Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

*Registry's translation,
the French text alone
being authoritative.*

B. (No. 3)

v.

IFAD

126th Session **Judgment No. 3995**

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Mr F. B. against the International Fund for Agricultural Development (IFAD) on 10 December 2015 and corrected on 19 March 2016, IFAD's reply of 2 August, the complainant's rejoinder of 11 October 2016 and IFAD's surrejoinder of 1 February 2017;

Considering the additional documents produced by IFAD on 4 October 2017 at the Tribunal's request, the complainant's comments on these documents of 6 November and IFAD's final observations of 5 December 2017;

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 neither party has applied;

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

The complainant challenges the measures taken by IFAD following its investigation into his allegations of harassment.

On 14 March 2013 the complainant filed a complaint of harassment against two of his supervisors, Mr S. and Mr D.B. In August he was transferred to another unit and Mr S. retired in December 2013.

On 5 May 2014 the complainant was notified of the outcome of the investigation conducted by the Office of Audit and Oversight (AUO), which concluded that he had not been harassed, but that the conduct of the supervisors in question had sometimes been inappropriate. The AUO's findings were forwarded to the Sanctions Committee in order that it might determine whether any corrective or disciplinary action should be taken in connection with the behaviour forming the subject of the complaint. By a memorandum of 23 June, the Director of the Ethics Office informed the complainant that, acting on the advice of that committee, the President of IFAD had decided to issue a reprimand to both of his former supervisors.

On 2 August 2014 the complainant, who wished to challenge the findings of the investigation, submitted a Request for Facilitation pursuant to paragraph 10.18 of Chapter 10 of the Human Resources Procedures Manual and asked to be provided with a copy of the AUO report. The facilitation procedure failed owing to a lack of agreement between the complainant and the Administration.

On 31 March 2015 the complainant filed an appeal with the Joint Appeals Board in which he requested the withdrawal of the "decision" of 23 June 2014, the disclosure of the evidence gathered during the investigation, including the AUO report, compensation for moral injury and costs.

In its report of 15 July 2015, the Joint Appeals Board considered that the investigation process and disciplinary sanctions imposed on the complainant's former supervisors were in line with the rules and procedures in force and it recommended the dismissal of the appeal. By a letter of 11 September 2015, which constitutes the impugned decision, the complainant was informed that the President of IFAD had decided to follow that recommendation.

The complainant filed a complaint with the Tribunal on 10 December 2015 seeking the setting aside of the impugned decision, the disclosure of the evidence gathered in the investigation, damages for the injury he considers he has suffered, which he evaluates at 80,000 euros, and costs in the amount of 8,000 euros for the internal appeal proceedings and the proceedings before the Tribunal.

IFAD asks the Tribunal to dismiss the complaint as unfounded.

During its preliminary examination of the case, pursuant to Article 11 of its Rules, the Tribunal asked IFAD to produce the reports drawn up by the AUO at the end of the investigation into the conduct of the complainant's two supervisors. It ordered the organisation to produce a redacted version of these reports the names of witnesses and any passages which could jeopardize the protection of their identity had been blacked out. On receipt of these reports, the Tribunal forwarded them to the complainant and invited him to comment on them, which he did. IFAD then filed its final observations, which brought the written pleadings to a close.

CONSIDERATIONS

1. The complainant impugns the decision of 11 September 2015 by which the President of IFAD dismissed his appeal challenging the outcome of the investigation of the harassment complaint which he had lodged on 14 March 2013 against the director of his division, Mr S., and his immediate supervisor within that division, Mr D.B.

2. In support of his complaint, the complainant first submits that the examination of his internal appeal was tainted with numerous procedural flaws.

The Tribunal can only find that the complainant's submissions in this respect are mostly well founded.

3. First, it is clear from the evidence in the file that the Joint Appeals Board which examined the complainant's appeal was unlawfully constituted.

It is true that the complainant is wrong in holding that the Board's membership should have complied with the rules currently laid down in Staff Rule 9.1, which would have meant, amongst other things, that it was chaired by an external jurist, in line with that provision. Indeed, President's Bulletin PB/2011/09 of 15 December 2011, through which those rules were published, provided in paragraph 8(c) that, pending the

completion of the future Chapter 9 (Dispute Resolution) of the Implementing Procedures, the internal appeal procedure would continue to be governed, as a transitional measure, by the provisions of Chapter 10 of the former Human Resources Procedures Manual. It is plain from the written submissions that the aforementioned Chapter 9 of the Implementing Procedures did not enter into force until 28 December 2016, with the result that, as the Fund rightly submits, Staff Rule 9.1 did not apply to the instant case.

On the other hand, the complainant is correct in contending subsidiarily that the rules governing the membership of the Joint Appeals Board laid down in paragraph 10.23.3 of the Human Resources Procedures Manual were flouted. The Board's report of 15 July 2015 indicates that one of the two members who, according to the provisions of that paragraph, ought to have sat on that appeal body alongside its Chairperson, had been replaced by the Board's Secretary, who was not entitled to participate in the Board's deliberations in place of one of its members. Moreover, the Tribunal notes that in its submissions IFAD offers no explanation for this anomaly. This plea is therefore indisputably well founded.

4. Secondly, the complainant is also right in contending that insufficient reasons were given for the recommendation made by the Joint Appeals Board.

Indeed, in the Board's report, the extreme brevity of which is surprising in itself, all that is said to support the conclusion that a recommendation in favour of dismissing the appeal should be made to the President of IFAD is that "in reviewing the documentation submitted by both the appellant and the respondent, the panel concluded that the investigation process and the disciplinary sanctions related [to the] above appeal were found to be in line with IFAD's rules and procedures".

Such laconic reasoning which, in the absence of any specific reference to legal or factual considerations, prevents the complainant from ascertaining whether each of the pleas presented in support of his appeal was duly examined by the Board, or from challenging the merits

of that body's recommendation, plainly does not satisfy the minimum standards required in order to ensure that the complainant's right to a fair appeal procedure is respected (see, for a comparable case, Judgment 1317, under 33).

IFAD's argument that the provisions of Chapter 10 of the above-mentioned Manual do not contain any requirements as to the form and content of the Joint Appeals Board's reports is irrelevant, for it cannot be inferred from the fact that the Manual does not address these matters that the Board is entitled to disregard the fundamental guarantees that any staff member must enjoy by issuing recommendations with grossly inadequate reasoning.

This flaw in the Board's report naturally renders the decision based on that body's recommendation unlawful.

5. Thirdly, the Tribunal considers that IFAD was wrong to refuse the complainant's request for disclosure of the reports drawn up by the AUO at the end of the investigation into the conduct of the two supervisors targeted by his complaint.

The Tribunal has consistently held that a staff member must, as a general rule, have access to all the evidence on which the competent authority bases its decision concerning her or him (see, for example, Judgments 2229, under 3(b), 2700, under 6, 3214, under 24, or 3295, under 13). This implies, amongst other things, that an organisation must forward to a staff member who has filed a harassment complaint the report drawn up at the end of the investigation of that complaint (see, for example, Judgments 3347, under 19 to 21, and 3831, under 17).

Of course, this obligation to disclose must be balanced against the need to respect the confidential nature of some aspects of an inquiry, particularly that of the witness statements gathered in the course of the inquiry. As the Tribunal's case law has confirmed, such confidentiality may be necessary in order to ensure witnesses' protection and freedom of expression (see, in particular, Judgments 3732, under 6, and 3640, under 19 and 20). Moreover, in this case the confidentiality of some information related to the investigation was expressly required by the provisions on this matter contained in section 4 of Annex 1 to the

President's Bulletin PB/2007/02 of 21 February 2007 concerning investigation processes.

That is why the Tribunal, after examining *in camera* the investigation reports produced by IFAD at its request, concluded that, while it was appropriate to order that they be shared with the complainant, they should first be redacted in order to remove any indications and passages which might reveal the identity of the witnesses. These same considerations will lead the Tribunal to deny the complainant's request for disclosure of all the evidence stemming from the investigation process because, apart from the fact that producing it would be of little use at this stage of the proceedings, it might reveal some items of information which should legitimately remain confidential.

Nevertheless, by refusing to disclose the AUO reports to the complainant during the internal appeal process, when it should have done so in the redacted form described above, IFAD unlawfully deprived him of a genuine opportunity to challenge the findings of the investigation. In addition, although IFAD submits that on 5 May 2014 the complainant received an email summarising those findings, having regard to the text of that email, this action did not remedy the non-disclosure of the investigation reports themselves.

Lastly, in this case, the fact that the complainant was ultimately able to obtain copies of these reports during the proceedings before the Tribunal does not remedy the flaw tainting the internal appeal process. While the Tribunal's case law recognises that, in some cases, the non-disclosure of evidence can be corrected when this flaw is subsequently remedied in proceedings before it (see, for example, Judgment 3117, under 11), that is not the case where the document in question is of vital importance having regard to the subject matter of the dispute, as it is here (see Judgments 2315, under 27, 3490, under 33, or the above-mentioned Judgment 3831, under 16, 17 and 29).

6. It follows from the foregoing, without it being necessary to examine the complainant's other pleas, that the decision of 11 September 2015 must be set aside, since it was reached at the end of an internal appeal process which was unlawful in three respects.

At this stage of proceedings, the Tribunal would normally have referred the case back to IFAD in order that it might be taken up again in proceedings complying with due process. However, in view of the time which has elapsed since the events and since, as stated earlier, the complainant has now received the investigation reports and been able to comment on them, the Tribunal considers it more appropriate, in the particular circumstances of the case, to deal directly with the merits of the case.

7. In examining the complainant's submissions on the merits, the Tribunal finds nothing that would invalidate the findings of the AUO investigation that the complainant's allegations of harassment were unfounded.

Contrary to the complainant's submissions, the adversarial principle was respected during this investigation. It is clear from the evidence in the file that the complainant was heard on two occasions during the investigation and that, at the second hearing, he was informed of the substance of the testimony and other evidence gathered by the AUO which refuted the alleged harassment, and was thus given an opportunity to challenge it.

In these circumstances, the findings reached in the disputed investigation cannot be called into question. It is well settled that it is not the Tribunal's role to review an internal appeal body's findings of fact or assessment of evidence unless they are tainted with manifest error (see, for example, Judgments 3593, under 12, 3682, under 8, or 3831, under 28). In the instant case, it is plain from the reports that have been produced that the AUO investigation was conducted rigorously and competently and that the complainant's comments in response to their disclosure do not in any way prove that the findings of this investigation involved any manifest error.

8. However, the Tribunal notes that, although the AUO's investigation led to the conclusion that the conduct of the managers targeted by the complainant's complaint could not be termed harassment, it nevertheless revealed that their behaviour towards him had been inappropriate and had, in some instances, undermined his dignity.

It is clear from the findings of the investigation, for example, that Mr S.'s behaviour towards the complainant was inadmissible on two occasions when he had wrongly blamed him for cancelling an international mission at the very last moment, which had placed him in an extremely embarrassing situation, and when he had improperly insinuated that the complainant devoted too much time to his duties as a member of the Executive Committee of the Staff Association. As for Mr D.B., the investigation concluded inter alia that, when communicating with the staff reporting to him, he regularly used rude and offensive expressions liable to create a disrespectful hostile working environment, and that Mr S. should moreover be taken to task for failing to order Mr D.B. to refrain from such unacceptable behaviour.

It must be emphasised that the findings of the investigation in question did in fact lead to disciplinary action being taken against the two managers concerned, who were reprimanded, which shows that IFAD acknowledged that at least some of the behaviour complained of had indeed taken place and constituted misconduct.

9. In these circumstances, the Fund was wrong to refuse to grant the complainant, who had been a victim of that behaviour, compensation for the injury he thus suffered.

According to the Tribunal's case law, by virtue of the principle that an international organisation must provide its staff members with a safe and healthy working environment, it is liable for all injuries caused to a staff member by a supervisor when the victim is subjected to treatment that is an affront to her or his dignity (see, for example, Judgments 1609, under 16, 1875, under 32, 2706, under 5, or 3170, under 33).

Contrary to the view expressed by IFAD in its written submissions, in this case, the fact that disciplinary action was taken against the complainant's supervisors at the end of the investigation on account of

their misconduct did not by any means suffice to redress the injury caused to the complainant. Since the conditions for applying the case law cited above were indubitably met, even though the complainant was not the sole victim of some of the improper behaviour in question, it was incumbent upon the organisation to grant him monetary compensation under this head. By refusing to do so, the President of IFAD committed an error of law which constitutes an additional flaw in the impugned decision.

10. The unlawfulness of that decision in itself caused the complainant moral injury which must be redressed. In this case, this injury is exacerbated by the nature of the irregularities identified above which affected the examination of the complainant's internal appeal and which substantially undermined his right to procedural fairness. In addition, as was just stated, the behaviour of the two officials targeted by his complaint caused the complainant injuries for which he is also entitled to redress. In the circumstances of the case, the Tribunal considers that all the injury suffered by the complainant may be fairly redressed by awarding him compensation in the amount of 30,000 euros.

11. As the complainant succeeds for the most part, he is entitled to costs which the Tribunal sets at 6,000 euros.

DECISION

For the above reasons,

1. The decision of the President of IFAD of 11 September 2015 is set aside.
2. IFAD shall pay the complainant compensation for moral injury in the amount of 30,000 euros.
3. It shall also pay him 6,000 euros in costs.
4. All other claims are dismissed.

In witness of this judgment, adopted on 3 May 2018, Mr Patrick Frydman, Vice-President of the Tribunal, Ms Fatoumata Diakité, Judge, and Mr Yves Kreins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 26 June 2018.

(Signed)

PATRICK FRYDMAN FATOUMATA DIAKITÉ YVES KREINS

DRAŽEN PETROVIĆ