

**107th Session**

**Judgment No. 2849**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr I. U. against the Food and Agriculture Organization of the United Nations (FAO) on 24 September 2007 and corrected on 14 January 2008, the Organization's reply dated 9 May, the complainant's rejoinder dated 16 June and the FAO's surrejoinder of 22 October 2008;

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 Nigerian national who was born in 1954. He joined the FAO Representation in Nigeria in March 1990 as a Programme Assistant at grade G-6 under a one-year fixed-term appointment. In March 1992 he was promoted to the post of Programme Assistant at grade G-7 and in January 2003 to the position of Assistant FAO Representative (Programme) at grade N-2, and his appointment was extended on a regular basis until 30 June 2005.

On 24 March 2004 the complainant was the subject of a complaint of harassment made by Ms I. who, by a letter dated 5 April 2004 to the

Director of the Human Resources Management Division, explained in detail her grievance against him. The Director asked the complainant to provide his comments on the matter. In a lengthy memorandum of 6 May to the Director the complainant denied Ms I.'s allegations and accused her as well as Mr J., the FAO Representative in Nigeria, and Mr S., the Senior Field Project Supervising Officer, of inter alia conspiring to tarnish his image and destroy his career. On 19 May he filed a complaint of harassment against Mr J. and Mr S.

An investigation and fact-finding mission was carried out in Nigeria in October 2004 and the Investigation Panel on Harassment issued two reports on 2 December 2004. One report related to Ms I.'s complaint and the other to the complainant's complaints.

Meanwhile, between May and June 2004, the Office of the Inspector-General fielded a mission to Nigeria during which it examined the "growing tensions" between the complainant, Mr J. and Mr S., which had resulted in the submission of numerous complaints and allegations to FAO Headquarters, including an allegation made by the complainant that Mr S. and another staff member were conspiring to assassinate him. In August 2004 the Office of the Inspector-General issued a report entitled "Conflictive behaviour at [FAO Representation] Nigeria" which contained its findings.

With effect from 28 January 2005 the complainant was suspended from duty with pay pending investigation. By a memorandum dated 14 February 2005 from the Assistant Director-General in charge of Administration and Finance, who was also Officer-in-Charge of the Human Resources Management Division, and the Director of the Office for Coordination of Normative, Operational and Decentralized Activities (hereinafter "the OCD") the complainant was informed that, based on the findings of the two Investigation Panel reports and the Office of the Inspector-General's report, the Organization was proposing to dismiss him for misconduct, pursuant to FAO Manual paragraph 330.2.41(a). The complainant was accused of unsatisfactory conduct which was classified under five headings: disloyalty, unsubstantiated allegations made by him against Mr S., relations with colleagues, insubordination and personal integrity. The memorandum

also emphasised the Investigation Panel's finding that the incidents of harassment to which he had subjected Ms I. were sufficient for the Administration to take disciplinary action. Pursuant to Manual paragraph 330.3.25 the complainant was given five working days to provide a reply. In a lengthy letter dated 4 March 2005 the complainant denied the charges and presented his version of the facts, and on 15 April he met the FAO Representative ad interim to discuss his reply.

By a memorandum dated 5 July 2005 from the Director of the Human Resources Management Division and the Director of the OCD, the complainant was informed that he was being dismissed for misconduct, in accordance with Manual paragraph 330.2.41(a), as of 30 June 2005. On 1 August 2005 he lodged an appeal against this decision with the Director-General, who then dismissed it. On 28 November 2005 he lodged an appeal with the Appeals Committee. In its report dated 24 January 2007 the Committee observed, inter alia, that the complainant's career progression suggested good performance and sound behaviour prior to the case. It found that some of the charges were not fully substantiated, that none of the charges could individually be considered grave enough to merit dismissal and that even the cumulative effect of the charges warranted consideration of a less severe sanction. The Director-General informed the complainant in a letter of 30 July 2007 that he had decided not to accept the recommendations of the Appeals Committee. In his view, there was sufficient evidence to substantiate all of the charges and, considered together, these charges justified the complainant's dismissal. That is the impugned decision.

B. The complainant submits that the Office of the Inspector-General's report and the Investigation Panel report dealing with Ms I.'s complaint of harassment contained "nothing but mere insinuations" and lacked professional objectivity, and that they should not have been used by the FAO as the basis for his dismissal. He contends that the authors of those reports fabricated inculpatory evidence and ignored exculpatory evidence. He provides a detailed analysis denying all the charges of misconduct which, he claims, are

unsubstantiated, and he submits a large number of documents in support of his case. He maintains and elaborates on his allegations of harassment against Mr J. and Mr S. and he questions the integrity of Ms I. In addition, he argues that he was unjustly suspended for 11 months, which allowed a rumour to be spread about his harassment of Ms I. and his impending dismissal.

He asserts that he served the FAO “meticulously” and that he does not deserve dismissal from service as the consequence of falsified allegations.

The complainant asks the Tribunal to order the Director-General to rescind his dismissal, to reinstate him with retroactive effect from 30 June 2005, to “clear [his] name of any blemish” with respect to a missing laptop computer by instituting an investigation and to provide him with a written apology in order to restore his reputation, credibility and integrity.

C. In its reply the FAO submits that the decision to dismiss the complainant was based on specific charges of misconduct which were drawn from the objective findings of fact contained in two investigation reports. It asserts that these charges were substantiated and that all the findings of misconduct taken together were considered to warrant dismissal. In its view, the complainant’s behaviour has been reprehensible in that he made serious and unfounded allegations of corruption, mismanagement and harassment against Mr J., and unsupported allegations of discrimination, corruption and conspiracy to murder against Mr S. In addition, he refused to implement instructions from Mr J., which resulted in formal warnings for unsatisfactory conduct. His lack of personal integrity was demonstrated by the admitted fact that he had staff members undertake personal work for him and by his occupation, without the prior approval of the Director-General, of rent-free housing provided by the Nigerian Government. He also attempted to undermine the reputation of the Organization. Furthermore, there is sufficient evidence that he subjected Ms I. to four identified forms of harassment, in violation of the Organization’s Policy on Prevention of Harassment. The complainant’s behaviour constituted unsatisfactory conduct

pursuant to the FAO Manual and violated the Staff Regulations. It was also incompatible with his duties as an international civil servant.

The Organization strongly disagrees with the findings and recommendations of the Appeals Committee. In its view, the Committee did not exercise its “full power of review” and based its recommendations on mistaken presumptions and considerations. Furthermore, it did not adequately explain why the sanction of dismissal was disproportionately severe in this case.

D. In his rejoinder the complainant presses his pleas and submits numerous documents which, in his view, support his position. He emphasises that the charges made against him were false and unsubstantiated.

E. In its surrejoinder the FAO maintains its arguments in full. It contends that many of the documents submitted by the complainant actually substantiate the allegations against him and regarding the harassment complaint submitted by Ms I. even reinforce its position.

## CONSIDERATIONS

1. The complainant, who was Assistant FAO Representative (Programme) at grade N-2 in Nigeria, was dismissed for misconduct on 30 June 2005.

2. The sequence of events which ultimately culminated in his dismissal commenced in early 2004, when Ms I. filed a complaint of harassment against him. The complainant, in turn, filed a harassment complaint against Mr J. and Mr S. in which he alleged, among other things, that he had been sidelined from the FAO Representation’s activities. These complaints triggered an investigation and fact-finding mission in Nigeria in October 2004, pursuant to the FAO’s Policy on Prevention of Harassment.

3. Around the same time, between May and June of 2004, the Office of the Inspector-General was pursuing a separate investigation

at the FAO Representation in Nigeria. This investigation was triggered by the growing tensions within the local management team as reflected in the receipt of numerous complaints and allegations, more than two thirds of which originated with the complainant.

4. With respect to the harassment complaint against the complainant lodged by Ms I., the Investigation Panel on Harassment concluded in its report that a number of the allegations levelled against the complainant were substantiated, including several incidents the Panel qualified as “express harassment” of Ms I. However, the allegations of sexual harassment were not upheld.

5. The Investigation Panel also observed problems going beyond those detailed by Ms I. in her complaint. Under the heading “General Impression”, it reported:

“During the representative’s mission it has become quite obvious that the [Assistant FAO Representative] has been the cause for an atmosphere of general distrust and intimidation at the FAO Representation in Nigeria. The signs supporting this impression are numberless [...]. The interviews held revealed that there are a number of other people that would have good reasons to formally complain about acts [and] incident[ts] of harassment provoked by the [Assistant FAO Representative]. However, the fact that they have not done so can either be attributed to the atmosphere of widespread intimidation that the [Assistant FAO Representative] has successfully created or as an attempt not to aggravate prevailing antagonisms any further.”

6. As to the complainant’s harassment complaints against Mr J. and Mr S., the Investigation Panel concluded that they were without merit.

7. The Office of the Inspector-General issued its report in August 2004. It concluded that of the numerous complaints received, 15 were substantiated, 10 of which had been levelled against the complainant. None of the complainant’s allegations against his colleagues could be substantiated, including his assertion that they had conspired to have him assassinated.

8. There was, however, evidence that the complainant had used official resources for personal work; that he had accepted rent-free accommodation from the Nigerian Government since 1990 without approval from the Director-General and contrary to Staff Regulation 301.1.6 governing receipt of gifts; that his relations with supervisors were dysfunctional to the point of insubordination; that his attitude towards subordinate staff was perceived as aggressive; and that he had made public criticisms of the FAO's Special Programme for Food Security as well as bold allegations of mismanagement, calling into question his loyalty to the FAO.

9. On the basis of the Investigation Panel reports and the report of the Office of the Inspector-General, the complainant was suspended with pay with effect from 28 January 2005. By memorandum of 14 February 2005 the Assistant Director-General in charge of Administration and Finance and the Director of the OCD notified the complainant of the proposal to dismiss him for misconduct. They stated that his behaviour came within the description of unsatisfactory conduct in Manual paragraphs 330.1.51 and 330.1.52 (b), (d), (h) and (i), and that it was in violation of Staff Regulations 301.1.1, 301.1.4, and 301.1.5 "which require staff members to discharge their functions and regulate their conduct with the interest of the Organization only in view; to conduct themselves in a manner befitting their status as an international civil servant; and to exercise discretion in all matters of official business". Additionally, they stated that the complainant's conduct was incompatible with his duties as an international civil servant as set out in the Standards of Conduct for the International Civil Service and that it violated in particular paragraph 20 thereof.

10. The complainant was given an opportunity to respond, which he did on 4 March 2005. In a memorandum of 5 July 2005 the Director of the Human Resources Management Division and the Director of the OCD informed the complainant of the decision to impose the disciplinary measure of dismissal for misconduct. The complainant lodged an appeal with the Director-General regarding

this decision and was subsequently informed that his appeal was dismissed on the basis that he had failed to provide any new evidence or elements that would justify setting aside the decision. On 28 November 2005 he filed an appeal with the Appeals Committee.

11. In his statement of appeal the complainant submitted that the Office of the Inspector-General's report and the Investigation Panel reports were "wishy-washy, lacking in credibility, [...] lacking in professional integrity and absolutely biased [...]", and that the staff members carrying out the investigations "fabricated what they wanted to find and discarded what they did not want to see". With respect to the report of the Office of the Inspector-General, the complainant denied the veracity of any of the conclusions, namely that he had been insubordinate, had made abusive or defamatory comments about Mr S., or that his allegations against Mr S. were unsubstantiated. With respect to the Investigation Panel reports, the complainant submitted that the allegations of harassment against him were false, and that the Panel had failed to enquire as to whether Ms I. had forged a harassment complaint against him, ostensibly written by her husband.

12. In its report of 24 January 2007 the Appeals Committee observed that the complainant's criticisms of the FAO were not fully documented. It also commented that it did not appear to be uncommon for FAO staff to benefit from rent-free accommodation in Nigeria without prior authorisation from the FAO. The Committee accepted that the complainant had made unsubstantiated allegations against Mr S. and that he had harassed Ms I.; however, given the complainant's length of service with the FAO and the fact that some of the charges were not in its view fully substantiated, it recommended a less severe disciplinary sanction than outright dismissal.

13. By letter of 30 July 2007 the Director-General informed the complainant that he had decided to reject the Appeals Committee's recommendations. He observed that the Committee's conclusions regarding specific charges of misconduct were not supported with reasoned arguments and that it had failed to identify specific evidence



and make findings based on the submissions, as would be required to overturn an administrative decision. He also stated that the findings of the report of the Office of the Inspector-General and the Investigation Panel reports were substantiated and that in the time since those reports were issued, no tangible evidence was provided to call into doubt their conclusions. The Director-General concluded:

“[...] It is considered unacceptable that a staff member in your position would not refrain from creating disruption and tension amongst colleagues, from launching tirades against specific individuals and from being disloyal towards the Organization. The Organization was not prepared to further tolerate the highly unprofessional behaviour that you displayed, as reported in both investigation reports. [...]

[...] it is my view that there is sufficient evidence to substantiate all the charges of misconduct that were laid against you [...], I confirm the Organization’s position that the instances of misconduct, taken together, justified your dismissal from service. Your appeal is accordingly denied.”

That is the decision the complainant impugns before the Tribunal.

14. The complainant’s submissions in this proceeding are substantially the same as those he advanced during the internal appeal. He reiterates his allegations of misconduct against Mr J. and Mr S., allegations which he claims were dismissed by the Office of the Inspector-General in order to make a scapegoat of him and oust him from the FAO. He also maintains that Ms I. fabricated her harassment complaint against him, and that she forged her husband’s signature on a similar complaint which was communicated and investigated by the Nigerian authorities.

The complainant submits that the charges of disloyalty and insubordination were based on rumors and manufactured stories. In particular, the statement in the Office of the Inspector-General’s report that “[t]he National Project Coordinator and the Special Assistant to the President informed us that the continued presence of the [complainant] constituted a severe threat to an economically, politically and diplomatically important project [...]” was fabricated. The complainant believes that this finding was a retaliatory measure because he had questioned the right of staff members carrying out the

investigations to come to his residence, uninvited, even though they knew that he was out of town.

The complainant also points out that many FAO staff members had benefited from rent-free accommodation without authorisation, but he was the only person charged.

He takes the position that the Appeals Committee rightly concluded that the items with which he was charged could not individually and collectively be considered grave enough to warrant dismissal.

15. The FAO replies that the Director-General was justified in not following the recommendation of the Appeals Committee urging the imposition of a lesser sanction. It argues that the recommendation was flawed in that it attached weight to the length of the complainant's satisfactory service with the FAO prior to his misconduct. The Organization contends that the length of satisfactory service is irrelevant to the specific charges of misconduct which were the subject of the disciplinary proceedings. Moreover, although the Appeals Committee stated that "some charges" of misconduct were not fully substantiated, in effect the only charge it explicitly rejected as unfounded was that of disloyalty. Lastly, the Committee overlooked the finding that the complainant's conduct had jeopardised, and would continue to jeopardise, the reputation of the FAO and its staff. In the defendant's view, this was particularly serious given the complainant's position of leadership and management in the FAO Representation in Nigeria.

The Organization submits that the combination of the findings of misconduct made by both the Office of the Inspector-General and the Investigation Panel on Harassment warranted the complainant's dismissal.

16. It is well established in the Tribunal's case law that where misconduct is denied, the onus is on the Administration to prove the misconduct beyond a reasonable doubt. Further, staff members are to be given the benefit of the doubt (see Judgment 2786, under 9).

17. Although the complainant argues otherwise, the evidence gathered by the Investigation Panel on Harassment and the Office of the Inspector-General clearly establishes misconduct beyond reasonable doubt. The complainant makes a number of allegations regarding the integrity of the members of the Investigation Panel and the Office of the Inspector-General and the honesty of the individuals interviewed during the course of the investigations. However, he has failed to adduce any evidence in support of his allegations.

18. With respect to the allegations of harassment, the Investigation Panel gathered and considered evidence from a variety of interviewees, including the complainant, before reaching the conclusion that the allegations were substantiated in part. Notably, the allegation of sexual harassment was not maintained because it could not be established “beyond a reasonable doubt”, despite some supporting evidence. In the Tribunal’s view, the investigation was conducted in a conscientious and careful manner consistent with the seriousness of the charges. Further, the finding that the charge of harassment had been proved beyond a reasonable doubt is fully supported by the evidence. Additionally, the complainant has not submitted any evidence that would undermine the findings.

19. Similarly, the Office of the Inspector-General’s report was based on direct observations of junior staff and the strategies they employed to protect themselves from the complainant, for example, locking doors and bringing home waste paper and interviews with the complainant’s superiors. Furthermore, the complainant has not submitted any evidence to support his contention that the staff members carrying out the investigation acted out of malice and fabricated the information upon which they relied nor has he submitted any evidence that would undermine the veracity of those interviewed or the findings of the investigation.

20. The question remains whether the sanction of dismissal was warranted in the circumstances. In Judgment 207 the Tribunal held that it is not its role to substitute one disciplinary sanction

for another unless the penalty imposed is clearly out of proportion with the gravity of the offence. The Tribunal further commented in Judgment 2656, under 5, that “[...] lack of proportionality is to be treated as an error of law warranting the setting aside of a disciplinary measure even though a decision in that regard is discretionary in nature [...]. In determining whether disciplinary action is disproportionate to the offence, both objective and subjective features are to be taken into account and, in the case of dismissal, the closest scrutiny is necessary (see Judgment 937).”

21. In the present case, the Director-General rejected the Appeals Committee’s recommendation that a lesser sanction be imposed. In doing so, the Director-General observed that the Committee had regard to the complainant’s career and work performance record, and that some of the charges had not been substantiated. The Director-General, however, was of the view that these considerations were irrelevant in the context of disciplinary proceedings for misconduct. He observed that “it is well established in law that unsatisfactory conduct and unsatisfactory performance are different matters with different administrative consequence”. While the Director-General’s observation is correct, it does not follow that exemplary prior service is not a relevant mitigating factor in the determination of a proper sanction.

22. It must be noted, however, that in the present case it was not a matter of a single transgression within the context of an otherwise unblemished career. The Director-General properly considered the incompatibility of the complainant’s conduct with his role as a representative of the FAO and considered the nature of the actions of misconduct in deciding that, when taken together they justified a dismissal from service. In these circumstances, the Tribunal will not interfere.

## DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 14 May 2009, Mr Seydou Ba, President of the Tribunal, Ms Mary G. Gaudron, Vice-President, and Ms Dolores M. Hansen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 8 July 2009.

Seydou Ba  
Mary G. Gaudron  
Dolores M. Hansen  
Catherine Comtet