Furthermore, he had instructed a special adviser to compile a "secret file" on her husband for the purpose of discrediting the latter and herself. Lastly, he had abused his authority and libelled her by obtaining false statements from staff members and submitting them to the Headquarters Board of Appeal (HBA).

In its report of 30 March 2010 the Grievance Panel identified four groups of allegations: first, "[e]rratic, highly inappropriate and disrespectful treatment of staff and a series of intense acts of bullying, marginalization, deceit and intimidation"; second, "[r]eceipt and concealment of evidence, illegal actions"; third, "[p]ublic verbal attacks/aggression in retaliation"; and fourth, "[a]buse of authority and libel". With respect to the first group of allegations, the Panel found that the request for the consultant's investigation and the investigation itself were highly inappropriate, uncalled for and disrespectful, and that Dr D. had not safeguarded the complainant's rights. It also noted that Dr D.'s behaviour towards his staff was "volatile", in that he "was prone to outbursts", and was "unsuitable in any working environment", but it found no independent evidence to corroborate either party's account of the meeting of 5 September 2005. Regarding the second group of allegations, the Panel considered that the decision

to reassign the complainant was an attempt by Dr D. to find a “fair and good solution”, but it noted that, although the complainant had been informed of the proposed move, there was no evidence that she had been given any options. However, it did not find proof of “receipt and concealment of evidence”. Concerning the third group of allegations, the Panel held that the discussion of the complainant’s appeal at the management retreat in December 2005 was inappropriate, but that there was insufficient evidence to uphold her allegations of public verbal attacks against her husband in retaliation for her having filed an appeal. It also dismissed her allegation regarding the existence of a “secret file” against her husband as unfounded. As for the fourth group of allegations, the Panel found no evidence of abuse of authority or libel.

In her final decision on the complaint of harassment against Dr D., which was conveyed to the complainant in a letter of 26 April 2010, the Director-General expressed reservations as to the receivability of certain allegations which had not been raised in the complainant’s internal appeal. Nevertheless, as the Panel had advised her on these allegations, she agreed to deal with them. Having reviewed the Panel’s findings, the Director-General stated that there was no evidence that Dr D. had intended to cause the complainant any injury when he had requested an investigation by a consultant, but that the approach taken by the latter did not safeguard her rights and was disrespectful of her and an affront to her dignity. She also considered that it was Dr D.’s responsibility, as Regional Director, to take measures to provide an acceptable working environment, including with respect to appropriate behaviour with and among staff. She accepted the Panel’s findings regarding the decision to reassign the complainant and agreed that the discussion of her internal appeal at the management retreat in December 2005 was inappropriate, but considered the complainant’s other allegations to be unsubstantiated. The Director-General noted that there was a considerable overlap between the Panel’s findings and the matters in respect of which the complainant had been awarded moral damages in Judgment 2839. However, she considered that some of the Panel’s findings had not been taken into account by the Tribunal in that judgment, and she

therefore decided to award the complainant 5,000 euros in respect of all the matters for which she had not yet received compensation. That is the impugned decision.

B. The complainant reiterates the allegations against Dr D. that she submitted to the Grievance Panel and contends that, for the most part, they are supported by the Tribunal's findings in Judgment 2839. In particular, she asserts that the Tribunal found that Dr D. treated her with disrespect, publicly humiliated and marginalised her and lied to her regarding the reasons for her reassignment. She submits that these matters are *res judicata*, yet Dr D. attempted to challenge them in his submissions to the Grievance Panel.

She further argues that the Grievance Panel failed in its duty to investigate and conducted a process that was severely flawed. She asserts that it made factual errors, breached the requirements of due process, violated its duty of impartiality and treated her as the accused. Moreover, the Panel did not verify the information provided by witnesses and failed to take certain documents into account. It also facilitated collusion among the nine staff members who were the subject of her allegations of harassment, by improperly giving them copies of her complaints against the other harassers, thereby enabling them to coordinate their responses.

The complainant asks the Tribunal to set aside the decision of 26 April 2010 and to award her damages under various heads, including exemplary damages, and costs. She also requests a performance appraisal for the year 2005.

C. In its reply WHO submits that the third and fourth groups of allegations raised by the complainant against Dr D. before the Grievance Panel could not have been raised in her internal appeal, as they concern events which allegedly took place after her appeal was filed. As such, they could not be referred to the Grievance Panel pursuant to Judgment 2839 and are therefore irreceivable. Moreover, it considers that the complainant had no standing to file a harassment complaint with the Grievance Panel as regards her third and fourth groups of allegations, nor does she have standing to pursue these

allegations before the Tribunal. Indeed, WHO's Policy on Harassment applies to staff members and "former staff who allege that their separation was due to harassment". Given that the events in question occurred well after the complainant had tendered her resignation, her separation could not have been "due to" the alleged acts of harassment by Dr D. Additionally, the Organization submits that the complaint is partly barred by the principle of *res judicata*, as the complainant is seeking to reopen matters already ruled upon in Judgment 2839.

On the merits, WHO submits that the Tribunal's findings in Judgment 2839 pertain only to the decision to reassign the complainant, and not to her allegations of harassment. It maintains that the Grievance Panel and the Director-General correctly determined that Dr D.'s actions did not fall within the definition of harassment set forth in the WHO Policy on Harassment. It considers that Dr D. provided legitimate reasons for the alleged incidents and stresses that the Grievance Panel did not find that he had acted in bad faith or with improper motives, or that he had intended to cause harm to the complainant. The Organization points out that the Director-General nevertheless took into account the Panel's findings concerning Dr D.'s responsibility, as head of the Regional Office, in failing to provide an acceptable work environment at EURO, as well as its finding concerning the inappropriate discussion of the complainant's appeal at the management retreat in December 2005, when she decided to award the complainant 5,000 euros as compensation in respect of those matters for which she had not already been compensated by the award of damages made by the Tribunal in Judgment 2839.

WHO maintains that the Grievance Panel carried out its work in accordance with its mandate and in good faith. It investigated the complainant's allegations thoroughly, objectively and in a timely manner. The Panel carefully considered all the evidence and observed due process. Its detailed report provided the Director-General with a sound basis upon which to make an informed decision concerning the complainant's allegations of harassment. The Organization specifically denies her allegation that the Panel refused to accept her evidence and points out that she submitted a total of 229 supporting documents to

the Panel. It objects to the complainant's use of partial quotations, misleading innuendos and incorrect facts to support her allegations.

## CONSIDERATIONS

1. This complaint arises from events that took place at the Organization's Regional Office for Europe (EURO) in 2005. Further to the Tribunal's decision in Judgment 2839, adopted on 14 May 2009, the complainant requested the Director-General to refer the harassment allegations made against a number of staff members to the Grievance Panel. The referral was made on 28 August 2009. One of the individuals against whom allegations were made was Dr D., a former WHO official, who at the material time was the Regional Director of EURO.

2. In summary, the complainant's harassment allegations against Dr D. concern the investigation by an external consultant he commissioned with a view to seeking advice on the Organization's rules and policies concerning spouse employment, in light of the fact that the complainant was soon to be married to another staff member; his failure to give adequate reasons for his decision to reassign her to another post; and his allegedly inappropriate conduct towards her in a meeting on 5 September 2005. The complainant also alleges that Dr D. continued to harass her after she filed her internal appeal in November 2005.

3. The Grievance Panel investigated the harassment complaint and submitted its report to the Director-General on 30 March 2010. In that report the Panel considered the complainant's allegations under four main headings. The first concerns the allegations of "[e]rratic, highly inappropriate and disrespectful treatment of staff" and a "series of intense acts of bullying, marginalization, deceit and intimidation". It includes the allegations in relation to the consultant's investigation

and Dr D.'s general behaviour and propensity for "volatile outbursts". The second deals with "[r]eceipt and concealment of evidence, illegal actions" based on the allegations that Dr D. lied to her regarding the true reasons for her reassignment. The third concerns "[p]ublic verbal attacks/aggression in retaliation" based on the allegations of inappropriate and threatening remarks Dr D. allegedly made to the complainant's spouse at a senior management retreat in December 2005. The fourth concerns "[a]buse of authority and libel" and deals with allegations surrounding the Administration's procurement and disclosure in the internal appeal proceedings of a staff member's comments regarding a note which the complainant had prepared in February 2005 and had subsequently produced as evidence in her internal appeal.

4. In relation to the first group of allegations, the Grievance Panel found that Dr D.'s volatility and propensity to outbursts were "unsuitable in any working environment". The Panel also concluded that Dr D.'s request for a consultant's investigation and the conduct of that investigation were "highly inappropriate and uncalled-for", particularly given the fact that, at the time, Dr D. had already received a comprehensive internal legal opinion from the Director of Human Resources Services regarding the administrative implications of the complainant's impending marriage.

5. With respect to the second group of allegations, the Panel found no evidence of "receipt and concealment of evidence", but stated that no consultative process had preceded the decision to reassign the complainant.

6. Regarding the third group of allegations, the Panel found that Dr D. had discussed the complainant's appeal at the management retreat in December 2005 and that it was inappropriate for him to have done so. However, it also found that there was insufficient evidence upon which to conclude that Dr D.'s comments amounted to "public verbal attacks/aggression in retaliation" as the complainant alleged in her harassment complaint of 9 October 2009.

7. As to the fourth group of allegations, the Panel found that as the complainant had adduced the note of February 2005, which mentioned certain staff members by name, in her rejoinder in the HBA proceedings, the Administration had a right to respond to this evidence, and the staff associated with coordinating that response did not act improperly. The Panel also observed that “[n]otwithstanding her role as [Acting Human Resource Manager], it [was] improper and unprofessional on the part of [the Director of Administration and Finance] to have requested the complainant to undertake an investigation of staff on rumours/gossip that was circulating about [him], knowing that she was in a relationship with him. If deemed necessary, this investigation should have been undertaken by someone else.”

8. The Grievance Panel did not state whether its factual conclusions amounted to a finding that harassment had occurred.

9. The Director-General accepted the Panel’s conclusions that Dr D.’s behaviour would be “unsuitable in any working environment” and that it had been inappropriate for him to discuss the complainant’s ongoing internal appeal at the management retreat in December 2005. She agreed with the Panel that it was not possible on the evidence to determine what had been said and by whom.

10. With regard to the reassignment decision, the Director-General found that Dr D. had attempted to find a fair solution to the situation arising from the complainant’s upcoming marriage to the Director of Administration and Finance. However, the complainant was denied a proper “consultative process”.

11. Lastly, as regards the consultant’s investigation, the Director-General found that Dr D. should have known that the manner in which it was conducted would offend the complainant and create an intimidating, hostile or offensive work environment. However, the Director-General found that the investigation was not “directed” at the complainant within the meaning of the term as it appears in the WHO

Policy on Harassment. Its purpose was, rather, to advise Dr D. on a possible conflict of interest arising from the complainant's marriage to her second-level supervisor.

12. In her decision, the Director-General did not deal with the question of whether the findings indicated that harassment had taken place. However, the Director-General concluded that, based on the findings, the complainant was entitled to "5,000 euros as compensation in respect of all matters set out in [her] letter for which [she] ha[d] not already been compensated".

13. WHO submits that the third and fourth group of allegations concern events which were said to have occurred after the complainant filed her internal appeal in November 2005. It asserts that, as the referral to the Grievance Panel in accordance with the Tribunal's decision in Judgment 2839 was limited to the harassment allegations made by the complainant in her internal appeal, the third and fourth groups of allegations are irreceivable. This argument was discussed in Judgment 3094, also delivered this day, and it is not necessary to repeat it here. It cannot be said with certainty whether the incident of December 2005 was referred to during the internal appeal. In Judgment 2839, under B, it is stated that "[h]er request to the Board not to take into consideration three highly defamatory and unfounded witness statements submitted by WHO in the course of the internal appeal was equally ignored". This appears to refer to steps taken by the defendant to counter the complainant's introduction of the note of February 2005 during the internal appeal. Given that the receivability of the allegations of December 2005 will not materially affect the outcome of this proceeding, this objection to receivability is rejected.

14. The Organization also submits that the fourth group of allegations is barred by operation of the principle of *res judicata*. This argument is without merit in view of the fact that in Judgment 2839 the Tribunal ordered that the complainant's allegations of harassment be referred to the Grievance Panel if the complainant so wished.

15. On the merits of the complaint, as noted above, the Director-General did not make a decision on the question of harassment. If an allegation of harassment cannot be resolved through other mechanisms, the purpose of the harassment complaint process is to make a determination as to whether the proven facts constitute harassment. Although the Director-General made findings of fact, she failed to decide whether the facts as she found them constitute harassment. This is a fundamental flaw in the decision. Having engaged the process, a staff member is entitled to a decision on the question of harassment itself. Although the matter could be remitted to the Director-General for a determination, given that the allegations have been fully and carefully investigated and the Tribunal has the benefit of an extensive record, the Tribunal will make the determination.

16. Before turning to the question as to whether the facts as found constitute harassment, as stated above the Director-General considered that the consultant's investigation was not "directed" at the complainant within the meaning of the term as it appears in the WHO Policy on Harassment. The question, however, is not whether the investigation was directed at the complainant; it is whether the complainant could reasonably believe that it was and, thus, find it offensive. In this respect, the Director-General erred. Having regard to the surrounding circumstances, in particular the nature of the investigation, the number of staff members interviewed and the questions posed to the staff members, the complainant could not help but think that the investigation was directed at her. Upon a review of the record, the Tribunal finds that there are no other reviewable errors in relation to the Director-General's findings of fact.

17. The remaining question is whether the facts as found amount to harassment. In the WHO Policy on Harassment, harassment is defined as "any behaviour by a staff member that is directed at and is offensive to others, which that person knows or should reasonably know, would be offensive, and which interferes with work or creates

an intimidating, hostile or offensive work environment". In the Tribunal's view, in addition to being behaviour that would be "unsuitable in any working environment", Dr D.'s behaviour was offensive and intimidating behaviour directed at the complainant that he should have known would be offensive to her and without doubt it created a hostile working environment. Further, as the official responsible for the consultant's investigation, he permitted the conduct of an investigation that created an intimidating and hostile working environment for the complainant. As to the complainant's reassignment, in addition to being unlawful as the Tribunal ruled in Judgment 2839, it also represents part of an ongoing pattern of harassment by Dr D. towards the complainant.

18. The decision of the Director-General must be set aside to the extent that it did not involve a finding of harassment and an appropriate award of damages. The complainant is entitled to damages for the Director-General's flawed decision and for the harassment, which the Tribunal fixes at 15,000 euros in addition to the 5,000 euros awarded by the Director-General. The complainant is also entitled to costs in the amount of 1,000 euros.

## DECISION

For the above reasons,

1. The Director-General's decision of 26 April 2010 is set aside to the extent that it did not involve a finding of harassment and an appropriate award of damages.
2. WHO shall pay to the complainant damages in the amount of 15,000 euros.
3. It shall also pay her costs in the amount of 1,000 euros.
4. All other claims are dismissed.

In witness of this judgment, adopted on 11 November 2011, Mr Seydou Ba, President of the Tribunal, Ms Mary G. Gaudron, Vice-President, and Ms Dolores M. Hansen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 8 February 2012.

Seydou Ba  
Mary G. Gaudron  
Dolores M. Hansen  
Catherine Comtet