

The Administrative Tribunal,

Considering the second complaint filed by Mr H.F. against the International Atomic Energy Agency (IAEA) on 29 August 2005 and corrected on 12 September, the IAEA's reply of 15 December 2005, the complainant's rejoinder of 19 January 2006 and the Agency's surrejoinder of 14 February 2006;

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. Facts concerning the present case may be found in Judgment 2552, also delivered this day, in which the Tribunal ruled on the complainant's first complaint. The complainant, a United States national born in 1944, was appointed to the post of Head of the Arabic Translation Section of the IAEA, at grade P.5, in 1997. At the material time he was temporarily assigned to the post of Senior Arabic Analyst in the Iraq Nuclear Verification Office.

By a memorandum of 28 April 2004 concerning alleged misconduct on the part of the complainant, Ms V., Head of the In-Service Administration Unit, informed the Head of the Staff Administration Section that within the past year her Unit had had to deal with four "complaints" filed by the complainant, who had accused certain staff members of misconduct, harassment or other inappropriate behaviour. On the basis that the complainant had repeatedly abused the Agency's recourse procedures by deliberately making false allegations against his subordinates and colleagues, Ms V. recommended that the matter be reviewed in accordance with Appendix G to section 1 of part II of the IAEA's Administrative Manual, concerning the procedures to be followed in the event of reported misconduct. In her memorandum Ms V. stated that the complainant "ha[d] shown a consistent pattern of formulating his correspondence with colleagues in a rather [...] impolite manner". The complainant found this statement offensive and, by a memorandum of 6 May 2004 to the Director of the Division of Personnel, formally accused Ms V. of harassment.

On 2 July 2004 the Director of the Division of Personnel informed both the complainant and Ms V. that the Deputy Director General in charge of the Department of Management had concluded that there had been no harassment. By a letter of 4 August 2004 to the Director General the complainant sought a review of that decision. After reviewing the matter, the Director General informed the complainant by a letter of 19 August 2004 that he had decided to uphold the Deputy Director General's decision. The complainant lodged an appeal with the Joint Appeals Board on 16 September 2004. In its report of May 2005, the Board recommended that the Director General uphold his decision, noting inter alia that the use of the word "impolite" by Ms V. did not in itself constitute harassment. By a letter of 20 June 2005, which is the impugned decision, the Director General informed the complainant that he had decided to endorse the Board's recommendation.

B. The complainant submits that in the memorandum of 28 April 2004, to which he objects, Ms V. used "offensive language" to describe his attitude towards his colleagues. Relying on the IAEA's policy on "Prevention and Resolution of Harassment Related Grievances [...]", as set out in staff notice SEC/NOT/1922, he alleges that an offensive remark constitutes harassment even if said only once.

In addition, he contends that in deciding to reject his appeal the IAEA gave legitimacy to the use of offensive language and thus failed in its duty to treat him with dignity and avoid causing him undue and unnecessary injury. He claims moral damages and costs.

C. In its reply the IAEA points out that Ms V., in her capacity as Head of the In-Service Administration Unit, was asked to consider a series of internal complaints made by the complainant against other staff members. In this regard she had to evaluate whether the complainant's behaviour was what might be expected of an international civil servant, or whether it amounted to misconduct. It emphasises that she considered and summarised a large

amount of written evidence, including a report by the Office of Internal Oversight Services, before drafting the memorandum of 28 April 2004. The IAEA views the statement made by Ms V. regarding the complainant's behaviour in the aforementioned memorandum as an example of a staff member exercising her judgement in the course of her duties without bias or personal animosity. It also submits that, in the light of available evidence, Ms V.'s summary of the complainant's attitude to his colleagues was euphemistic and respected the complainant's dignity; she was also fulfilling her duty to consider the evidence frankly and objectively.

Citing the case law, the Agency points out that the complainant does not allege any malice, hostility, ill will or other improper motive on the part of Ms V. to support his allegation of harassment.

The IAEA rejects the complainant's contention that, according to its policy on "Prevention and Resolution of Harassment Related Grievances [...]", as set out in staff notice SEC/NOT/1922, an offensive remark constitutes harassment even if said only once. It submits that the said policy should be considered as a whole, and draws attention to paragraph 1 of the aforementioned staff notice, which provides that staff members shall "treat one another with courtesy and dignity". It notes that the complainant, who relies solely on paragraph 4 of the notice, has not provided a copy of the full text. It adds that it dealt with the complainant's allegation against Ms V. promptly, in good faith, and in accordance with the appropriate procedures.

The Agency asserts that its policy on harassment, though expressed in broad terms, must be subject to an implied limitation concerning unreasonable and disproportionate responses to the conduct or remarks of others. In this regard it adds that it would be difficult to think of a less offensive criticism than "impolite".

Lastly, it points out that Ms V.'s remarks concerning the complainant were not addressed to him. They were addressed to Ms V.'s supervisor, the Head of the Staff Administration Section, and the memorandum of 28 April 2004 might never have been forwarded to the complainant had the Head of the Staff Administration Section not agreed with Ms V.'s recommendation that the matter be reviewed.

D. In his rejoinder the complainant asserts that Ms V. was well aware that the memorandum of 28 April 2004 would be forwarded to him, since she recommended that the matter be reviewed in accordance with the procedures set out in Appendix G of the Administrative Manual. According to the rules stated therein, upon receipt of an allegation of misconduct on the part of a staff member, the Division of Personnel must inform the staff member concerned of the allegations and request his or her observations. In this regard the complainant alleges that the fact that Ms V. knew that her memorandum would be communicated to him betrays malice aforethought. Lastly, he submits that Ms V. did not provide concrete evidence in support of her claim that he had been impolite, and he challenges the Agency to do so.

E. In its surrejoinder the IAEA maintains its position. In addition, it submits that the complainant bears the burden of proof in respect of his allegation of harassment.

## CONSIDERATIONS

1. In a memorandum dated 28 April 2004, the Head of the In-Service Administration Unit, Ms V., acting in the course of her duties at the IAEA, wrote that:

"The attached documentation shows that for several years, [the complainant] has shown a consistent pattern of formulating his correspondence with colleagues in a rather superior and impolite manner, while on the other hand distorting statements of other staff members in order to make them appear to be attacks on himself [...]"

2. The complainant finds the use of the word "impolite" in this statement offensive. On 6 May 2004 he formally accused Ms V. of harassment:

"In view of the fact that SEC/NOT/1922 states that making offensive or abusive personal remarks, even once, is a form of harassment (paragraph 4) and that harassment will not be tolerated by the Agency (paragraph 2), I hereby formally accuse [Ms V.] of harassment."

3. On 2 July 2004 the Director of the Division of Personnel informed the complainant that the Deputy Director General in charge of the Department of Management had decided that there was no harassment. The complainant wrote to the Director General on 4 August 2004 requesting a review of the decision of the Deputy

Director General. On 19 August the Director General upheld the Deputy Director General's decision. On 16 September 2004 the complainant filed an appeal with the Joint Appeals Board against the decision of 19 August 2004.

4. On 20 June 2005 the Director General informed the complainant that:

“The Board concluded that [Ms V.'s] action was not harassment and [...] recommended that the decision of 19 August 2004 be upheld.”

The Director General added that he had decided to accept the Board's conclusion and consequently dismissed the complainant's appeal. That is the impugned decision.

5. Harassment is described in staff notice SEC/NOT/1922 as follows:

“Harassment is any conduct or comment made by a staff member or group of staff members on either a one-time or continuous basis that demeans, belittles or causes personal humiliation. It can take many different forms, including, for example: threatening comments, whether oral or written, or threatening physical behaviour; intimidation, blackmail or coercion; making deliberate insults related to a person's personal or professional competence; humiliating, degrading or making offensive or abusive personal remarks to someone; undermining or isolating people; or making it impossible for staff to do their job by, for example, withholding information.”

6. This is a very broad definition, no doubt designedly so. It requires reasonable interpretation and application to the circumstances of each particular case. It contains both subjective and objective elements: did the alleged victim actually feel humiliated, offended or intimidated by the impugned conduct, and was such conduct, viewed objectively, of a nature reasonably to humiliate, offend or intimidate? Where the impugned conduct consists of words, although truth will not always constitute a complete defence, an inquiry as to whether such words may or may not reasonably be true is obviously relevant. Likewise, an inquiry as to whether the speaker's words can reasonably be seen as a reference to the performance of duties and are not merely gratuitous comments will be germane. Personal characteristics such as gender, race and ethnicity as well as the reasonableness of the sensitivities of the alleged victim, must also be weighed in considering both questions. Similarly, any previous history of relations between the alleged victim and the alleged offender may be relevant and, while a single injurious action may by itself be enough to constitute harassment, an otherwise apparently inoffensive comment may, with repetition, become a legitimate source of grievance.

In the final analysis, the question as to whether any particular act or series of acts amounts to harassment is one of fact to be answered only after careful consideration of the above factors and an examination of all the surrounding circumstances.

7. In its report to the Director General, the Joint Appeals Board reviewed the relevant communications written by the complainant and referred to in the memorandum of 28 April 2004 mentioned above. It found them to be reasonably capable of giving offence. It noted that the complainant had on more than one occasion alleged that similar comments by fellow workers had been considered by him to be offensive. The Board concluded “that use of the word ‘impolite’ [...] in describing in the course of a single memorandum the [complainant's] conduct in a number of incidents, could not in itself be regarded as harassment”.

8. That finding is unimpeachable. It is difficult to conceive of any circumstances in which the single use of the word “impolite” could be considered to constitute harassment. They decidedly do not exist in this case. The use of that word to describe the complainant, based on the tone and content of his many written communications, was reasonable and his assertion that he finds it offensive, if true, can only be the product of hypersensitivity on the part of one whose own conduct has not been beyond reproach. The complainant was not harassed.

9. The complaint must be dismissed.

## DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 5 May 2006, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Vice-President, and Ms Mary G. Gaudron, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 12 July 2006.

Michel Gentot

James K. Hugessen

Mary G. Gaudron

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 21 July 2006.