

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

**R. (No. 3)**

**v.**

**IOM**

**137th Session**

**Judgment No. 4746**

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Ms M. R. against the International Organization for Migration (IOM) on 13 May 2020, IOM's reply of 19 August 2020, the complainant's rejoinder of 2 October 2020 and IOM's surrejoinder of 7 January 2021;

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 to close her harassment complaint following a preliminary assessment and without conducting an investigation.

By an email of 15 May 2018, the complainant filed a formal complaint of harassment with the Ethics and Conduct Office (ECO) under IOM's "Policy for a Respectful Working Environment", contained in Instruction 90 (IN/90) of 22 August 2007.

On 28 August 2018, she was informed that her complaint had been referred to the Office of the Inspector General (OIG).

On 20 March 2019, OIG advised the complainant that further to a preliminary assessment, it had determined that there was no *prima facie* case of harassment, abuse of authority, retaliation or other misconduct. Referring, in particular, to her allegations of harassment against two IOM staff members, OIG noted that these had been reviewed by ECO in 2016 and that she had been advised that the matter had been closed. Referring to the actions described in her harassment complaint, OIG noted that they were administrative decisions taken for reasonable organisational purposes and that the complainant had already challenged them in three internal appeals she had lodged.

On 27 March 2019, the complainant wrote to OIG and asked to be provided with detailed information on the method used by OIG in “assessing/investigating” her harassment complaint and in determining that there was no *prima facie* case of harassment, and she also asked to be provided with the “assessment/investigation report” addressing in detail all claims she had raised in support of her harassment complaint.

On 11 April 2019, the complainant submitted a request for review of the 20 March 2019 decision to close her harassment complaint without carrying out an investigation. She requested that a proper investigation be carried out by an independent external investigator and she also requested moral damages and costs or, alternatively, a waiver of the internal appeal process.

On 29 May 2019, in response to the complainant’s 27 March request, the Chief Investigator of OIG provided her with a detailed response in which he explained that, upon a preliminary assessment, OIG had concluded that the actions complained of could not reasonably be interpreted as constituting harassment under the definition contained in IN/90. He stressed that her harassment allegations related directly to her ongoing dispute with the Administration and that they constituted a reformulation of her previous complaints. In light of the above, OIG had concluded that no investigation was warranted and decided to close the case. The Chief Investigator added that, as certain claims seemed to be directed against the Head of ECO, her complaint had been referred to OIG to ensure an independent assessment of her allegations.

By a letter of 11 June 2019, the Director of the Human Resources Management Division (HRM) rejected the complainant's request for review on the basis that the preliminary assessment of her complaint had been conducted in compliance with the applicable rules and procedure, and he also rejected her request for a waiver of the internal appeal process.

On 10 July 2019, the complainant filed an appeal with the Joint Administrative Review Board (JARB) against the 11 June 2019 decision.

In its report of 14 January 2020, the JARB considered the appeal partly irreceivable. Specifically, the JARB considered the appeal irreceivable with respect to the harassment allegations previously assessed by ECO in a harassment complaint made by the complainant in 2016. It found that that complaint had been closed by ECO and the complainant had not submitted a request for review of ECO's decision to close it within the applicable time limit. The JARB also considered the appeal irreceivable with regard to allegations related to decisions the complainant had challenged in the context of three other internal appeals, namely that the Administration had used rotation as a retaliation and harassment tool against her and that it had discharged her illegally in retaliation for her harassment allegations. The JARB found that, as these allegations had been addressed in final decisions taken by the Director General, they were covered by *res judicata*. On the merits, the JARB found that there was no *prima facie* case of harassment, or violation of IOM's gender and discrimination policies, that the allegations of institutional harassment had not been substantiated, and that OIG's decision to close the complaint following a preliminary assessment was therefore legitimate. Lastly, the JARB found that the delay in ECO's "investigation" of the complainant's harassment complaint was unacceptable, but not the length of time taken by OIG to conduct the preliminary assessment. The JARB recommended that the appeal be rejected.

By a letter of 13 February 2020, the Director General informed the complainant that he had endorsed the JARB's findings and had decided to reject her appeal, as the decision to close her harassment complaint

following a preliminary assessment was well founded. That is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision. She also asks the Tribunal to order that an independent external investigation be conducted and concluded with no further delay and that the costs of this investigation be covered by IOM. Lastly, she asks the Tribunal to order IOM to pay her compensation in an amount equal to three years of net base salary and to also pay her costs.

IOM asks the Tribunal to dismiss the complaint as partly irreceivable and otherwise devoid of merit. IOM objects to the complainant improperly incorporating pleadings and annexes pertaining to issues that were the subject of her previous complaints, and asks the Tribunal to exercise its inherent power to prevent such an abuse of process by striking out those annexes to the complaint which are irrelevant to the impugned decision. IOM submits that, in breach of Article 6, paragraph 1(b), of the Tribunal's Rules, the complainant has not articulated her case fully in the complaint.

## CONSIDERATIONS

1. The complainant seeks the setting aside of the Director General's decision of 13 February 2020 accepting the recommendation of the Joint Administrative Review Board (JARB) to reject the complainant's internal appeal against the decision to close her harassment complaint following a preliminary assessment and without conducting an investigation.

2. IOM contends that the complaint is irreceivable with regard to the following allegations put forward by the complainant. First, the allegations of harassment she submitted to the Ethics and Conduct Office (ECO) in 2016 are time-barred, as she failed to submit a request for review of ECO's decision to close that case within the applicable time limits, as specified in Instruction 217 (IN/217) "Request for Review and Appeal to the Joint Administrative Review Board (JARB)". Second, the principle of *res judicata* applies to the claims based on the

allegations of harassment relating to the complainant's transfer to IOM Sudan, the change in her salary and entitlements as a result of the transfer, and the decision to impose upon her the disciplinary sanction of discharge, "being the subject of separate proceedings pending before the Tribunal". The complainant argues that IOM refused to examine or address her harassment complaint from a broader perspective to ensure that there was no pattern of harassment. She further submits that IOM's position is contradictory in that it has refused to address her harassment allegations in previous appeals and now argues that such claims are *res judicata*.

3. It is necessary to address the issue of receivability and to determine the scope of the present complaint at the outset. The complainant includes in her submissions in this complaint incidents reported in her May 2016 complaint of harassment to ECO. The incidents concern two remarks made at meetings held on 26 and 27 May 2016, the first by Mr H., who called the complainant a "liar", and the second by Mr G., who said that she was "partial". By an email of 25 April 2017, ECO notified the complainant of its decision to close that complaint on the ground that the evidence submitted did not support a finding of a *prima facie* case of harassment against her alleged harassers. Paragraph 8 of IN/217 provides that "[t]he staff member must submit the Request for Review within 60 calendar days after he or she received notification of the contested administrative action, decision or disciplinary action". The complainant did not submit a request for review of ECO's decision to close her 2016 harassment complaint within the time limit required by IN/217. Therefore, the complainant's allegations related to her 2016 harassment complaint are time-barred and irreceivable. Even if the Tribunal were to accept the 2016 harassment complaint as evidence presented by the complainant to establish her allegation of "a pattern of harassment", it is still difficult to see how her allegations about two isolated remarks that occurred four years before the filing of the present complaint could have any relevance to the decision impugned in this complaint.

4. The complainant also includes in her submissions in this complaint allegations of harassment relating to two administrative decisions, namely the decision not to defer her transfer to Sudan until she was able to find adequate medical and schooling facilities for her daughter, and the decision to impose upon her the disciplinary measure of discharge after due notice. These two decisions, which were respectively the subject of the complainant's first and second complaints with the Tribunal, were set aside by the Tribunal in Judgments 4459 and 4460, respectively. It bears noting that both judgments were delivered in public on 27 January 2022, that is after the closure of the written proceedings in the present complaint.

5. In Judgment 4459, consideration 10, the Tribunal held that:

“[T]he Director General should have continued to temporarily waive [the complainant's] transfer under the rotation policy out of consideration for her daughter's special needs and related family circumstances until she was able to secure suitable facilities there for her educational needs. This would have been in accordance with the duty of care which IOM owed to the complainant, which was accordingly breached.”

It accordingly set aside the impugned decision and awarded the complainant moral damages and costs.

6. In light of Judgment 4459, the Tribunal decided in Judgment 4460 to remit the matter to IOM for a new decision by the Director General. It held, at consideration 10 of that judgment, that:

“The Director General maintained the discharge decision in the impugned decision on the basis that the four charges had been proved, in effect, viewing the decision to discharge the complainant as proportionate on the four charges, cumulatively. However, in Judgment 4459, which is also delivered in public this day, the Tribunal has set aside the impugned decision which confirmed the Director General's decision not to temporarily defer the complainant's reassignment to Sudan. The Tribunal concluded that in the particular circumstances of the case, IOM breached its duty of care towards the complainant by not granting her request to temporarily defer that reassignment. That decision may well have had an effect on the first and second charges proffered against the complainant. In the circumstances, the Tribunal cannot be affirmatively satisfied that the decision to discharge the complainant, which the Director General confirmed in the impugned decision, would have been the same. Issues of proportionality may well arise

which, under the Tribunal's case law, must be considered in a case such as this (see, for example, Judgments 3953, consideration 14, and 4400, consideration 29). For this reason, the impugned decision of 18 January 2019 will be set aside."

7. In Judgments 4459 and 4460, the Tribunal excluded the complainant's allegations of harassment from the scope of the respective complaints, because the complainant had not exhausted the internal means of redress in respect of those allegations, which were thus found to be irreceivable (see Judgments 4459, consideration 4, and 4460, consideration 6). As a result, IOM's objection to receivability based on the existence of parallel proceedings is unfounded.

8. Turning to the merits, the complainant alleges that IOM's decision to close a series of harassment allegations based on a belated and insufficient preliminary review of "a highly complex series of allegations of misconduct" constituted a breach of its duty of care towards her, as well as a breach of its duty to investigate claims of harassment promptly and thoroughly. IOM argues that an organisation is not obliged to refer complaints of harassment for a full investigation if the allegations are not sufficiently well founded.

9. IOM's Office of the Inspector General (OIG) Investigation Guidelines provided in relevant part:

"26. All allegations of misconduct are subject to a preliminary assessment, which is the process of collecting, preserving and securing basic evidence and the evaluation of this evidence to determine whether an investigation into reported allegations of misconduct or other wrongdoing is warranted.

[...]

28. Upon receipt of an allegation, a preliminary assessment is undertaken to determine if the alleged misconduct justifies further investigation and whether an investigation is feasible based on the information received and the availability of necessary records or witnesses, etc.

[...]

31. OIG has the exclusive authority to determine whether to close a case or proceed with an investigation based on the results of the preliminary assessment."

It should be recalled that, according to firm precedent, an organisation has no obligation to open a full investigation into allegations of harassment if the allegations are insufficiently substantiated at the stage of the preliminary assessment. As the Tribunal recalled in Judgment 3640, consideration 5, “[t]he sole purpose of the preliminary assessment of [...] a complaint [of harassment] is to determine whether there are grounds for opening an investigation”.

10. Contrary to the complainant’s contention that the preliminary assessment was inadequate, the Tribunal finds that OIG conducted a thorough review of the voluminous documentation submitted by the complainant and a detailed analysis of her allegations. OIG’s conclusion that the complainant’s harassment complaint should be closed was based on the results of its preliminary assessment that “there was no *prima facie* case of harassment, abuse of authority, retaliation or other misconduct”. In determining that the complaint should be closed for a lack of a *prima facie* case, OIG acted within its authority and fully in line with the provisions of the OIG Investigation Guidelines set out in consideration 9 above.

11. In its report of 14 January 2020, the JARB grouped the complainant’s allegations into four categories: (a) IOM had used the rotation policy as a retaliation and harassment tool; (b) IOM had discharged the complainant illegally in retaliation for her harassment allegations; (c) IOM had undermined the complainant’s work and discriminated against her, including (i) allegations of 2016 previously assessed by ECO and (ii) allegations of harassment related to IOM operations in Syria and the treatment of the Chief of Mission for IOM Syria; (d) IOM had mishandled previous harassment complaints.

The JARB found that items (a) and (b) were covered by *res judicata*, because they had been determined in final decisions taken by the Director General, and these decisions were *res judicata*. The JARB considered that the decision related to the complainant’s rotation and her discharge were made for legitimate reasons, so they could not be construed as harassment, unless the decisions were overruled by the Tribunal. The JARB considered that item (c)(i) was irreceivable,

because it concerned the complainant's allegations of harassment previously submitted to ECO in 2016, which had not been challenged within the applicable deadline and thus were time-barred. The JARB was correct to find the complainant's allegations previously assessed by ECO as time-barred, as explained in consideration 3 above. Although the JARB erroneously relied on the *res judicata* rule to exclude from the scope of the appeal, and its review, items (a) and (b), this error does not have an impact on the outcome of the present case because the present complaint is, in any event, unfounded on the merits for the reasons explained in the following considerations.

12. It is well settled in the Tribunal's case law that "an allegation of harassment must be borne out by specific facts, the burden of proof being on the person who pleads it, and that an accumulation of events over time may be cited to support an allegation of harassment" (see, for example, Judgment 2100, consideration 13). The Tribunal notes that Judgment 4459, which set aside the decisions related to the complainant's rotation, was grounded on a breach of the duty of care. According to considerations 9 and 10 of that judgment, IOM had, over the years, taken into consideration the complainant's family circumstances, especially regarding her daughter's disability, and had accommodated her by exempting her from rotation; however, it had failed in its duty of care by not approving her request to temporarily defer her reassignment until suitable facilities for her daughter's educational needs were secured. In Judgment 4460, given the potential effect of Judgment 4459 on two out of four charges proffered against the complainant, the Tribunal found that, in the circumstances, it could not be "affirmatively satisfied that the decision to discharge the complainant [...] would have been the same". Hence, in Judgment 4460 it set aside the decision to discharge the complainant and remitted the matter to IOM in order for the Director General to make a new decision on the complainant's appeal against the decision to discharge her. Administrative decisions cannot be characterized harassment solely because they are unlawful (see Judgments 4241, consideration 9, and 2861, consideration 37). In this case, the complainant has not provided persuasive evidence that the decisions set aside by the Tribunal in Judgments 4459 and 4460, even viewed in the context of the

series of incidents alleged by the complainant, constituted institutional harassment (see Judgment 4111, consideration 7).

13. More importantly, the JARB carefully and objectively weighed the evidence and provided a point-by-point analysis in making its factual findings on the merits and in reaching its conclusion to uphold OIG's closure of the case following its preliminary assessment and without investigation. In particular, it found that the documentation provided by the complainant did not directly support her allegations of marginalization and isolation; that some examples of alleged marginalization lacked specificity and sufficient supporting documentation; that the events referenced by the complainant as "belittling" were examples of disagreements in email exchanges regarding funding issues and visa applications; that the Director General's decisions to reduce resource mobilization efforts and to suspend the project review and the endorsement of new projects, in keeping with the mission's capacity to continue operations, were legitimate and fully within the Director General's authority, and did not constitute harassment; that the evidence did not support the allegations of discrimination and impeding the complainant's career development; and that there was no evidence to support the complainant's submission that IOM had ignored or downplayed harassment complaints, or that it had engaged in a pattern of delay evading to investigate her harassment complaints. While noting a delay in ECO's review of the complainant's harassment allegations and a lack of response to her inquiries on the status of the investigation, the JARB concluded that these deficiencies, although regrettable, did not constitute a pattern of harassment.

14. Moreover, in light of OIG's detailed preliminary assessment and analysis, as summarized in the Chief Investigator's 29 May 2018 response to the complainant's 27 March 2018 request for information, the Tribunal is satisfied that there was no manifest error in OIG's conclusion that there was no *prima facie* case of harassment against the complainant or in its decision to close her harassment complaint after a preliminary assessment. The Tribunal is also satisfied that there is no persuasive evidence to prove that the Director General's decision to

endorse the JARB's recommendation, based on the OIG's preliminary assessment, and to reject the complainant's appeal, was tainted by bad faith or improper motivation, or that IOM violated its duty of care towards the complainant.

15. The complainant also alleges that IOM's delay in dealing with her allegations over an extended period was tantamount to a refusal to address her harassment complaint. Considering the number of allegations made by the complainant, the lack of specificity in the harassment complaint and the voluminous documents submitted by her, the Tribunal finds that the seven-month period taken by OIG to conduct the preliminary assessment was not unreasonable. The three-and-a-half-month delay in ECO's referring the complainant's harassment complaint to OIG, due to the former Head of ECO's absence from the office, cannot constitute a pattern of harassment, either.

16. In the foregoing premises, the complainant's allegations are unfounded and the complaint must therefore be dismissed in its entirety.

#### DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 27 October 2023, Mr Michael F. Moore, Vice-President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, Mirka Dreger, Registrar.

Delivered on 31 January 2024 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

HONGYU SHEN

MIRKA DREGER