

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**B. Z. (No. 3)**

**v.**

**IFAD**

**134th Session**

**Judgment No. 4544**

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Ms R. B. Z. against the International Fund for Agricultural Development (IFAD) on 23 October 2018, IFAD's reply of 5 April 2019, the complainant's rejoinder of 17 July and IFAD's surrejoinder of 30 October 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 seeks the setting aside of the decision to extend her appointment by only six months, from 4 September 2016 to 3 March 2017.

On 1 February 2014 the complainant joined the IFAD Office in Bujumbura, Burundi, as a Country Programme Officer (CPM) at grade P-4 in the East and Southern Africa Division under a short-term appointment until August 2014. Following a selection process, she was later appointed for a two-year fixed term in the same position from 4 September 2014 until 4 September 2016, and was designated as IFAD Representative in Burundi. Her contract of employment included a description of her duties in Attachment III and stated that she could not have any expectation of continuous employment or conversion to any

other type of appointment and that possible extensions of her appointment were conditional on successful performance and satisfactory conduct, among other factors. In addition, confirmation of her appointment depended on the satisfactory completion of a 12-month probationary period, ending on 4 September 2015. A work plan was drawn up by her regional director and supervisor at the time. It was signed by the complainant on 19 September 2014.

At the end of the first five months of her probationary period, the complainant received a generally positive mid-point assessment report from her then regional director and supervisor, which she signed on 1 February 2015. However, her supervisor pointed out various shortcomings in the complainant's performance, including insufficient knowledge of new concepts in sustainable and effective rural transformation, leadership skills, and the ability to balance detail with a high-level, overall view of her duties.

From May 2015 the complainant, who was worried about the political uncertainty in Burundi caused by a failed coup d'état on 15 May 2015 and the upcoming presidential elections on 15 July 2015, carried out various missions away from her usual duty station in Bujumbura, with her managers' agreement. In July 2015, in view of the deterioration in her health as assessed by the Chief Medical Officer of the United Nations Food and Agriculture Organization (FAO) on 9 July 2015 and confirmed by her doctor in Bujumbura, the complainant requested permission from her new regional director and supervisor, in post since 1 April 2015, to return to IFAD headquarters in Rome. Her supervisor agreed to this request on an exceptional basis, stating that he would discuss the situation with her when she arrived. A meeting was held on 23 July 2015 at which the complainant was asked to confirm in writing that she would remain in Bujumbura unless ordered to evacuate by the United Nations Department of Safety and Security, in accordance with the applicable rules for IFAD. On 29 July 2015 her supervisor, explaining that he had received instructions to this effect from his superiors, asked her to return to her usual duty station at the end of her annual leave, due to finish on 17 August. The complainant replied that she had already arranged her return tickets to Bujumbura. She

confirmed that she agreed to deal with the insecurity in Burundi and to remain at her duty station in Bujumbura unless an evacuation order, as referred to above, was issued or she was duly authorised by her managers to travel.

On 6 August 2015 her supervisor sent her the probationary report, in which he proposed that the probationary period be extended by six months, until 4 March 2016. The complainant inserted her observations and the report was finalised. She explicitly agreed to a six-month extension of her probationary period. On 28 September 2015 her supervisor sent her a performance improvement plan (PIP) for the six-month period from 5 September 2015 to 4 March 2016. This plan, which was dated 22 September 2015 and provided for continuous feedback on her performance and the delivery of monthly progress reports, was duly signed and approved by the complainant. On 2 October the complainant sent her supervisor a detailed work plan covering the rest of 2015. She received a copy of this first finalised PIP by email on 30 October 2015.

Shortly before, on 29 July 2015, the complainant had received a draft mid-term performance review for 2015. This was later removed from the complainant's personal file, as she was still on probation at the time and had been placed on a PIP.

A probationary report was drawn up at the end of the 18-month period. It was signed on 16 May 2016 by the complainant's supervisor and on 26 May 2016 by her head of department. Given that the probationary period had come to an end and the prescribed maximum duration had been reached on 4 March 2016, the complainant's appointment was confirmed on that date pursuant to IFAD Staff Rule 2.5. However, in view of the weaknesses identified in crucial competencies required for the role of CPM and the fact that, under the applicable rules, the probationary period could not be further extended, it was decided that the complainant would be placed on a new PIP from the date of confirmation of her appointment until 3 March 2017.

In June 2016 the complainant submitted a request for facilitation.

By letter of 23 September 2016, forwarded to the complainant the following day, the facilitator notified her that the facilitation process had failed. However, she informed the complainant that several points

had been or were being deleted from her probationary report and that her mid-term performance review for 2015 would be removed from her personal file as it should not have been drawn up.

The Joint Appeals Board (JAB), with which the complainant lodged an internal appeal, delivered its report on 31 January 2017. It found that the appeal was irreceivable *ratione temporis* because it had not been sent to the competent authority in good time and was time-barred. It also considered that the appeal was partly irreceivable because it was, inter alia, directed against a decision which was still under discussion between the parties, namely the second PIP, eventually signed on 2 and 15 September 2016 by the supervisor and the complainant and covering the period from 4 September 2016 to 3 March 2017. The JAB further considered that the appeal was unfounded in any event, and therefore recommended that it be rejected. The President of IFAD endorsed those recommendations in a letter of 20 February 2017.

In her first complaint, filed with the Tribunal on 6 June 2017, the complainant requested the setting aside of that decision of 20 February 2017 dismissing as irreceivable the complainant's appeal, which was directed – apart from a point which has become moot – against the imposition of a second PIP and the extension of her appointment by only six months. The complainant also sought the setting aside of several documents drawn up prior to that decision, namely the probationary report of 16 May 2016, the first PIP and the probationary report of 22 August 2015.

That complaint was dismissed in Judgment 4542, also delivered in public today.

In the meantime, on 7 July 2016, in the complainant's mid-term review, her supervisor stated that her performance had remained unsatisfactory over the previous six months and he had therefore decided to place her on a new PIP. A draft PIP, dated 5 August 2016, was sent to the complainant for comment on 11 August 2016, and she was informed that a possible extension of her appointment from 3 September 2016 to 3 March 2017 was under consideration. A telephone conversation took place about the aforementioned PIP on 23 August. In an email sent the following day, her supervisor stated that the

conversation in question constituted the monthly performance review conversation required by the PIP. He awaited her comments on the draft second PIP and the minutes of the meeting. On 27 August the complainant expressed her disagreement with the imposition of the second PIP and its content. Her supervisor agreed to change the timeframe of the plan (stating that it would run from 4 September 2016 to 3 March 2017) and informed her that he considered the amended PIP final. The final version of the second PIP was signed by the supervisor on 2 September 2016 and by the complainant on 15 September 2016. However, the complainant specified that her signature was subject to the taking into consideration of her comments on the PIP, with which she had expressed her disapproval in the emails of 27 August and 2 September. By letter of 2 September 2016, the complainant was also notified of the decision of the Director of the Human Resources Division (HRD) to extend her appointment, due to expire on 4 September 2016, by six months until 3 March 2017 so as to cover the period of the second PIP. As when she took up her initial appointment, the complainant was informed that any further extension of her appointment was conditional on successful performance and satisfactory conduct among other factors.

On 31 October 2016 the complainant submitted a request for facilitation concerning the decision to extend her appointment. A letter of 9 November 2017 stated that the facilitation procedure had failed. On 8 December 2017 the complainant challenged before the JAB the decision to extend her appointment by only six months. In particular, she requested that her appointment be renewed for three years or at least two years, which corresponded to the length of her initial appointment. In its reply, the administration argued that the appeal was rendered moot by the decision not to renew the complainant's appointment, which had been taken on 4 July 2017.

On 21 February 2017 the complainant was sent the final performance evaluation report (known as the Performance Evaluation System or PES document) for 2016. As she acknowledges, she had already received it by email on 10 January 2017. The report stated that her overall performance was "partially satisfactory", after the departmental Management Review Group (MRG) had reviewed the supervisor's

performance evaluation and awarded the complainant a final overall rating of 2, corresponding to “partly satisfactory” performance. On 27 February 2017, at the last monthly review meeting under the second PIP, the supervisor informed the complainant that he was recommending that her appointment not be extended as her overall performance was deemed unsatisfactory.

By letter of 3 March 2017, the Director of HRD informed the complainant that her appointment would not be renewed owing to underperformance. Referring to the six monthly review meetings and reports related to the second PIP covering the period from 4 September 2016 to 3 March 2017, the Director told the complainant that she had unfortunately not achieved the expected level of improvement in the main competencies and overall skills required for the post of CPM. She was reminded that three months’ notice was incorporated in the period covered by the second PIP, as specified in the original draft dated 5 August 2016, but that she had been granted a one-month extension, until 3 April 2017, during which time she would be placed on special leave with full pay for the purpose of facilitating her repatriation to her home country. The complainant was re-sent all of the monthly progress reports by an email of 9 March 2017, which stated that she had already received each report from her supervisor after each review meeting.

On 22 March and 8 April 2017 the complainant lodged two internal appeals in which she requested the Director of HRD to reconsider the decision of 3 March 2017 and her PES document for 2016. By a decision of 4 July 2017, which she states she received on 12 July, the complainant was informed that her final PES rating for 2016 was confirmed. On 11 August 2017 she lodged an appeal with the JAB seeking, inter alia, the withdrawal of her PES document, a new performance evaluation, and compensation for injury suffered. In the appeal, she emphasised, amongst other things, that an examination of the various evaluations of her performance revealed a deliberate intention to undervalue and criticise her work, to jeopardise her future in the Organisation, to manipulate any party who might have dealings with her in her work and to destroy her career, all driven by gender

discrimination. She further argued that she had achieved the objectives set for this period and also initiated other activities.

The decision not to renew the complainant's appointment was confirmed by the same decision of 4 July 2017. On 11 August 2017 she also referred this dispute to the JAB, seeking to be awarded a new three-year appointment with IFAD.

With the complainant's agreement, the JAB decided to join the three appeals and delivered a single report on 4 June 2018. The JAB found that the complainant's alleged underperformance had not been properly substantiated. It recommended that the PES document for 2016 be considered invalid, that it therefore be removed from the complainant's personal file, and that the decision not to renew her appointment be rescinded. As an alternative, it recommended that the complainant be awarded appropriate compensation. The report did not mention the six-month extension of the appointment from 4 September 2016 to 3 March 2017, which had been decided on 2 September 2016.

By letter of 25 July 2018, the President informed the complainant of his decision not to endorse the JAB's recommendations and to reject her three appeals as unfounded. He stated that her performance, though satisfactory at the beginning, had declined as time went by, a fact that had been noted by her managers and highlighted by her placement on a PIP. There were therefore sufficient reasons to maintain both her PES document for 2016 and the decision not to renew her appointment.

In a previous complaint, the complainant requested the Tribunal to set aside the President's decision of 25 July 2018 in that it maintained her PES document for 2016. That complaint was dismissed in Judgment 4543, also delivered in public today.

In the present complaint, the complainant asks the Tribunal to set aside the President's decision of 25 July 2018 in that it resulted in her appointment being extended by only six months. She also claims compensation for all the injury she considers she has suffered, which she assesses at 25,000 euros at least, and an award of 7,000 euros in costs for the internal proceedings and the proceedings before the Tribunal. She explains that the compensation of at least 25,000 euros reflects her moral injury, and she claims further compensation – including through

the reconstruction of her career – for the material injury suffered in connection with the loss of an opportunity.

IFAD requests the Tribunal to dismiss the complaint as unfounded and to order the complainant to cover her own costs.

In the meantime, the complainant has left IFAD. However, on 2 April 2017, the day before she left, she lodged an internal harassment complaint against her supervisor for conduct that had taken place over more than a year and a half, since early July 2015. IFAD's decision of 23 October 2018 finding this internal complaint unfounded is the subject of the complainant's sixth complaint to the Tribunal.

#### CONSIDERATIONS

1. The complainant seeks the setting aside of the decision of the President of IFAD of 25 July 2018 to extend her appointment by only six months and the initial decision of 2 September 2016.

2. The complainant submits that her right to an effective remedy was breached in respect of the internal appeal lodged with the JAB. Firstly, in the single report which it issued on 4 June 2018 on the complainant's three internal appeals, the JAB did not expressly address the appeal against the decision to extend her appointment by only six months. Secondly, the President was not entitled to take a position on that matter in his decision of 25 July 2018 without having first invited the JAB to give its opinion.

However, the Tribunal observes that in its report of 4 June 2018, the JAB expressly referred to the decision to extend the complainant's appointment by only six months and, in its recommendations, considered that since the President's decision of 25 July 2018 not to renew the complainant's appointment was not adequately reasoned and should be rescinded, it followed that the complainant's appointment should be confirmed with retroactive effect from 4 March 2016. The JAB thereby implicitly but necessarily also dealt with the decision not to extend the complainant's appointment beyond 3 March 2017, since its recommendation involved the rescission of the decision not



to renew the complainant's appointment beyond 4 March 2017 as well as the decision to extend that appointment for only six months, from 4 September 2016 to 3 March 2017.

The complainant's plea is plainly unfounded.

3. The complainant also alleges a breach of section 2.21.1 of Chapter 2 of the Human Resources Implementing Procedures in that the decision of 2 September 2016 to extend her appointment was not taken by the Associate Vice-President for the Corporate Services Department, although it should have been given that she was classified at grade P-4.

The Tribunal notes that, pursuant to section 2.21.1(v) of the Implementing Procedures in the version applicable at the material time, the extension of a fixed-term appointment is to be approved by the "Associate Vice-President, Corporate Services Department (for appointments at grade level P-3 to P-5)", whereupon "HRD will prepare the extension offer for signature of [...] the relevant HR business partner (for grade levels P-5 and below)".

In the present case, the documents submitted by the parties show that the decision to extend the complainant's contract was approved by the relevant Associate Vice-President, Mr S.A. His name is mentioned in the complainant's probationary report of May 2016, in which she was informed that she was to be placed on a second PIP, and his signature appears on page 4 of that report. This plainly implies that he agreed to the extension of the complainant's contract until 3 March 2017.

This plea is also unfounded.

4. The complainant further alleges a breach of section 2.21.1(iii) of Chapter 2 of the Implementing Procedures and an infringement of her legitimate expectation that her appointment would be renewed for the same two-year period as the initial appointment, since she was not informed, at least three months before her initial appointment expired, of the decision to extend her appointment by only six months.

In the version applicable at the material time, abovementioned section 2.21.1(iii) provides as follows: “The supervisor shall inform the staff member of the intention not to renew the [fixed-term] appointment at least three months prior to contract expiry date.”

However, the Tribunal does not see why this provision would apply in the present case. There is a significant legal difference between an outright decision not to renew a contract and a decision to extend it, albeit for only six months.

Furthermore, the complainant was expressly informed on 26 May 2016 that her performance would continue to be evaluated using a PIP until 4 March 2017 and that the renewal of her appointment would be considered at the end of that period. Even if that decision had to be finalised later, the complainant was in fact informed three months before the expiry of her appointment on 4 September 2016 that it might not be automatically renewed on that date.

The plea is therefore unfounded.

5. The complainant submits that section 2.21.1(iv) of Chapter 2 of the Implementing Procedures was not observed in three respects: (1) no evidence has been provided that the request for her contract to be extended was made by the head of department; (2) there is no evidence that this request was made in consultation with HRD; and (3) there is nothing to suggest that the head of department had previously assessed her performance and conduct.

Aforementioned section 2.21.1(iv), in force at the time, provides in relevant part that “[p]rior to requesting any extension [of an appointment], and in consultation with HRD, the Division Director must ensure that: [...]

- (b) The incumbent has the required competencies;
- (c) The incumbent’s performance and conduct in relation to the tasks have been carefully assessed and that these are fully meeting, exceeding or significantly exceeding the agreed objectives; [...].”

In the present case, it appears that, before her regional manager and supervisor proposed that the complainant's appointment be extended, he did in fact ascertain whether she had the required competencies and whether her performance and conduct exceeded the agreed objectives. He likewise expressed a view on these questions after having carefully assessed her performance, as can be seen in the final probationary report signed in May 2016, the second PIP, the initial draft of which was drawn up on 5 August 2016, and the complainant's PES document for 2016. The Tribunal further notes that that performance evaluation process was established in consultation with HRD, as is evident from the letter of 2 September 2016 from a human resources officer and from the fact that provision was expressly made for a member of HRD to always be present at the monthly review discussions between the complainant and her supervisor in connection with the second PIP.

Furthermore, the Tribunal notes that it has already found (see consideration 3, above) that the extension of her fixed-term appointment was in fact approved by the relevant Associate Vice-President.

Insofar as the complainant contends that no evidence of a prior assessment of her competencies and conduct has been adduced and that the rules on performance evaluation for IFAD staff members were not observed, the Tribunal refers to Judgment 4543, also delivered in public today, from which it is apparent that those criticisms are unfounded.

It follows that the various pleas alleging a breach of section 2.21.1(iv) of Chapter 2 of the Implementing Procedures are unfounded.

6. In further support of her complaint, the complainant argues that the decision to extend her appointment by only six months was contradictory and implied a disregard by IFAD of the authority of its own decisions. According to her, under the Implementing Procedures, the confirmation of an appointment at the end of the probationary period presupposes that the conduct and performance of the staff member concerned have been considered fully satisfactory at the end of the probationary period, which is in total contradiction with the subsequent decision to place the complainant on a new PIP and to extend her appointment only for the period covered by it.

Despite what the complainant submits, the confirmation of her initial appointment was not based on her conduct and performance being satisfactory. On the contrary, the decision to confirm her appointment, which had retroactive effect, arose solely from the fact that the complainant's probationary period, even though extended by six months, had expired on 4 March 2016, so that under Staff Rule 2.5 her appointment was automatically confirmed on that date. However, this did not prevent the Organisation from considering that, for the future, the complainant needed to significantly improve her conduct and performance as a CPM with a view to future annual performance evaluations and that she should therefore be placed on a new PIP and granted an extension of her appointment for only a limited period. By so doing, IFAD merely ensured that aforementioned section 5.1.8 of Chapter 5 of the Implementing Procedures had been implemented correctly.

Indeed, this is precisely what the Organisation decided when it stated the following reasons for the complainant's probationary report of May 2016, which formed the basis both for the decision of 2 September 2016 to extend her appointment by only six months and the adoption of a new PIP for the period from 4 September 2016 to 3 March 2017: "The appointment of [the complainant] is confirmed, given that the probation period already expired since 4 March 2016. However, in view of the above major weaknesses in crucial competencies while delivering agreed activities, and given that the probation period cannot be anymore extended beyond 31 March 2016 (according to the [Implementing Procedures]), [the complainant]'s performance will continue to be monitored under the PIP for a further one year (till 4 March 2017)."

The decision of 2 September 2016 to extend the complainant's appointment by only six months is, therefore, properly reasoned and the plea directed against it is unfounded.

7. The complainant further contends that her supervisor lacked impartiality. She submits that he subjected her to excessive, largely unfair criticism that demonstrated a clear intention to stigmatise her and

led to a blatant error of judgment in his evaluation of her performance. She rests this contention on what she describes as her supervisor's obsessive criticism of her travel away from her usual duty station, Bujumbura, even though that travel was authorised, and of the involvement of the FAO Chief Medical Officer in her health assessment in July 2015, and his multiple serious errors in evaluating her performance.

In Judgment 4543, also delivered in public today, the Tribunal has already explained why it has found that the complainant's contentions with regard to her PES document for 2016 and the second PIP are unfounded and that her supervisor's lack of impartiality has not been established.

For all of the considerations set out in aforementioned Judgment 4543, it must be found that the complainant has not proved that her supervisor lacked impartiality.

8. It is apparent from all the foregoing that the complaint must be dismissed.

#### DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 27 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