

119th Session

Judgment No. 3409

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms G. V. against the International Fund for Agricultural Development (IFAD) on 2 November 2012 and corrected on 17 November 2012, IFAD's reply of 11 March 2013, the complainant's rejoinder of 21 May and IFAD's surrejoinder of 3 July 2013;

Considering the complaint filed by Ms F. W. G. against IFAD on 31 October 2012, IFAD's reply of 11 March 2013, the complainant's rejoinder of 22 May and IFAD's surrejoinder of 3 July 2013;

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 none of the parties has applied;

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

A. The first complainant, Ms V., joined IFAD on 1 July 2008 on secondment from the Italian Ministry of Economy and Finance. She was granted a two-year fixed-term contract as Head of the Country Management Office, grade P-5, in the Office of the Secretary, which

was part of the External Affairs Department. In that capacity, she was responsible for formulating strategies and developing action plans to mobilize resources from donor countries, amongst other things. With effect from 1 January 2010 the External Affairs Department was abolished and IFAD's Resource Mobilization Division was renamed the Resource Mobilization and Partnership Unit and was placed under the Vice-President's responsibility within the Office of the President and Vice-President (OPV). With effect from 1 January 2011 the Resource Mobilization and Partnership Unit was restructured into a Resource Mobilization and Partnership Office (RMPO). Meanwhile, in July 2010, Ms V. was granted a two-year contract extension as a Senior Resource Mobilization Officer in the Resource Mobilization and Partnership Unit. She separated from IFAD upon expiry of this extension on 30 June 2012.

Prior to that, on 19 August 2011, she was told that as a result of RMPO's restructuring, her position would be redefined and that the redefined position would then be advertised and filled by competition. A vacancy announcement for the position of a Lead, Resource Mobilization Officer in RMPO, at grade P-5, was advertised in late 2011. Ms V. applied for that position but she was soon after informed that the competition had been cancelled. By an official "Notice of Redeployment/Termination" dated 31 December 2011, she was informed that her position had become redundant and that her contract would expire on 30 June 2012. She was also informed that, although IFAD would make every attempt possible to find alternative suitable employment for her, her contract would not be renewed beyond its expiry, unless a permanent reassignment to other functions within the Fund could be arranged. The notice also stated that the advertised position of a Lead, Resource Mobilization Officer, at grade P-5, had been cancelled due to the continuing redefinition of RMPO's business needs. It informed her that for the remainder of her contract she would be assigned to a temporary position in the Office of the Secretary.

The second complainant, Ms G., joined IFAD in 2003 under a one-year fixed-term contract as a Programme Officer, at grade P-3, in the Resource Mobilization Division. Up until 2007 she was granted one-year extensions of contract. In 2007 she became a Programme

Manager and was granted a two-year contract extension. In 2008 she was promoted to grade P-4. In 2009 she was offered a further two-year extension of contract until 1 December 2011. Before the expiry of this extension, on 14 July 2010, she was transferred with effect from 1 January 2010 to the Resource Mobilization and Partnership Unit as a Resource Mobilization Officer. After a final six-month extension, she separated from IFAD on 1 June 2012.

Prior to that, on 19 August 2011, she was told that as a result of RMPO's restructuring, her position would be redefined as that of a Private Sector and Foundations Resource Mobilization Officer. She was also told that the redefined position would then be advertised and filled by competition. A vacancy announcement for that position, at grade P-4, was subsequently issued on 2 September 2011. Ms G. applied for the position but she was informed by a letter of 30 November 2011 that she had not been shortlisted. By that same letter, she was officially informed that, as her position no longer existed and a new redefined position had been advertised in its place, she would be subject to redeployment procedures. To this end her contract was extended for a further six-month period, to 1 June 2012, and she was assigned to a temporary position in the Front Office of the Corporate Services Department. Around the end of 2011 discussions took place between her and the Director of HRD on the possibility of an agreed termination or her participation in the Fund's Voluntary Separation Programme. These discussions did not, however, result in an agreement.

On 28 March 2012 the Administration advertised the position of Partnership and Resource Mobilization Officer, Replenishment, at grade P-4. On 4 May 2012 Ms G. wrote to the Director of HRD asking that she be redeployed to that position through a direct placement. In support of her request, she emphasised that the advertised position corresponded almost entirely to the position that she had held previously. The Director of HRD replied on 28 May 2012 that a direct placement was not possible, because she lacked "sufficient experience in critical requirement areas", but that her application would be considered along with those of all other candidates. Referring to another position for

which she had applied, he stated that her application had not been considered because she did not meet the requirements of that position.

The complainants submitted individual requests for facilitation (a mandatory process prior to filing an internal appeal), Ms V. on 15 June 2012 and Ms G. on 1 June 2012, indicating that they were challenging the decision on IFAD's part not to renew their contracts. Ms G. also filed an appeal with the Joint Appeals Board on 23 July 2012, but she was told by its secretary that she had to complete the facilitation process before she could come to the Board. By letters of 9 August 2012 addressed on behalf of the President to each complainant individually, the Director of HRD informed them that their requests for facilitation were time-barred insofar as they concerned the decision to abolish their positions and that, therefore, the Administration considered them as being directed only against the effectiveness of the redeployment efforts. Should they wish to challenge the latter, they could proceed directly to the Tribunal. In their complaints filed respectively on 2 November 2012 (Ms V.'s complaint) and 31 October 2012 (Ms G.'s complaint), the complainants impugn the decisions of 9 August 2012.

B. The complainants submit that their complaints are receivable because they were filed within the prescribed time limits and the internal remedies in respect of all issues raised therein have been exhausted. They explain that the complaints are mainly directed against the non-renewal of their contracts, which was the combined result of the abolition of their respective positions and the failure to assign them to other positions. Although their positions were abolished by January 2012, the false reasons given for their abolition only became apparent in May 2012 when the Administration refused to consider them for any of the new positions in RMPO. They add that their main claim before the Tribunal is for reinstatement and that it could not have arisen before the respective date of their separation from IFAD.

On the merits, they assert that the abolition of their respective positions was not a necessary consequence of the restructuring of RMPO but merely a pretext to remove them from IFAD. In that connection,

they draw attention to the fact that RMPO's budget and number of staff increased substantially following the restructuring. Ms V. points to the fact that the redefined P-5 position of a Lead, Resource Mobilization Officer, which was advertised in RMPO in late 2011, was identical to her previous position and when this similarity became apparent, IFAD cancelled the vacant post with the sole aim to circumvent her. This is obvious also from the fact that no reasons were given for its cancellation. Although she was the *de facto* Head of the Resource Mobilization Unit, the Administration did not consult her on the restructuring. She adds that the abolition of her position was preceded by an unjustified attack on her job title. Ms G. argues that the abolition of her position was preceded by unjustified attacks on her standing, such as an attempt to reduce her performance rating for 2010 and a failure to give her a revised post description following her transfer to RMPO with effect from 1 January 2010. She considers that in the process of abolishing her position, IFAD failed to follow its own standards regarding the abolition of posts.

The complainants also contend that, contrary to the requirements of Section 11.3.9 of the Human Resources Procedures Manual (HRPM), IFAD made no effort to redeploy them to other available positions. Ms V. notes that she was not considered even for positions that fully matched her profile and to which she could have easily been reassigned and that she was not even offered a grade P-4 position in spite of her stated readiness to accept one. She considers that, in light of her successful performance as Head of the Resource Mobilization Unit, IFAD cannot credibly claim that it could not reassign her to another position. The fact that the new Director of RMPO preferred to hire young people was not a good enough reason to remove her, especially given her strong record in traditional and innovative resource mobilization. Similarly, Ms G. points out that IFAD refused to redeploy her even to available positions that fully matched her profile, such as the Partnership and Resource Mobilization Officer, Replenishment, and that it also refused to provide her with the training that she might have required to assume the functions of the redefined position of Private Sector and Foundations Resource Mobilization Officer. She contends that she received no support from HRD in her

effort to identify suitable alternative employment within IFAD, nor was she given preference for any of the available vacancies. In addition, IFAD abruptly withdrew its offer of an agreed termination leaving her no time to consider it. She was thus led to believe that she was negotiating a termination package when in fact this was no longer offered. By so doing, IFAD treated her unfairly and in a manner not worthy of an international organisation.

The complainants ask the Tribunal to quash the decisions of 9 August 2012 and to order their reinstatement with full pay, including all entitlements and allowances less the amounts already received for that period. Ms V. asks that she be reinstated as from 1 July 2012 and Ms G. as from 2 June 2012. They each seek an order to the effect that IFAD take immediate action to assign them to suitable positions with the Fund. They each claim moral and exemplary damages, as well as costs in the amount of 5,000. Ms G. draws the Tribunal's attention to the fact that in December 2010 she met the requirements for a continuous contract and that, had it not been for IFAD's illegal actions towards her, she would have been eligible for such a contract as soon as the freeze on their award was lifted. Therefore only reinstatement can restore her to that position.

C. In its replies IFAD submits that the complaints are time-barred and hence irreceivable insofar as they challenge the decision to abolish the complainants' positions, because the complainants did not file requests for facilitation within the two-month time limit provided for in Section 10.18.1(a) of the HRPM. Subsidiarily, it submits that the complainants have not exhausted the internal remedies insofar as the decision to abolish their positions is concerned.

On the merits, it contends that the restructuring was genuine and that it was based on objective grounds. IFAD had every right to restructure its resource mobilization function, including through the abolition of positions and/or the creation of new ones and the Tribunal will only exercise limited review in that respect. It explains that RMPO's restructuring was necessitated by the need to strengthen the Fund's resource mobilization capacity, which was one of the main elements

of the Change and Reform Agenda introduced by IFAD's Governing Bodies in 2010. Pursuant to their instructions, RMPO shifted towards the mobilization of resources from the private sector and the creation of high-level liaison and advocacy positions (D1 and above) which would be supported by lower-level professional positions. RMPO's restructuring and the new focus on alternative resource mobilization prompted the redefinition of certain positions, including that of the complainants, who were given advance warning of the impact of the restructuring on their positions. In the case of Ms V., in particular, it notes that the reason for the cancellation of the vacancy for a Lead, Resource Mobilization Officer, at grade P-5, was the decision by the Director of RMPO to abolish that position and to create two lower-level positions instead.

IFAD considers that it abided by its duty of care in attempting to find suitable positions for the complainants within the Fund. Not only did it correctly apply the rules and procedures on redundancy, but it also made extensive redeployment efforts. In the case of Ms V., these proved difficult because the pool of vacancies at grade P-5 in an organisation as small as IFAD is very limited. It did consider her qualifications and experience for a number of potential vacancies, but her profile was not found to be suitable. Although Ms V. was made aware of the P-4 vacant position of a Private Sector and Foundations Resource Mobilization Officer, she chose not to apply for that position but instead to question why the vacancy had not been issued at a higher level. In the case of Ms G., IFAD submits that it systematically forwarded her Personal History Form to the Directors of various divisions within the Fund and that she was in fact considered for a number of positions. In addition, it did provide her with full institutional support as well as training opportunities. The position of Partnership and Resource Mobilization Officer, Replenishment, to which Ms G. refers in her complaint, did not materialise and the draft vacancy announcement was cancelled. The Fund also explains that Ms G. could not have been retained without competition for the redefined position of Private Sector and Foundations Resource Mobilization Officer, because this position required strong experience in private sector co-financing and funds management, whereas the

complainant's experience was in mobilizing resources from member States. In any event, she could not have been retained for any post within IFAD without competition because the Administration is bound by the Human Resources Policy adopted by its Executive Board, which requires it to retain the highest qualified person for a position. It argues that, as the abolition of Ms G.'s position was motivated by objective reasons, it is immaterial whether the duties performed by her were maintained or assigned to other staff members.

D. In their rejoinders the complainants submit that, even if the Tribunal considers that their complaints are time-barred insofar as they concern the decision to abolish their positions, it would still be obliged to examine the circumstances surrounding that abolition in order to determine if the non-renewal of their contracts was tainted by an abuse of authority.

On the merits, they note that as at 19 August 2011, when they were notified of the decision to redefine their respective positions, there were no instructions by the Governing Bodies to turn away from traditional resource mobilization. It was only in December 2011, i.e. after their positions had been abolished, that there was agreement within the Governing Bodies to explore additional sources of financing without, however, turning away from the traditional financing through member States' contributions. They maintain that RMPO has continued to grow both in terms of budget and staffing and that its current staffing clearly demonstrates that there was no move away from the traditional ways to replenish the Fund's resources but rather reinforcement thereof.

Ms V. emphasises that, in any event, throughout the discussions on the replenishment consultations all references to alternative financing were consistently linked to the example of the Spanish Food Security Co-financing Facility Trust Fund which she had designed and negotiated. Ms G. considers that, contrary to IFAD's claim, she could easily have been retained for the redefined position of Private Sector and Foundations Resource Mobilization Officer, since she had 13 years of relevant experience. With regard to the position of Partnership and Resource Mobilization Officer, Replenishment, she

maintains that a vacancy was properly advertised, notwithstanding the fact that it was subsequently cancelled.

E. In its surrejoinder IFAD submits that it only agreed to allow the complainants to seize the Tribunal directly on the issue of the effectiveness of the redeployment procedure. This was an exceptional measure and at no point did the Fund agree to extend it to the decision to abolish and, subsequently, to redefine their positions. Accordingly, the complaints are irreceivable to the extent that they challenge the decision to abolish the complainants' positions.

On the merits, it maintains that its Governing Bodies gave, as early as 2010, clear instructions on the necessity for the Fund to explore non-traditional sources of financing. The restructuring of the resource mobilization function was a reasonable and valid exercise carried out in implementation of these instructions. The complainants received early warning of the impact the restructuring had on their positions. It submits that Ms V.'s contribution in the establishment of the Spanish Food Security Co-financing Facility Trust Fund did not render the decision to abolish her position unfounded. As to Ms G., it reiterates that she could not have been retained for the position of Private Sector and Foundations Resource Mobilization Officer, not least because she did not meet the minimum requirements in terms of academic qualifications and professional experience.

CONSIDERATIONS

1. The first complainant, Ms V., joined IFAD on 1 July 2008. She held a two-year fixed-term contract as the Head of the Country Management Office at grade P-5. Her contract was renewed for a further two years. Her title was changed to Resource Mobilization Officer and later changed to Senior Resource Mobilization Officer after she protested. In January 2010, the resource mobilization function was transferred to the Resource Mobilization and Partnership Unit within the Office of the President and Vice-President (OPV) pending the nomination of a new Director. With effect from 1 January 2011 the

Resource Mobilization and Partnership Unit was restructured into a Resource Mobilization and Partnership Office (RMPO). On 19 August 2011 Ms V. was informed that, due to RMPO's restructuring, her post would be redefined and advertised in 15 days and she was encouraged to apply, which she did. She was informed in November 2011 that the vacancy announcement would be cancelled. On 2 January 2012 she received a "Notice of Redeployment/Termination" dated 31 December 2011. Ms V. was not reassigned to any other post and was separated from service at the expiry of her contract on 30 June 2012. She requested facilitation, which was refused by letter dated 9 August 2012. She was given permission to seize the Tribunal directly insofar as her complaint challenged the failure to redeploy her, but was told that a challenge to the abolition of her post was time-barred. She filed her complaint before the Tribunal on 2 November 2012 against the decision of 9 August 2012.

2. The second complainant, Ms G., joined IFAD in 2003 as a Programme Officer at grade P-3 in the Resource Mobilization Division. She was promoted to grade P-4 in 2008. In July 2010 Ms G. was transferred (with effect from 1 January 2010) to RMPO as a Resource Mobilization Officer. Her fixed-term contract was due to expire on 1 December 2011. On 19 August 2011 she was informed that her position would be redefined as that of a Private Sector and Foundations Resource Mobilization Officer and that it would be advertised and filled by competition. She applied for the position but was not shortlisted, and on 30 November 2011 she was informed that her position no longer existed and that she would be subject to redeployment procedures. Her contract was extended for six months, with the expiry set to 1 June 2012. She was assigned to the Front Office of the Corporate Services Department. When the position of Partnership and Resource Mobilization Officer, Replenishment, was advertised at grade P-4 in March 2012, Ms G. asked that she be redeployed to that position through direct placement. In a letter dated 28 May 2012 she was informed that her request was denied on the grounds that she did not have enough experience in critical requirement areas. Ms G. requested facilitation on 1 June 2012,

challenging “the final decision on IFAD’s part not to extend [her] contract, as stated in the letter [of] May 28, 2012”. She received a response dated 9 August 2012, stating that her request for facilitation was time-barred insofar as it concerned the decision to abolish her position and, therefore, the Administration considered it as being directed only against the effectiveness of the redeployment efforts. She was given permission to apply directly to the Tribunal in that regard. She filed her complaint on 31 October 2012 against the decision of 9 August 2012.

3. The complainants ask the Tribunal to quash the decisions rejecting their individual requests for facilitation with respect to their separation from IFAD; to order their reinstatement with full pay, including entitlements and allowances (with effect from 1 July 2012 for Ms V. and from 2 June 2012 for Ms G.), less any amounts already received for those periods; to order IFAD to reassign them to suitable posts; to award them moral damages; and to award them costs in the amount of 5,000 euros each.

4. The complainants submit that their complaints are primarily directed against the non-renewal of their contracts, but they emphasize that, regardless of the issue of time-bar, the Tribunal can examine the circumstances surrounding the abolition of their posts and IFAD’s failure to redeploy them, in order to determine whether or not the non-renewal decisions were tainted with an abuse of authority (see Judgment 3172, under 16).

5. Ms V. bases her complaint on the following grounds: the abolition of her post was a pretext to remove her; the post that replaced hers was practically identical to it; no reason was given for the cancellation of the redefined post; IFAD did not follow its own standards for the abolition of the post; IFAD failed to consult her on the reorganization; the staff of RMPO has increased following the abolition of her post; the decision to remove her was not required by the restructuring; and IFAD refused to reassign her to available positions.

6. Ms G. bases her complaint on the grounds that: the abolition of her post was a pretext to remove her; it was not a necessary consequence of the restructuring; IFAD did not follow its own rules regarding the abolition of posts; and RMPO's budget and number of staff have increased substantially. She also submits that IFAD has breached its duty of care by: refusing to redeploy her to other available positions; not offering her training which would have allowed her to adjust her focus and assume the functions of the redefined position of Private Sector and Foundations Resource Mobilization Officer; not recognizing her 13 years of experience in private sector and foundations resource mobilization; and by withdrawing its offer of an agreed termination without giving her time to consider it.

7. Although the facts differ somewhat from case to case, the two complaints raise the same issues of fact and law, contain some common claims, rest in part on the same arguments, and seek the same redress. The Tribunal therefore considers that they should be joined in order that they may form the subject of a single judgment (see Judgments 1461, under 2, 1680, under 2, and 2944, under 19).

8. The Tribunal finds that the complainants' claims against the abolition of their posts are irreceivable, in accordance with Article VII, paragraph 1, of the Tribunal's Statute, for failure to exhaust all internal means of redress. While the complainants submit that they were only later aware of the full damage caused to them by the abolition of their posts, they each should have filed an internal appeal (as IFAD did not authorize them to challenge the issue directly before the Tribunal) challenging the 9 August 2012 decisions insofar as the decisions declared their requests for facilitation concerning the abolition of their posts to be time-barred.

9. Although the Tribunal, as in Judgment 3172, will not rule on the lawfulness of the abolition decisions, it will consider the overall situation regarding the Fund's treatment of the complainants, including the actions leading up to the abolition of their posts, as well as the consequent effects. Considering this, the main issues to be addressed

regard the non-renewal of the complainants' contracts, the subsequent reassignment efforts, and the extent to which IFAD fulfilled its duty of care and showed respect for the dignity of the complainants.

10. The Tribunal is of the opinion that IFAD violated its duty of care and did not respect the dignity of the complainants. Specifically, with regard to Ms V., it was out of the ordinary for her job title to have suddenly changed from "Head of the Country Management Office" to "Resource Mobilization Officer", and later "Senior Resource Mobilization Officer" only after she protested against the unjustified change, which appeared to demote her. Further, the lack of consultation with regard to the changes made not only to her post but also to the Office of which she was the "Head" was unusual. It also seems improper for IFAD to have reconfigured her post, advertised it, and then to have cancelled the advertisement in favour of splitting the P-5 post into two lower-level posts, without proper and specific justification. The Fund does not provide any convincing reason why Ms V. could not have been assigned to a suitable P-4 position, while maintaining her P-5 grade, as an interim solution during their reassignment efforts. By simply expecting her to apply for posts at the P-4 level, IFAD did not recognise her P-5 level nor did it respect her dignity. Moreover, the fact that it did not reply to her questions and suggestions regarding a specific post contributed to a further decline in the quality of interaction. The Fund mentions that Ms V. was on secondment from the Government of Italy, but the Tribunal finds that her secondment should have had no bearing whatsoever on the efforts to reassign her or on the decision not to renew her contract. Ms V. makes a fair point that her non-renewal could appear damaging to her reputation and the Tribunal notes that it is generally in the interest of national governments to have their staff working on secondment with the various international organizations, as it is seen as a kind of national 'representation' which benefits both parties.

11. With regard to Ms G., the Tribunal considers that the abrupt change in her job title; the last minute notifications regarding changes to her post; the 'less than satisfactory' performance rating that was

later changed by recommendation of the JAB, which found no evidence in support of or justification for the inferior rating; the disregard for her qualifications and/or the lack of specific justification for not reassigning her to any of the posts for which she had applied; and the abrupt withdrawal of the termination payment offer, all point to the finding that IFAD did not act with respect for her dignity and did not fulfil its duty of care towards her.

12. The Tribunal notes that IFAD increased the number of staff in RMPO to which the complainants were assigned prior to the abolition of their posts. It also appears that rather than changing the focus of RMPO as drastically as presented, IFAD merely added a new focus (namely, the private sector resource mobilisation) to the original one (public sector resource mobilization). It can be inferred that the changes made to the complainants' posts and the subsequent inability to reassign them were illusory. Consequently, the decisions not to renew their contracts must be set aside as they were in violation of the duty of care and in violation of the procedures of the Human Resources Procedures Manual for dealing with redundancy, which in paragraph 11.3.9 provided *inter alia*: "(a) Every attempt will be made to absorb redundancy by natural wastage of staff; (b) Find suitable alternative employment within IFAD for those affected and provide training if this is necessary; (c) Give as much advance notice as possible".

13. As the complainants lost a valuable opportunity to have their contracts renewed in positions other than the abolished positions, the Tribunal awards them material damages in the amount they would have earned at their respective grades for one year, starting from the day following the expiry of their last contracts (1 July 2012 for Ms V. and 2 June 2012 for Ms G.), including all allowances, benefits and entitlements, less any amounts already received by way of salary and emoluments from any other employment for that period, plus monthly interest of 5 per cent from the date of separation to the date of final payment. The Tribunal awards them moral damages stemming from the unlawful decisions and IFAD's violation of its duty of care and failure to respect their dignity, set at 6,000 euros for

each complainant. Costs are awarded in the amount of 1,000 euros for each complainant. The Tribunal does not see any justification for an award of exemplary damages so that claim is dismissed.

DECISION

For the above reasons,

1. The decisions not to renew the complainants' contracts are set aside.
2. IFAD shall pay each complainant material damages as outlined under consideration 13, above.
3. It shall pay each complainant moral damages in the amount of 6,000 euros.
4. It shall also pay each complainant costs in the amount of 1,000 euros.
5. All other claims are dismissed.

In witness of this judgment, adopted on 14 November 2014, Mr Giuseppe Barbagallo, President of the Tribunal, Mr Michael F. Moore, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 11 February 2015.

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

HUGH A. RAWLINS

DRAŽEN PETROVIĆ