

**A.**

**v.**

**International Federation of Red Cross  
and Red Crescent Societies**

**138th Session**

**Judgment No. 4833**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr K. M. A. against the International Federation of Red Cross and Red Crescent Societies (“the Federation”) on 15 May 2021, the Federation’s reply of 21 December 2021, the complainant’s rejoinder of 2 February 2022 and the Federation’s surrejoinder of 4 May 2022;

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 contests the decision setting aside the disciplinary measure that had been imposed on him due to a procedural flaw, reopening the investigation by providing him with all the evidence gathered as part of the investigation and allowing him to comment on it, and declining to award him moral damages.

The complainant joined the Federation in 2007 and held various positions between 2007 and 2017. On 1 April 2017, he started a new position as Regional Disaster Management Delegate in the “Disaster Crisis Prevention, Response & Recovery” (DCPRR) unit of the Federation’s Africa Regional Office based in Nairobi, Kenya, at grade D-2.

On 29 July 2019, the complainant received a warning letter for breaches of the Code of Conduct and Anti-Harassment Guidelines, which was placed in his personnel file as constituting a disciplinary measure. According to the warning letter, a preliminary assessment concluded that the complainant had failed to accept a female subordinate's repeated requests to end their personal relationship and had continued to make unwanted contact attempts of a personal or intimate nature, which appeared to have made the female subordinate in question uncomfortable and to have created an offensive working environment.

On 23 August 2019, the Federation's Human Resources Department (HRD) received a report from another female staff member, who was on loan to the Federation's office in Nairobi, concerning alleged inappropriate behaviour and unwanted advances made towards her by the complainant. Following a preliminary assessment which found that there was a legitimate concern of possible misconduct, on 17 September 2019, the complainant was notified of the allegations made against him and of the opening of an investigation. An external investigator was appointed on 20 November 2019. On 2 December 2019, the complainant was interviewed by the external investigator in presence of Ms B., a staff member working in the Federation's Africa Regional Office.

The external investigator finalized his investigation report on 16 January 2020, which concluded that the allegations of sexual harassment were substantiated. According to the investigation report, apart from the complainant and the female staff member who had reported the allegations on 23 August 2019, three witnesses were interviewed as part of the investigation, as well as two managers, the Acting Regional Director and the Deputy Regional Director for Africa. The investigation report mentioned that the investigation also involved the review of documentary evidence, including but not limited to the 23 August 2019 written report and social media conversations, as well as a forensic search of the complainant's phone and laptop. Screenshots of WhatsApp messages between the complainant and the female staff member who had reported the allegations constituted the sole Annex to the investigation report.

On 21 January 2020, the Director, HRD, issued to the complainant a charges letter for alleged breaches of the Code of Conduct and Anti-Harassment Guidelines. The charges letter was accompanied by a copy of the investigation report. The complainant was given 15 days to respond and provide evidence.

On 7 February 2020, the complainant's counsel wrote to the Director, HRD, asking for "all evidence and documents collected by the investigator and related to the investigation". On 19 February 2020, the Director, HRD, replied that the investigation report "contain[ed] all evidence upon which [he] relied to base [his] decision to charge [the complainant]".

On 4 March 2020, the complainant provided his comments on the charges letter.

By letter of 3 April 2020, the Director, HRD, notified the complainant of the non-extension of his contract beyond 30 September 2020, "due to lack of funding". The complainant left the service of the Federation on 30 September 2020.

On 1 May 2020, the complainant was served with a final letter of warning for breaches of the Code of Conduct and Anti-Harassment Guidelines, involving his conduct towards the female staff member who had reported the allegations on 23 August 2019, which, according to the letter, met the definition of sexual harassment. The final letter of warning constituted a disciplinary measure and was also placed in the complainant's personnel file.

On 29 July 2020, the complainant lodged an appeal to the Federation's Appeals Commission, directed against the 1 May 2020 final letter of warning. Among the issues raised in his appeal, the complainant contended that the involvement of Ms B. compromised the integrity of the investigation. He further argued that the Federation's decision not to provide him with all the evidence gathered as part of the investigation prevented him from properly defending himself.

On 21 December 2020, the Appeals Commission submitted its report and recommendations to the Secretary General. The Commission determined that the investigation did not lack independence or

impartiality, and that it had not been shown that the investigative findings were false, misleading or biased. It however concluded that the Federation had “violated its duty of care towards [the complainant] by not following due process in refusing to provide him with the evidentiary materials underlying the investigative findings” and that “the failure to provide [the complainant] with material evidence during the disciplinary process was a procedural flaw that breached the Federation’s duty to provide due process and to act in good faith”. The Commission further noted that these findings “should not be construed as a vindication of the [complainant] or a conclusion that he did not commit misconduct, given the evidentiary record reviewed by the Panel”. It recommended quashing the 1 May 2020 disciplinary measure and removing it from the complainant’s personnel file, as well as an award of 20,000 Swiss francs in moral damages and 5,000 Swiss francs in legal costs.

By letter of 15 February 2021, the Secretary General notified the complainant of his decision regarding his appeal. In his letter, the Secretary General accepted the finding of the Appeals Commission that the non-disclosure of certain materials during the disciplinary process had impaired the complainant’s ability to defend himself. The Secretary General wrote that, “[i]n order to rectify this procedural flaw”, he had decided to disclose the 23 August 2019 written report and summaries of all interviews carried out as part of the investigation and to afford the complainant an opportunity to respond to these materials in a second interview. The Secretary General also informed the complainant that, should the allegations of sexual harassment be substantiated following these additional investigative steps, a new disciplinary process would be launched, the outcome of which would supersede the previous one. Pending the conclusion of the new process, the 1 May 2020 final letter of warning would be immediately removed from the complainant’s personnel file and replaced with the 15 February 2021 letter. The Secretary General further indicated that he had agreed to award the complainant 5,000 Swiss francs in legal costs, in line with the Appeals Commission’s recommendation, but that he had decided not to follow the proposal of the Commission with regard to the award of moral damages. The Secretary General explained that he believed that the

moral injury suffered by the complainant would be “adequately remedied through correction of the procedural flaw” identified by the Appeals Commission, including by “[p]roviding [him] with all material evidence considered by the investigator and providing [him] with another opportunity to respond to the allegations, both to the investigator and through a subsequent disciplinary process if warranted”. That is the impugned decision.

The complainant was eventually provided with the additional evidence referred to in the Secretary General’s 15 February 2021 letter and a revised investigation report was issued. A new charges letter was sent to the complainant on 22 June 2021. By letter of 30 July 2021, the Federation notified the complainant of its final decision on the matter. The complainant was informed that the Federation had found that he had committed sexual harassment, in violation of its Code of Conduct and Anti-Harassment Guidelines, and that the Secretary General would have issued a final letter of warning as the appropriate disciplinary measure had the complainant remained employed by the Federation. The complainant was further advised that the letter of 30 July 2021 would be placed in his personnel file and that relevant information would be shared in line with the Federation’s commitment to the Inter-Agency Misconduct Disclosure Scheme.

The complainant asks the Tribunal to set aside the impugned decision to the extent that the Secretary General decided to “conduct another investigation and potential disciplinary process” and “refused to accept the Appeals [Commission]’s recommendation to award moral damages”, as well as “any subsequent adverse administrative actions taken by the Federation because of the [i]mpugned [d]ecision”. He asks to be awarded 50,000 Swiss francs in moral damages as well as 15,000 Swiss francs in legal costs. Finally, he seeks the payment of interest.

The Federation asks the Tribunal to dismiss the complaint in its entirety and submits that some aspects of the complaint are irreceivable.

## CONSIDERATIONS

1. The complainant states that he submits this complaint against the Secretary General's decision of 15 February 2021, in which the Secretary General informed him that he would follow, in part, the recommendations the Appeals Commission made in its report of 21 December 2020 concerning the complainant's internal appeal against the disciplinary measure imposed on him (the complainant) pursuant to Staff Regulation 9.7.3(b). The decision to impose the disciplinary measure was made following the investigation of the 23 August 2019 report of an allegation of sexual harassment made against him (the complainant). However, on his internal appeal against that measure, the Appeals Commission recommended that the measure be set aside because the disciplinary process was procedurally flawed. The flaw it identified is revealed in the facts. The Commission also recommended that the disciplinary measure be removed from the complainant's personnel file, and that he be awarded moral damages and legal costs. In the letter of 15 February 2021, which the complainant impugns, the Secretary General informed him that he had accepted the Appeals Commission's recommendations, however deciding not to award him moral damages since he "believe[d] that the moral injury [...] will be adequately remedied through correction of the procedural flaw".

2. The complainant challenges the 15 February 2021 letter on various grounds, which the Federation opposes. The Federation notes that the complainant has filed internal appeals against other decisions the Secretary General made, including an appeal against the final decision of 30 July 2021 on the reopened investigation into the same harassment complaint reported on 23 August 2019. The Federation submits, in effect, that any complaint filed in the Tribunal before the Secretary General made the final decision would be irreceivable by virtue of Article VII, paragraph 1, of the Tribunal's Statute. Thereby, the Federation raised receivability as a threshold issue in relation to the present complaint, albeit that it then went on to explain why various issues raised by the complainant are beyond the scope of this complaint.

3. The Secretary General accepted all relief the Appeals Commission recommended the complainant be awarded, except moral damages. Thus, this complaint raises a cause of action only in relation to that issue. In this respect, the Secretary General was entitled to exercise his discretionary power to refuse to accept the recommendation to award moral damages. As he explained, the alleged moral injury would be “adequately remedied through correction of the procedural flaw”. His decision in this respect was not unlawful. Accordingly, there is no basis for the Tribunal to award moral damages.

4. In the foregoing premises, the complaint will be dismissed as unfounded.

#### DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 9 May 2024, Mr Michael F. Moore, Vice-President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Rosanna De Nictolis, 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

ROSANNA DE NICTOLIS

MIRKA DREGER