

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

**R. (No. 19)**

**v.**

**IAEA**

**138th Session**

**Judgment No. 4828**

THE ADMINISTRATIVE TRIBUNAL,

Considering the nineteenth complaint filed by Mr R. R. against the International Atomic Energy Agency (IAEA) on 27 April 2019 and corrected on 22 June 2019, the IAEA's reply of 28 October 2019, the complainant's rejoinder of 20 February 2020, the IAEA's surrejoinder of 29 May 2020, the additional documents submitted by the IAEA on 2 April 2024 at the Tribunal's request, the complainant's comments on said documents of 22 April 2024, the IAEA's observations thereon of 30 April 2024 and the complainant's final comments of 2 May 2024, the IAEA having declined to make final observations;

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 as unsubstantiated two investigations into allegations of misconduct.

By letter dated 11 August 2017, the complainant, who at the material time served with the IAEA on a fixed-term appointment, made allegations of misconduct against Mr S., his former supervisor in the Nuclear Information Section of the Department of Nuclear Energy.

Specifically, he alleged that Mr S. had made defamatory comments to the Joint Advisory Panel on Professional Staff (“P-Panel”) on the complainant’s behaviour, which had led to the non-renewal of his contract. The complainant made additional allegations of misconduct against Mr S. in a letter dated 15 August 2017 stating that his former supervisor had not taken appropriate action when he reported that he was being harassed by another official.

By letter of 17 August 2017, the complainant made allegations of misconduct against Mr C., the Deputy Director General of Nuclear Energy (DDG-NE). He alleged that the decision not to renew his fixed-term contract had been based on entirely unfounded and unsubstantiated allegations of misconduct made by Mr S. in the performance remarks section of the P-Panel, which were improperly endorsed by DDG-NE in his recommendation to the P-Panel. The complainant challenged the decision not to renew his fixed-term contract in his sixth complaint before the Tribunal, which the Tribunal dismissed as unfounded in Judgment 4346.

The complainant was informed on 24 August and 14 September 2017 that his allegations against Mr S. and Mr C. had been referred to the Office of Internal Oversight Services (OIOS) for review and that he would be informed of the outcome of that review in due course.

By two memoranda of 30 October 2017, OIOS informed the complainant that the investigations into his reports were now completed and that, as all the complainant’s allegations had been found to be unsubstantiated, OIOS had closed both investigations (IF 17-0028 on his allegations against Mr C. and IF 17-0029 on his allegations against Mr S.).

By two emails dated 31 October 2017, the complainant enquired about the outcome of the investigations and requested that OIOS “produce all evidence collected, on which the decision to close [IF 17-0028 and IF 17-0029] was drawn”. On 2 November 2017, OIOS provided the complainant with detailed summaries concerning the outcomes of investigations IF 17-0028 and IF 17-0029. OIOS further explained that, in accordance with the OIOS Procedures for the Investigation of Staff Members (AM.III/4), “OIOS does not provide

complainants with evidence adduced by OIOS as part of the investigative process”.

On 29 December 2017, the complainant requested that the Director General review the decisions of 30 October 2017 to close as unsubstantiated the two investigations and asked to be provided with the two investigation reports.

By decision of 28 March 2018, the Director General rejected the complainant’s request for review and also rejected his request to be provided with the two investigation reports, on the ground that he was not in a position to compel OIOS to provide such information given its operational independence.

On 27 April 2018, the complainant lodged an appeal before the Joint Appeals Board (JAB) against the decision of 28 March 2018.

In its report of 13 September 2018, the JAB recommended that the Director General maintain his decision and dismiss the appeal. The JAB examined the two investigation reports produced by OIOS, which were not shared with the complainant, on the ground that no rule provided for allowing the staff member in the complainant’s position to access those reports.

By decision of 14 January 2019, the Director General followed the JAB’s recommendation to dismiss the complainant’s appeal. That is the impugned decision.

The complainant asks the Tribunal to order the full and unredacted disclosure of the two investigation reports, to set aside the impugned decision and to order that the investigations be carried out anew. He claims material damages, moral damages, consequential damages, exemplary damages, as well as costs, with interest on all amounts awarded. He submits that the IAEA has committed an abuse of process and asks that this be taken into account in an award of punitive damages.

The IAEA asks the Tribunal to dismiss the complaint as partly irreceivable and entirely without merit. It denies his plea of abuse of process.

## CONSIDERATIONS

1. The complainant impugns the Director General's final decision of 14 January 2019 to endorse the Joint Appeals Board (JAB) recommendation of 13 September 2018 and to dismiss the complainant's appeal of 27 April 2018.

2. On 24 November 2023, the complainant submitted a request for the recusal of two of the judges sitting on the panel this session deciding the present case. His grounds for the recusal are that the judges' recurring participation in a succession of cases involving him and the uniformity of their orders dismissing all of his complaints raise substantial concerns about the right to a fair trial and their impartiality. Additionally, the complainant requests that the pending complaints be heard by a panel of judges without prior involvement in any of his cases. The complainant has sought the recusal of the two judges on the basis of the same argument in previous cases, and such applications were rejected by the Tribunal (see Judgments 4703, consideration 10, 4701, consideration 2, and 4520, consideration 1). The request is rejected on the same basis, as nothing additional is raised in these proceedings which is material.

3. The complainant bases his complaint on the following grounds:

- (a) the investigator who conducted investigations IF 17-0028 and IF 17-0029 had no legal authority;
- (b) there were omissions and mistakes of fact and law in the investigations and in the JAB report, ultimately tainting the impugned decision with manifest unreasonableness and error of law;
- (c) there was undue delay in the internal appeal process, by which the complainant's dignity and right to a fair appeal were injured;
- (d) the impugned decision results from a series of acts which, taken as a whole, amounts to institutional harassment.

4. Concerning the complainant's fourth ground of challenge, the IAEA submits that the complaint is irreceivable in part because the complainant's allegations of institutional harassment were not raised in his request for review nor in his appeal to the JAB, and thus were outside the scope of the impugned decision. This is correct. The Tribunal's case law has it that a complainant may enlarge on the arguments presented before internal appeal bodies, but may not submit new claims to the Tribunal (see, for example, Judgments 4703, consideration 3, 4522, consideration 3, and 4467, consideration 5). The complainant's claim of institutional harassment is a new claim, not a new plea that merely provides an additional reason to support the claim. The complainant's claim of institutional harassment was not raised in his request for review of 29 December 2017, nor in his appeal of 27 April 2018 to the JAB, and is therefore irreceivable.

5. As regards the complainant's first ground, the Tribunal notes that the arguments presented are remarkably similar to those advanced in his seventeenth complaint, which were adjudicated by Judgment 4755. The Tribunal found that the investigator who conducted the investigations at issue in that case had legal authority to conduct them (see Judgment 4755, consideration 5). For the same reasons, the same is true in this case. The complainant's first ground of challenge is unfounded.

6. In the second ground, the complainant contends that (a) the Office of Internal Oversight Services (OIOS)'s decision not to investigate matters "managerial in nature" in IF 17-0028 and IF 17-0029 was an arbitrary omission, as no principle exists that managerial matters are not to be investigated; (b) the finding in IF-0029 that Mr S. had no obligation to act upon his report of alleged harassment constituted a mistake of law; and (c) he was never offered any opportunity to review evidence and comment on the testimony of the witnesses. In his final comments of 2 May 2024, the complainant emphasizes that he is not a mere reporter of generic misconduct but is a protected person alleging harassment by his superiors.

7. The complainant's second ground is unfounded. First, as regards the alleged failure to investigate "managerial" matters, the Tribunal observes that the complainant's assertions do not faithfully characterize the events as they took place. In this connection, as explained in the summary of OIOS's conclusions of 2 November 2017, OIOS did not establish that Mr C. had "been derelict in his duties and responsibilities of [second] level supervisor". Rather, Mr C. was only recorded as the complainant's secondary supervisor in light of the complainant's specific workplace situation, as the complainant undertook a temporary assignment following his allegations of workplace harassment against his then direct supervisor Mr A. in his initial area of assignment, and his new team, while operational, was not formally established yet as a group within the Agency and thus had not yet an official Section Head. In view of this, OIOS found the issue managerial in nature and no evidence of a dereliction of duty by Mr C. Moreover, at no point did OIOS recognise Mr C. as having taken a decision "under fettered discretion" acting under the "direct instructions" from the Division of Human Resources (MTHR). Instead, it found that, with respect to the complainant's requests to launch a formal Performance Review Report resolution process as well as the complainant's request for the documentary evidence upon which Mr C. made his comments to the Joint Advisory Professional Panel on Professional Staff (P-Panel), Mr C. had appropriately referred such requests to MTHR and sought its guidance. Second, as regards the allegation of mistake of law, the Tribunal observes no flaw in the OIOS' conclusion that the complaint of lack of appropriate action on the part of Mr S. was not substantiated. In assessing that the 3 September 2015 email to the complainant from his then direct supervisor Mr A. did not constitute harassment, there was indeed no obligation for Mr S. to report the complainant's email of 17 September 2015 to a higher-ranking official, since there had been no breach of the relevant rules. Third, on the alleged failure to allow the complainant to review evidence and comment on the witnesses' testimony, the Tribunal considered essentially the same argument in the complainant's fourteenth and seventeenth complaints (see Judgments 4703, consideration 9, and 4755, consideration 6), and dismissed it. The Tribunal further finds that

the complainant's portrayal of himself as "a protected person alleging harassment on the part of his superiors" does not faithfully reflect the nature of the allegation he lodged. The evidence in the file shows that the complainant alleged that both Mr S. and Mr C.'s misconduct influenced the IAEA's decision not to renew his appointment beyond its expiry date of 31 May 2018. That decision was the subject of the complainant's sixth complaint, which the Tribunal dismissed as unfounded in Judgment 4346, delivered in public on 7 December 2020. He additionally alleged that Mr S. failed to take appropriate action regarding his report of being harassed by another official, Mr A. Thus, on the substance, his allegation against both Mr S. and Mr C. was their failure to perform their supervisory role. The complainant's role was that of a reporter of alleged misconduct, not that of a complainant of harassment. Like in his fourteenth and seventeenth complaints mentioned above, the complainant is a mere reporter of misconduct. Therefore, he was not entitled to review the evidence. Nor is he entitled to be provided with a full and unredacted version of the final investigation reports (subject to the Tribunal's observations which follow about the use that was made of those reports by the JAB). Paragraph 32 of the OIOS Procedures for the Investigation of Staff Members (AM.III/4), provided that "[w]hen the report has been forwarded to [the Director, MTHR] [...] [t]he person who made the report, where identified, will also be informed that the OIOS investigation into their report is concluded". The complainant was not only informed by two memoranda of 30 October 2017 that the OIOS' two investigations into his reports were closed as all his allegations had been found to be unsubstantiated, but he also was provided with detailed summaries of investigations IF 17-0028 and IF 17-0029 on 2 November 2017.

The Tribunal recalls that it is not its role to reweigh the evidence before an investigative body which, as the primary trier of fact, has had the benefit of actually seeing and hearing many of the persons involved, and of assessing the reliability of what they have said. For that reason, the findings of such a body are entitled to considerable deference. So that where an investigative body has heard evidence and made findings of fact based on its appreciation of that evidence and the correct

application of the relevant rules and case law, the Tribunal will only interfere in the case of manifest error (see, for example, Judgments 4207, consideration 10, and 3593, consideration 12). The complainant does not provide any persuasive evidence to show that OIOS made a manifest error in fact or in law that would vitiate the conclusions reached in its final investigation reports. The Tribunal is further satisfied that OIOS did not violate any applicable procedures in its investigation.

Nevertheless, it must be noted that, as evidenced in its report on the complainant's appeal, the JAB not only was provided with, but also reviewed, the two OIOS' investigation reports. The JAB, as a matter of fact, relied on the two investigation reports for its main findings and recommendation. In this regard, the Tribunal has consistently stated that a staff member must be provided with all the materials an adjudicating body uses in an internal appeal and that the failure to do so constitutes a breach of due process (see Judgments 4412, consideration 14, 3413, consideration 11, and 3347, considerations 19, 20 and 21). However, no moral injury has been established for this procedural flaw and, accordingly, no relief is warranted.

8. In the third ground, the complainant alleges excessive delay in the internal proceedings. The Tribunal considers that the time taken to respond to the complainant's request for review was not inordinate, given the complexity of the issues and the multiple overlapping proceedings raised by the complainant. Furthermore, the complainant fails to establish any moral injury he suffered nor a causal link with the alleged delay. Accordingly, his claim for compensation due to excessive delay in the internal appeal process is dismissed.

9. Additionally, the complainant contends that the fact that a number of the annexes to the IAEA's reply consist of its submissions in other complaints filed by the complainant amounts to an abuse of process. The Tribunal does not accept this is so.



10. The complainant's request for a full and unredacted copy of two investigation reports is rejected, as stated in consideration 7 above. In any event, he was provided with a redacted copy of the two investigation reports during the Tribunal's proceedings.

11. It follows from the foregoing that the present complaint must be dismissed.

#### DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 16 May 2024, 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 8 July 2024 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

HONGYU SHEN

MIRKA DREGER