

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

D. (No. 2)

v.

IFAD

134th Session

Judgment No. 4541

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Ms S. D. against the International Fund for Agricultural Development (IFAD) on 15 September 2018 and corrected on 15 November 2018;

Considering the request for a stay of proceedings submitted by IFAD on 24 January 2019 and granted by the President of the Tribunal until 11 April 2019, so as to enable the parties to attempt to reach an amicable settlement;

Considering IFAD's reply of 22 May 2019, the complainant's rejoinder of 2 September 2019 and IFAD's surrejoinder of 19 December 2019;

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 decision not to notify her of the outcome of the investigation into her internal complaint of moral harassment, the decision not to send her the full report drawn up following that investigation, and the decision not to inform her of the outcome of her internal complaint.

The complainant joined IFAD in October 2007.

At the time when her new direct supervisor, Ms K., arrived, the complainant was assigned to the Asia and the Pacific Division at grade P-2. After being promoted to grade P-3 as Country Programme Manager in Lao, Asia, in January 2013, the complainant was reassigned to IFAD Headquarters in Rome as of 1 May 2015 and then transferred to the West and Central Africa Division as of 1 January 2016, having provided her written consent thereto on 22 December 2015. The complainant also voluntarily left IFAD to join another international organisation in February 2016.

A year earlier, after being summoned in February 2015 by the investigation unit of IFAD's Office of Audit and Oversight (AUO) in connection with an investigation into Ms K., on 12 March 2015 the complainant lodged an internal complaint of harassment, abuse of authority and discrimination against Ms K., requesting that corrective measures be taken to sanction her alleged harasser's improper and unacceptable conduct and that preventive measures be taken to protect her.

On 3 January 2017, when she was no longer employed by IFAD following her resignation, the complainant was informed that an investigation had been carried out by AUO and that, on the basis of AUO's report, the matter had been referred to the Sanctions Committee and "appropriate managerial action" had been taken on the President's instructions. On 8 January the complainant sought clarification of the outcome of her internal complaint, asked the organisation what compensation it was prepared to grant her and requested a formal decision on the matter, as well as the full investigation report. On 2 March IFAD replied that her allegations had been thoroughly investigated. Her request for the investigation report was refused on grounds of confidentiality and protection of third parties.

On 23 March 2017 the complainant submitted a request for review of the implicit refusal to notify her of the outcome of her complaint – that is, whether the existence of harassment or any misconduct by Ms K. had been recognised – and the explicit refusal to provide her with the investigation report. She requested compensation for the injury which she considered she had suffered. Her request for review was

rejected on 19 July 2017, and on 18 August she submitted a statement of appeal to the Joint Appeals Board (JAB). There followed an exchange of emails between the complainant and the secretary of the JAB concerning the language of the proceedings and the prescribed time limit for supplementing the statement of appeal. On 6 September the complainant submitted a brief in which she requested the withdrawal of the decision of 19 July, the disclosure of all evidence gathered during the investigation, compensation for the injury she considered she had suffered and an award of costs.

In its report of 17 April 2018, the JAB stated that it had no jurisdiction to recommend compensation for the injury caused by harassment or improper conduct by Ms K. Even if it had, it considered that the complainant had not provided sufficient evidence of injury and, in the absence of a response from the administration as to the merits of the internal complaint of 12 March 2015, it considered that the claim for compensation was in any event premature. It nevertheless recommended that the complainant be provided with a redacted version of the investigation report, the recommendation of the Sanctions Committee and a copy of the “managerial action” taken. It also recommended that she be awarded the sum of 1,000 euros in costs. By letter of 14 June 2018, the President informed the complainant of his decision to accept the JAB’s first recommendation – a redacted copy of the investigation report was attached to that letter – and to reject the other recommendations on the grounds that the other documents were confidential and the JAB had overstepped its remit by proposing an award of costs. That is the impugned decision.

On 19 June 2018 the complainant, noting that the decision of 14 June failed to address the actual subject-matter of her internal complaint, namely whether Ms K. had been found to have committed harassment, asked IFAD whether the appeal procedure was to proceed further. On 26 June she was informed by the Director of the Human Resources Division (HRD) that the decision of 14 June was a final decision on her internal appeal.

The complainant asks the Tribunal to set aside the impugned decision and the “initial decision”, to redress all the moral injury she considers she has suffered, which she assesses at 60,000 euros at least, to order IFAD to pay punitive damages of a minimum amount of 20,000 euros and to award her 10,000 euros in costs for the internal appeal proceedings and the proceedings before the Tribunal. Lastly, she requests that an amount corresponding to the fees and taxes which she has undertaken to pay to her counsel be deducted from any monetary awards made to her and that such amount be paid to her counsel.

IFAD asks the Tribunal to dismiss the complaint in its entirety. It submits that the complainant has not correctly identified and defined the subject-matter of the dispute and has not produced evidence in support of her claims. It argues that her claim for compensation is irreceivable on the grounds that she has failed to exhaust internal remedies and, subsidiarily, it contends that the amount sought is excessive and has no objective basis.

CONSIDERATIONS

1. In summary, the complainant asks the Tribunal:
 - to set aside IFAD’s decisions of 2 March 2017, 19 July 2017 and 14 June 2018; and
 - to order IFAD to pay compensation for all the moral injury she has allegedly suffered, punitive damages, and the costs of the internal appeal proceedings and the proceedings before the Tribunal that she has had to bring.
2. In her rejoinder, the complainant further seeks the setting aside of the decision by the President of the Tribunal to stay the proceedings temporarily with a view to allowing the terms of an amicable settlement to be discussed.

However, no appeal lies from procedural decisions taken by the President of the Tribunal or by any other authority thereof in exercise of the authority granted to them under the Tribunal’s Statute and Rules.

The complainant's request in her rejoinder must therefore be dismissed as irreceivable.

3. To begin with, the complainant refers to various flaws which, according to her, tainted the procedure followed by the JAB when considering her internal appeal. In particular, she argues, first, that the refusal to send her AUO's investigation report in good time hampered her in defending her interests before the JAB and, second, that this investigation report, which is an essential part of the case, was not examined by the JAB, which rendered the proceedings before that body unlawful. For its part, IFAD submits that the investigation report was duly disclosed to the complainant in good time, on 14 June 2018, in compliance with the procedural requirements and with due regard for the protection of all concerned, including the witnesses. According to IFAD, the complainant was thus able to submit observations on the report before she referred her case to the Tribunal if she so wished. It adds that, given the complainant's failure to express her other harassment-related grievances in clear and definite terms, the JAB was not required to examine the investigation report in order to give a view on the merits of the internal appeal.

The Tribunal observes that from January 2017 onwards the complainant expressly requested a clear and explicit reply from IFAD as to whether or it recognised the existence of harassment or misconduct in her respect owing to the actions of her direct supervisor and, if so, as to how it intended to compensate her for the injury she had suffered. In addition to the request for a copy of the full investigation report, those two claims were reiterated in the request for review submitted on 23 March 2017, in the statement of appeal of 18 August 2017 and in the appeal brief of 6 September 2017.

The Tribunal also notes that the redacted investigation report was not sent to the complainant until after the JAB had made a recommendation to that effect in its report of 17 April 2018. On receiving the investigation report following the decision of the President of IFAD of 14 June 2018, which rejected the complainant's other claims, she again approached IFAD in order to ascertain whether it considered the internal appeal

procedure to be complete and whether the decision of 14 June 2018 should be regarded as final. She received an answer in the affirmative in an email from the Director of HRD on 26 June 2018.

In those circumstances, two conclusions must be drawn by the Tribunal. First, the complainant cannot be criticised for not having taken steps after receiving AUO's investigation report, since she received clear confirmation that the President's decision of 14 June 2018 was final. Second, the fact that the complainant did not receive the investigation report until she was informed of the President's final decision resulted in her being deprived of the opportunity to challenge the findings of the investigation effectively during the appeal proceedings before the JAB.

In this respect, IFAD's argument that the disclosure of the investigation report was unnecessary because the complainant did not include harassment-related grievances in her appeal is irrelevant since, contrary to what is thereby implied, the appeal did also concern the acts of harassment themselves, as described in the internal complaint.

Similarly, although the complainant also challenged before the JAB IFAD's decision not to give an explicit decision on the harassment, abuse of authority and discrimination which she had reported, there is no evidence in the JAB's report or the parties' other submissions that the JAB was provided with AUO's investigation report during the proceedings before it. Nor does the Organisation contend in its various submissions that it was.

In the light of the foregoing considerations, the Tribunal must conclude that the procedure followed before the JAB was also unlawful in that the JAB was not provided with all the evidence which would have enabled it to give a fully informed decision on the internal appeal before it (see, to that effect, Judgment 1372, consideration 11). In consequence, the complainant was deprived of the right to have her internal appeal properly examined (on the obligation of any international organisation to ensure that the rules are correctly applied and due process followed, see, *inter alia*, Judgments 2219, 2654, 2700 and 3065).

Those flaws in the procedure followed before the JAB are sufficient for a finding that the impugned decision is unlawful.

4. The complainant further submits that IFAD failed to state sufficient reasons for the impugned decision. She contends that in the absence of a clearly articulated decision on the merits of the case and valid disclosure of AUO's report in good time, she was unable to argue her case on its merits. She argues that the Organisation thereby breached its obligation to give a staff member who complains of harassment or inappropriate conduct by her or his direct supervisor a clear and definite reply regarding the existence and characterisation of the conduct complained of and any redress it intends to provide. The complainant also disputes several of the findings in AUO's investigation report as to whether some of the conduct she had reported could be considered as harassment.

IFAD refers to the annex to Chapter 8 of the Human Resources Implementing Procedures, according to which the only decisions to be notified to staff members who have lodged an internal complaint of harassment are a decision by the Ethics Office to refer the complaint to AUO for investigation and a decision by AUO that the behaviour reported does not constitute harassment. While emphasising that the complainant has failed to identify clearly the subject-matter of the dispute, IFAD contends that she is not entitled to request the Tribunal to re-examine the evidence on which AUO based its investigation report nor to substitute its assessment for that of AUO, unless she can establish that it has committed an obvious error.

While it is true that the annex to Chapter 8 of the Implementing Procedures expressly requires that a staff member who complains of harassment be informed solely of the decisions to which IFAD refers in its reply, the Tribunal considers that the organisation is nevertheless under an obligation to notify the staff member of the final decision taken by the President on the basis of the JAB's report and recommendations as to whether to recognise the misconduct alleged in support of the internal complaint, even in the absence of an explicit provision to that effect (see Judgment 4207, considerations 15 and 18).

The Tribunal considers that merely informing an international civil servant that disciplinary proceedings have been started against a supervisor following an investigation into a complaint of harassment and that

appropriate managerial measures have been taken – as happened in the instant case in the letter of 3 January 2017 – does not enable that civil servant to know whether the harassment she or he alleges has been recognised and, if so, how the organisation concerned intends to compensate her or him for the material or moral injury suffered (see, to that effect, Judgment 3965, consideration 9). In the present case, and since such an explanation of reasons could, *inter alia*, support a possible claim for compensation for the injury suffered, the complainant should have been adequately informed, in the President’s final decision, of the reasons why the organisation did or did not recognise the existence of harassment by her direct supervisor (see, to this effect, Judgment 3096, consideration 15). As she was not so informed, the decision of 14 June 2018 is fundamentally flawed, since the staff member who engaged the procedure, while not entitled to be informed of any measures taken against the alleged harasser, is entitled to a decision on the question of harassment itself (see aforementioned Judgment 3096, consideration 15) and, in consequence, to receive a reply from the administration concerning her or his harassment complaint (see, to that effect, Judgment 4207, consideration 15).

This argument is, therefore, also well founded.

5. It follows from the foregoing that the Tribunal must set aside the final decision of President of IFAD of 14 June 2018, without there being any need to examine the other pleas directed against it.

6. Since, in its initial decisions of 2 March and 19 July 2017, the Organisation also breached its obligation to give a staff member who complains of harassment by her or his supervisor a clear and definite reply regarding the existence and characterisation of the conduct complained of and any redress it intends to provide, those decisions are unlawful and must likewise be set aside.

7. At this stage of proceedings, the Tribunal would normally refer the case back to IFAD in order for a decision to be duly taken on the complainant’s harassment complaint. However, in view of the fact that it has sufficient information in the present case to enable it to reach

an informed decision, the Tribunal considers it more appropriate, in the particular circumstances of the case, to deal directly with the dispute on the merits.

8. In that regard, the Tribunal notes, in the light of the file, that the complainant based her internal complaint on numerous incidents liable to establish that she was harassed by her direct supervisor. Similarly, AUO's extensive investigation resulted in a highly detailed 55-page investigation report. Even if the way in which this report was redacted by IFAD sometimes makes it difficult to read, it is nonetheless clear that various incidents alleged by the complainant in support of her internal complaint were considered by AUO to have been proven.

The Tribunal notes the following passages from the investigation report:

- paragraph 152: a witness observes that, as compared to her colleagues, the complainant was treated differently by her direct supervisor, who always found something to change in her work or a reason to request further information from her;
- paragraphs 219, 224 and 226: AUO takes the view that, on the basis of various actions by her direct supervisor, the complainant could reasonably consider that she had been subjected to negative stereotyping and attacks on her integrity and professional reputation, which were not based on sufficiently verified information;
- paragraph 230: AUO finds that the complainant could reasonably feel humiliated by the manner in which she had been informed of the change in the date initially set for her departure from Lao;
- paragraph 233: AUO finds that the complainant could reasonably feel humiliated owing to the fact she was treated differently from standard practice, in view of what a staff member could expect;
- paragraph 235: AUO finds that the complainant was unreasonably excluded from various events in connection with one of her projects in Lao, which could have also led her to doubt her professional reputation;

- paragraph 237: AUO finds that the same is true of the announcement of the postponement of the presentation that the complainant was due to give concerning another of her projects in Lao, in respect of her colleagues, some of whom held more senior positions within IFAD;
- paragraph 239: AUO finds that the lack of transparent communication and use of covert consultations in which the complainant may have wished to participate could have reasonably led her to feel, as she alleged, excluded and belittled, and also possibly damaged or created doubt regarding her professional reputation among her colleagues;
- paragraph 246: AUO finds that the complainant may have been disadvantaged in terms of her professional reputation, offended and belittled by her direct supervisor through inconsistent comments which were made in the context of the process for evaluating her professional performance.

On the basis of these incidents, AUO came to the following main conclusions. First, the complainant was subjected to negative stereotyping and attacks on her integrity and professional reputation, which were not based on sufficiently verified information. Second, she was subjected to unfair treatment. Third and last, she may reasonably have felt demeaned by the manner in which she had been treated in respect of one of her projects in Lao.

The Tribunal considers that it is apparent from these conclusions that harassment took place.

It should also be noted that the complainant's direct supervisor had drawn up a performance evaluation report for her for 2014 that was unfavourable in several respects and that, following an internal appeal by the complainant, an entirely favourable revised evaluation report was ultimately drawn up by the organisation. The complainant's claim for compensation for the moral injury she allegedly suffered owing to the "particular anxiety" caused by the effects of her initial evaluation on her career and reputation was, however, dismissed by the Tribunal in Judgment 4371, delivered in public on 18 February 2021, on the

grounds that the complainant, in that case, had not provided sufficient evidence to establish that injury.

The Tribunal considers that the various incidents referred to above are evidence of conduct which any reasonable person could have regarded as offensive, degrading, humiliating and embarrassing (see, for a comparable case, Judgment 3488, consideration 16). It follows that the complainant could reasonably have felt demeaned by various actions taken by her direct supervisor, and she could have felt that the latter was creating a hostile working environment in her regard.

These incidents therefore suffice to establish the existence of harassment by the complainant's direct supervisor as defined in sections 8.3.1 and 8.3.2, in the version applicable at the time, of the annex to Chapter 8 of the Implementing Procedures. The Tribunal recalls in this regard that the main factor in the recognition of harassment is the perception that the person concerned may reasonably and objectively have of repeated acts or remarks liable to demean or humiliate her or him (see, for example, Judgment 4241, consideration 9).

9. This finding, reached by the Tribunal at the end of proceedings to which the complainant's direct supervisor is not a party and in which she has therefore been unable to comment, may not under any circumstances be used against her in any context other than that of the instant judgment.

10. The complainant assesses her total moral injury at 60,000 euros at least. However, she does not provide any justification for that amount.

IFAD first objects to the receivability of the complainant's claim for compensation. It submits that internal remedies have not been exhausted in respect of that specific claim and that by setting total moral injury at an amount of at least 60,000 euros for the first time before the Tribunal, the complainant is making a new claim to the Tribunal, which is not receivable under its case law.

However, the Tribunal notes that, in any event, the complainant made it clear when she lodged her internal complaint on 12 March 2015 that the alleged harassment had damaged her career, her professional

reputation and, to a significant degree, her health. On 8 January 2017 she explicitly asked, first, whether IFAD recognised that she had been the victim of harassment or any other inappropriate behaviour on the part of her direct supervisor, and, second, if so, what compensation IFAD was prepared to grant her for the injury she had suffered. That claim for compensation was subsequently made both in the request for review submitted on 23 March 2017 and in the internal appeal lodged with the JAB, specifically in the appeal brief dated 6 September 2017. In its reply lodged in the context of that internal appeal procedure, IFAD explicitly mentioned the claim for compensation while adding that the JAB did not have authority to award moral damages.

In the light of all these considerations, the Tribunal finds that the complainant has in fact exhausted the internal remedies in respect of her claim for moral damages. Also in the light of these considerations, the Tribunal further finds that the complainant's claim to this effect in her complaint cannot be regarded as a new claim within the meaning of its case law. It is irrelevant that the complainant specifies solely and for the first time in her complaint the amount of moral damages she claims, still without knowing exactly what acts of harassment her direct supervisor might have been charged with.

IFAD's objection to receivability will therefore be dismissed.

11. Although the complainant does not justify the amount of compensation claimed for moral injury, the Tribunal considers that the existence of such injury is apparent from the evidence in the file, the complainant's ensuing health problems and the fact that she felt compelled to re-direct her career. In the circumstances of the case, Tribunal considers it fair to award the complainant moral damages in the amount of 40,000 euros.

However, the award of punitive damages she claims is not justified.

12. The complainant claims 10,000 euros in costs for the internal appeal proceedings and the proceedings before the Tribunal.

However, the Tribunal recalls its case law according to which costs in respect of the internal appeal proceedings may only be awarded under exceptional circumstances (see, in particular, Judgment 4217, consideration 12), which are not present in the instant case.

Given that the complainant has succeeded in part, the Tribunal considers it fair to order payment of 6,000 euros in costs for the proceedings before it.

13. The complainant's counsel requests that an amount corresponding to the fees and taxes which the complainant has undertaken to pay him be deducted from any monetary awards made to her and that such amount be paid to him. However, it is not for the Tribunal to concern itself with private arrangements made between complainants and their counsel (see Judgment 4072, consideration 21).

DECISION

For the above reasons,

1. The decision of the President of IFAD of 14 June 2018, and the decisions of the Director of the Human Resources Division of 2 March 2017 and 19 July 2017, are set aside.
2. IFAD shall pay the complainant moral damages in the amount of 40,000 euros.
3. It shall also pay her 6,000 euros in costs.
4. All other claims are dismissed.

In witness of this judgment, adopted on 26 April 2022, Mr Patrick Frydman, Vice-President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 6 July 2022 by video recording posted on the Tribunal's Internet page.

(Signed)

PATRICK FRYDMAN JACQUES JAUMOTTE CLÉMENT GASCON

DRAŽEN PETROVIĆ