

The Administrative Tribunal,

Considering the complaint filed by Miss C. P. against the World Health Organization (WHO) on 10 June 2002, the WHO's reply of 4 October, the complainant's rejoinder of 5 November 2002, and the Organization's surrejoinder of 6 March 2003;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant is a French national born in 1945. In 2000 she filed an internal appeal with the Headquarters Board of Appeal in which, among other things, she made allegations of harassment by her first and second-level supervisors during the period from late-1996 to September 1998. On this particular issue the Board considered that further investigation was warranted and recommended in its report of 23 August 2000 that an inquiry be conducted. In a letter of 23 October 2000 the Director-General informed the complainant that she accepted this recommendation and was requesting the Chairperson of the Working Group on Harassment to make arrangements for an examination of the complainant's allegations.

On 23 March 2001 Cluster Note 2001/9 informed all staff of the Policy on Harassment, which included establishing a grievance panel. Subsequently, Cluster Note 2001/13 of 26 April 2001 informed staff of the establishment of the Grievance Panel and the formal process for investigating complaints of harassment. It was that body which carried out the investigation of the complainant's allegations against her first and second-level supervisors as well as against the Director of Human Resources Services.

All relevant documents had been submitted to the Grievance Panel by mid-September 2001 and the complainant was heard by the Panel on 6 November 2001. Having received no further information after that time, she wrote to the Chairperson of the Panel on 11 March 2002 to enquire about the status of her case. On 13 March 2002 the Director-General wrote to the complainant, enclosing a copy of the Panel's report dated 17 December 2001. The Director-General informed the complainant that, having reviewed the Panel's report, she agreed with its findings that there had been friction between the complainant and her supervisors during the period in question and that more effective steps could have been taken by all concerned to improve the working environment. She added that, having taken all elements into account, she was satisfied that the facts resulting from the investigation carried out by the Panel did not substantiate the allegation of harassment. That is the impugned decision.

B. The complainant asserts that the Director-General's decision was flawed because the Grievance Panel had made no clear recommendation concerning her case. She contends that the Panel's report contained erroneous and contradictory statements. She submits that there were recommendations made by the Panel concerning general administrative and managerial issues, but none of these recommendations related specifically to her. Furthermore, there were "many flaws in the due process": deadlines were not respected and there was "disregard of the normally accepted legal processes" since witnesses directly involved in the case refused to be interviewed by the Panel. She contends that she had to "stand trial" whereas other concerned parties were able to declare that they did not wish to be interviewed.

She requests the Tribunal to quash the Director-General's decision on the basis that the Panel did not make any clear recommendation that concerned her personally and it put forward inaccurate or unsubstantiated facts. She seeks a letter of apology for the "harassment process" to which she was subjected.

C. In its reply the WHO points out that the complainant is not pursuing her allegations of harassment and that she is only objecting to the grievance process leading to the Director-General's decision of 13 March 2002. It asserts that her allegations were investigated in accordance with the procedures set out in Cluster Note 2001/13 of 26 April 2001. It submits that no apology is owed for the manner in which her allegations were investigated: the proper procedures were followed and the Grievance Panel's investigation found no evidence of harassment. For that reason, the Panel made no recommendation which directly concerned the complainant. It did, however, uncover "serious shortcomings" in the human resources management of her unit, and thus made recommendations aimed at preventing these shortcomings in the future.

Concerning her comments that she felt that she was the one who had to stand trial, the Organization submits that the Tribunal has consistently held that whenever an allegation of harassment is made, the burden of proof lies with the person so pleading. It contends that the report does not contain erroneous or contradictory statements; the Panel members simply reached different conclusions, having interpreted some facts differently from the complainant. However, the Panel made every effort to put the complainant at ease.

The complainant is mistaken in alleging that the Panel failed to comply with the deadline set out in Cluster Note 2001/13 which states that the Panel's report should "normally" be sent to the Director-General within 60 days of receiving the alleged harasser's written reply. The word "normally" permits the Panel to take more than 60 days if it needs additional time to ensure that a complaint is thoroughly investigated. That was the case here. The WHO denies that any procedural error was committed by the Panel's decision not to interview certain individuals. The relevant provision in the Cluster Note says what should "normally" happen. When the individuals in question expressed a wish not to be interviewed directly, the Panel agreed that it had ample written evidence before it to evaluate the allegations.

D. In her rejoinder the complainant states that she considers the Organization's statements regarding the relevant events and the Grievance Panel's inquiry to be incomplete and misleading. Not only was it several months before the Panel began its inquiry, but once it did begin, the investigation dragged on for months afterwards. She denies that the Panel made every effort to put her at ease and points out that one of the Panel members works in the same cluster as she. She says she did not object because she did not want to cause any more delays in the investigation. Furthermore, she disagrees that concerted efforts had been made by the Panel: it allowed one individual to refuse to be interviewed because she was no longer a staff member and it also allowed a staff member to refuse to be interviewed. By doing so the Panel acted in a prejudicial manner against her.

She is "flabbergasted" that the WHO is trying to hide behind the word "normally" to explain what she contends were "endless delays pertaining to the process".

E. In its surrejoinder the Organization recalls that the complaint "lies solely against the grievance process" and that the complainant is not pursuing a claim of harassment against any former or serving official. It maintains that her harassment complaint was investigated in accordance with the procedures set out in Cluster Note 2001/13. During the 83 days from the time the Panel received the last written submissions to the date it submitted its report to the Director-General, it had met 12 times and reviewed lengthy written submissions. The WHO admits that there was a delay before the Panel began to investigate the complainant's case, but this was to allow for an investigation of her allegations within the framework of an established harassment policy and investigative procedure, which had taken some time to put in place. Once the Panel members had been selected they underwent training to assure that harassment investigations are properly carried out. The complainant's case was among the first to be considered by a Grievance Panel.

If the complainant felt that having a Panel member from her same cluster constituted a conflict of interest, then she should have brought it up before the Panel investigated her case. In the WHO's view, she is now making an after-the-fact attempt to undermine the Panel's work.

Cluster Note 2001/13, which sets out the grievance process, does not require the Panel to interview individuals who have been accused of harassment. In this particular investigation it felt that the individual who no longer worked for the WHO had submitted ample evidence in the form of a written reply to the complainant's allegations and she "remained available" for any follow-up questions. As for the staff member who refused to be interviewed, the Panel felt that his written statement was sufficient, as he was far from the focus of her allegations.

## CONSIDERATIONS

1. The complainant has been employed by the WHO since March 1978. In 1998 she became eligible for a two-step salary increase subject to completion of 20 years' satisfactory service. The increase was withheld as there was delay in finalising her appraisal reports for the preceding two years. Eventually, an appraisal report was placed on her file in a manner with which she disagreed. That action was confirmed by the Director of Human Resources Services (HRS) in December 1999. She subsequently appealed against his decision to the Headquarters Board of Appeal and, in the course of that appeal, complained of harassment and mobbing from the latter part of 1996 until September 1998.
2. The Board concluded that there was "clear evidence of dysfunctional management" in the Classification Administration (CSA) Unit in which the complainant was employed until November 1998. However, the Board stated that it had neither the mandate nor the resources to determine whether the dysfunctional management "had deteriorated into harassment and mobbing". Accordingly, it recommended that there be an immediate inquiry into the management of the CSA Unit during the period concerned and that, if that inquiry indicated that there was mismanagement and/or harassment, appropriate action "be taken to apportion blame, to compensate those staff members involved and to protect them from any further adverse effects on their careers".
3. Instead of establishing a general inquiry into the management of the CSA Unit, as recommended by the Board, the Director-General requested the Chairperson of the recently established Working Group on Harassment to make arrangements for an examination of the complainant's allegations of harassment. This decision was communicated to the complainant on 23 October 2000. Subsequently, a Grievance Panel was established to investigate allegations of harassment and the matter was then referred to that Panel. On 13 June 2001 the Chairperson of the Panel wrote to the complainant informing her of the procedures for investigation and requesting her to submit a formal complaint.
4. On 2 July 2001 the complainant submitted a formal complaint to the Panel, alleging harassment against three persons: her direct supervisor, her second-level supervisor, and the Director of Human Resources. By then, her two supervisors were no longer employed by the WHO.
5. The Panel conducted its investigation and concluded, on 17 December 2001, that "there was evidence of serious shortcomings in the human resources management of the CSA Unit". It deplored that "an already difficult situation had been allowed to escalate into a conflictual working environment by supervisors and senior managers". However, it also concluded that "no clear evidence of harassment existed".
6. The Director-General informed the complainant of the Panel's conclusions on 13 March 2002 and, at the same time, informed her that as "the facts resulting from [its] investigation [did] not substantiate the complaint of harassment, [...] the case should be closed". It is from that decision that the complainant brings these proceedings. The receivability of her complaint is not challenged.

### *Nature of the complaint*

7. The complainant contends, in her complaint to the Tribunal, that the Panel's investigation and conclusions are flawed by erroneous and contradictory statements, procedural defects and by its failure to make specific recommendations relating to her. As the Director-General's decision was based on the Panel's recommendations, it is contended that it is similarly flawed and should be set aside. Additionally, the complainant seeks a formal apology for "the harassment process she was subjected to".

### *Relevant provisions with respect to the powers and procedures of the Grievance Panel*

8. Before turning to the complainant's specific contentions, it is convenient to note the definition of "harassment" contained in Cluster Note 2001/9 and the formal processes which, by Cluster Note 2001/13, the Grievance Panel is required to observe.
9. By paragraph 4 of Cluster Note 2001/9, "harassment" is defined as:

"any behaviour by a staff member that is directed at and is offensive to others, which that person knows or should

reasonably know, would be offensive, and which interferes with work or creates an intimidating, hostile or offensive work environment. Harassment may include conduct, comment or display related to race, religion, colour, creed, ethnic origin, physical attributes, age, gender, or sexual orientation. It may involve a group or team and may occur among and between all levels of employees. It can take many different forms, including sexual harassment. The most common origin of harassment is unresolved conflict in the workplace; it is often prolonged and malicious."

It is provided in paragraph 6 of that note that "[r]easonable actions by supervisors intended to encourage satisfactory levels of performance should not be considered as acts of harassment". Paragraph 7 provides:

"Supervisors sometimes have to take difficult decisions, e.g. moving staff or allocating new work assignments. Clearly these decisions do not in themselves constitute harassment. However, when the duties assigned are patently and deliberately unrealistic, with the aim of undermining self-esteem and confidence, such actions may be construed as harassment."

10. Cluster Note 2001/13 sets out the procedure that the Grievance Panel is required to observe when a formal complaint of harassment has been made. A copy of the complaint is to be forwarded to the alleged harasser, who will have 30 days "to submit a written response, along with any additional information considered relevant", unless an extension is requested and granted by the Chairperson. Upon receipt of that response or upon the expiration of the time limit, the Panel is to "promptly conduct an investigation".

Paragraph 2.3 of that note provides that the investigation "will normally include separate interviews with the complainant, the alleged harasser, any alleged witnesses and any others who may be able to provide relevant information". That paragraph also empowers the Panel to "call for documentation, request information to be presented either orally or in writing, and [...] summon to an interview any person whom it considers necessary to ensure it has sufficient information to complete its investigation".

In accordance with paragraph 2.5, "[c]oncerted efforts [are to] be made to resolve the complaint quickly" and the Chairperson is to "send the Panel's findings and recommendations to the Director-General, normally within 60 days from receipt of the alleged harasser's written reply, or expiry of the time-limit". The Director-General is required, by paragraph 2.7, to inform the complainant and the alleged harasser promptly of the decision which he or she has taken.

11. Two other matters should be noted with respect to the procedures established by Cluster Note 2001/13. The first is that paragraph 2.8 allows procedures to "be expanded with additional administrative processes, upon decision of the Panel". The other is that under paragraph 1.4:

"The Chair of the Panel may excuse another member if the Chair determines there is an actual or perceived conflict of interest, or at the member's request. [...]"

*Complainant's contentions with respect to non-observance of procedures*

12. The complainant criticises, on three counts, the processes observed in relation to her harassment complaint. The first is that the Grievance Panel's report should have been submitted to the Director-General prior to 17 December 2001 and that the Director-General's decision should have been communicated to her prior to 13 March 2002. The second is that two of the persons - about whose conduct she complained - were not interviewed by the Panel, whereas she was interviewed and had "to substantiate her claims". The third contention raised by the complainant in her rejoinder, albeit indirectly and by way of answer to the report of the Chairperson of the Panel, is that one member of the Panel worked in the same cluster as she. She thus contends inferentially that there was an actual or perceived conflict of interest on his part.

13. The argument with respect to the time at which the Panel forwarded its report to the Director-General may be dealt with shortly. The time limits specified in Cluster Note 2001/13 are not mandatory. They are indicative only of what may be expected. Furthermore, the Panel is empowered to expand its procedures, as it did in this case by submitting the responses of the alleged harassers to the complainant and allowing her ten days in which to respond and allowing them a further ten days in which to file surrejoinders. Thus the complainant's response was sent to the alleged harassers on 12 September 2001 and the Panel held its first meeting on 26 September. The Panel's report

was submitted on 17 December, i.e. within 60 days of the completion of the expanded administrative processes upon which it decided.

14. There is nothing to suggest that the expanded processes upon which the Panel decided resulted in any procedural or other unfairness to the complainant. On the contrary, they may well have ensured a more thorough investigation of her complaint. Given that that is so, and that the times specified in Cluster Note 2001/13 are indicative only, neither the Panel's report nor the decision of the Director-General is open to attack on the basis of delay in the presentation of that report.

15. It is contended by the complainant that paragraph 3.1 of Cluster Note 2001/13 required the Director-General to communicate her decision not later than sometime in January 2002. That paragraph provides that "[t]he rules governing appeals as set out in Section 12 of the Staff Rules, including those that establish time limits for the filing of appeals, remain in force". The WHO correctly points out that those rules relate to the filing of internal appeals, not to the reaching of a decision by the Director-General with respect to a recommendation by a Grievance Panel. Even so, the delay between December 2001 and March 2002 is largely unexplained.

16. The WHO argues that the time taken by the Director-General to reach a decision in the present matter was reasonable given her wish to consider the complete file as well as the Panel's report. *Prima facie*, at least, that examination could and should have been conducted within a much shorter period, particularly in view of the serious nature of the issue raised by the complainant and the need acknowledged in Cluster Note 2001/13 for speedy resolution of harassment complaints. However, that is not to say that the Director-General's decision is flawed by reason of delay.

17. In the absence of mandatory time limits, mere delay is not a basis for attacking a decision. Moreover, the delay in the present case appears to have been in the decision-making process, not in the communication of the decision once made.

18. The second of the complainant's procedural contentions relates to the Panel's failure to interview two of the alleged harassers, relying instead on their written responses and surrejoinders. It is well established that the burden of proving harassment rests on the person who alleges it. Where a complainant establishes a *prima facie* case of harassment, fairness to the alleged harasser will ordinarily require that he or she be interviewed to enable the contrary case to be properly presented. In the present case, the Panel concluded, after interviewing the complainant, that "no clear evidence of harassment existed". In the absence of such evidence, and given that the burden of adducing lay on the complainant, there was no necessity for the Panel to interview those persons against whom harassment was alleged.

19. So far as concerns the contention, made inferentially, that there was a conflict of interest on the part of the member of the Panel who worked in the same cluster as the complainant, it is to be noted that no objection was taken to his membership of the Panel. In the absence of an objection, upon which the Chairperson can rule in accordance with paragraph 1.4 of the formal processes established by Cluster Note 2001/13, a decision should not be set aside on the ground of conflict of interest except in a case where there are reasonable grounds for concluding that there was an actual conflict of interest, not merely a perceived conflict.

20. In the present case, the complainant points to nothing which could establish a basis for a finding that there was an actual conflict of interest and, accordingly, the Director-General's decision cannot be set aside on the ground that the Panel, as constituted, included a person who worked in the same cluster as the complainant.

21. Although the Director-General's delay in reaching a decision in this matter provides cause for concern, the matters upon which the complainant relies provide no basis upon which the report of the Panel or the decision of the Director-General can be impugned. Similarly, they provide no basis for requiring an apology as sought by the complainant.

#### *Claimed factual errors*

22. Before turning to the specific contentions of the complainant relating to what are described as "erroneous" and "contradictory" statements, it is necessary to point out that the issue for the Panel was whether a mismanaged and conflictual work environment had reached the point where it could properly be characterised as harassment because, for example and in terms used in paragraph 7 of Cluster Note 2001/9, action had been taken with "the aim

of undermining self-esteem and confidence". In this context, the Panel necessarily had regard to the work environment in the CSA Unit during the relevant period and made findings, some specific and some tentative, relating to that environment.

23. The statements of the Panel which are claimed to be erroneous are:

- "The CSA Unit seemed to have had a large workload which pre-existed the period under consideration."
- "There was an indication that the working environment in CSA was unfriendly, tense and conflictual, probably reflecting the broader working environment in HRS."
- "[The complainant] appeared to be reluctant to accept changes made by her supervisor and it seemed that [the latter's] failure to resolve the antagonism led to a deteriorating working relationship."
- "[The complainant] further alleged that [the Director of Human Resources] 'never demonstrated any interest for the support staff' in HRS and never 'tried to meet (her) to listen to her situation'."

24. So far as the first of the above statements is concerned, the complainant contends that, by April 1996, the workload of the CSA Unit was at its lowest for years. Even accepting this to be so, it does not follow that there was not then a heavy workload. So far as concerns the second, third and fourth of the above statements, the complainant contends that those situations arose only upon the arrival of her direct supervisor at the CSA. Again, accepting that to be so, it does not have the consequence that the Panel's statements are erroneous. In addition, the final statement which the complainant contests is not an erroneous statement, but a repetition of her contentions relating to the Director of Human Resources.

25. The statements which the complainant contends are contradictory are statements concerning the failure of supervisors and management to address problems at the human resources level, to resolve workplace conflict and to prevent its escalation, as well as statements as to the lack of appropriate management skills on the part of her direct supervisor. These statements are said to contradict statements to the effect that the Panel could find no further elements relevant to harassment by her second-level supervisor and the Director of Human Resources and its conclusion that "no clear evidence of harassment existed".

26. There is no inconsistency in a finding of managerial incompetence and a failure to find harassment. As Cluster Note 2001/9 makes clear, something additional is necessary, for example, intention to belittle, before management practices can properly be characterised as harassment. Given that that is so, and given, also, that the complainant bore the onus of proving that she had been harassed, the Panel's factual statements provide no basis upon which its report can be challenged and, consequently, no basis upon which the Director-General's decision can be set aside.

*Failure to make recommendations  
with respect to the complainant*

27. The final matter upon which the complaint is based is the absence of any recommendation by the Panel with respect to the complainant and, also, with respect to the Director of Human Resources, although recommendations were made with respect to management and supervisory practices.

28. The Panel's power to make recommendations with respect to complaints that are not substantiated is set out in paragraph 2.5(i) of Cluster Note 2001/13 which provides in part that:

"The Panel may [...] recommend that steps be taken to protect the reputation of persons affected by the complaint, as well as the reputation and position of persons making complaints in good faith."

That power is facultative, not mandatory.

29. Given the facultative nature of the relevant power conferred upon the Panel and given also that, in large measure, the complainant was vindicated both by the Board of Appeal and by the Grievance Panel, notwithstanding that no finding was made of harassment, it is properly to be inferred that the Panel saw no reason to recommend steps to protect the reputation of the complainant. Similarly, in the absence of a finding of harassment it is to be inferred that the Panel saw no need to make recommendations with respect to the Director of Human Resources.

30. The complaint must therefore be dismissed.

## DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 9 May 2003, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Vice-President, and Mrs Mary G. Gaudron, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 16 July 2003.

Michel Gentot

James K. Hugessen

Mary G. Gaudron

Catherine Comtet