

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

E.
v.
FAO

121st Session

Judgment No. 3593

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr A. E. against the Food and Agriculture Organization of the United Nations (FAO) on 9 January 2013 and corrected on 23 January, the FAO's reply of 8 July, the complainant's rejoinder of 17 August and the FAO's surrejoinder of 3 December 2013;

Considering the application to intervene filed by Ms S. A. D. on 7 April 2015 and the FAO's comments thereon of 21 May 2015;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

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

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

The complainant impugns the Director-General's decision to reject his complaint of harassment and retaliation.

The complainant joined the FAO on 7 September 2007 as the Chief Technical Advisor, at grade P-5, of a five-year project in Saudi Arabia. He was granted a one-year fixed-term contract subject to a one-year probationary period. The project for which he was engaged was managed by the Programme Coordination Unit (PCU), which was based in Riyadh

and which comprised a Programme Coordinator and a Programme Officer.

In June 2008 the complainant was told that because of his weak performance and spelling mistakes in his progress reports, his contract would not be renewed upon its expiry. On 19 and 25 August 2008 he wrote to the Assistant Director-General and Regional Representative for the Regional Office for the Near East and North Africa (RNE) and the Office of the Inspector General (OIG) respectively, alleging that the “FAO Office in Riyadh” had engaged in illegal acts with regard to the management of the project, such as diverting project funds, halting project activities, preventing him from using a satellite phone that had been recommended by the United Nations Department of Safety and Security (UNDSS), treating him in an degrading manner and interfering with the renewal of his contract. On 6 September 2008 the complainant’s contract expired and he separated from the FAO. Due to difficulties with his separation formalities, he and his family were temporarily left in Riyadh without exit visas. On 3 December 2008 he wrote again to the OIG to report what were, in his view, additional cases of misconduct by the “FAO Office in Riyadh”. On 4 December 2008 the OIG replied that the project in question had been audited and that the issues raised by the complainant were currently being analysed by Management.

On 9 January 2009 the complainant submitted a complaint of harassment to the Director of the Human Resources Management Division (CSH). He reiterated his earlier allegations and he also made allegations of harassment against the Programme Coordinator and the Programme Officer of the PCU, asserting that he had been removed from his position in retaliation for refusing to become involved in the corrupt practices of the “FAO Office in Riyadh”. On 2 February 2009 he wrote again to the Director of CSH, effectively requesting that the non-renewal of his contract be considered as retaliation against him. The complainant’s harassment complaint was referred to the Investigation Panel on Harassment on 2 May 2009. The Panel submitted its report to the Director of CSH on 16 October 2009. A copy of the report was subsequently provided to the complainant and the respondents with an invitation to submit their comments thereon. The complainant did so

on 23 December 2009. By a letter of 25 February 2010, the Director of CSH informed the complainant that the facts reported by the Investigation Panel did not support a finding of harassment and that, consequently, no action would be taken against the Programme Coordinator and the Programme Officer.

The complainant appealed this decision with the Director-General on 17 May 2010 but his appeal was rejected. On 6 September 2010 he appealed to the Appeals Committee, requesting that the FAO re-employ him, that it compensate him for the harassment to which it had subjected him and for the danger to which it had exposed him by preventing him from using the recommended satellite phone, and that it take appropriate measures against the Programme Coordinator and the Programme Officer. The Appeals Committee delivered its report on 18 May 2012 recommending that the complainant's allegations of retaliation be investigated by the OIG and that appropriate action be taken to remedy his situation should the OIG find that he had indeed suffered retaliation. It also recommended that "appropriate action" be taken with regard to the FAO's failure to provide him with a satellite phone. With regard to the complainant's request for compensation for the harassment he had suffered, the Committee accepted the Investigation Panel's findings and conclusions and therefore recommended that it be dismissed. As to the complainant's request that the FAO re-employ him, the Committee left this matter to the Administration's discretion, noting that it was not in a position to determine the appropriateness of such a course of action, in particular in the absence of official evaluations of the complainant's performance. By a letter of 21 August 2012, which the complainant received on 24 October 2012, the Director-General informed him of his decision to dismiss his appeal as unfounded. That is the impugned decision.

The complainant asks the Tribunal to order the FAO to re-employ him in a position at grade P.5 (the grade of his former position) or higher and to compensate him for: (i) "mishandling" his complaint of harassment submitted to the Director of CSH (amount claimed 500,000 United States dollars), (ii) ignoring his complaints to the Assistant Director-General and Regional Representative for the RNE, (amount claimed

500,000 dollars) and to the OIG (amount claimed 500,000 dollars), and (iii) failing to protect him from reprisals and sanctions during his work with the FAO (amount claimed 500,000 dollars). He also claims 500,000 dollars in compensation for the harassment to which he was subjected by the Programme Coordinator and the Programme Officer of the PCU, an equal amount in compensation for the retaliation that he suffered, which manifested itself as interference with the request for the renewal of his contract, and 1,000,000 dollars for the FAO's breach of the UNDSS's recommendation to provide him with a satellite phone.

The FAO asks the Tribunal to dismiss the complaint *in toto*.

CONSIDERATIONS

1. The complainant's spouse has filed an application to intervene in this case. Article 13, paragraph 1, of the Tribunal's Rules requires such a person to be in a similar situation in fact and in law to that of the complainant. The provision states as follows:

"Anyone to whom the Tribunal is open under Article II of the Statute may apply to intervene in a complaint requesting that the Tribunal's ruling on the complaint apply to them. The application must set out the basis on which the intervener considers that she/he is in a situation in fact and in law similar to that of the complainant."

The application to intervene would be dismissed, as the applicant has not shown that she is in a situation in fact and in law similar to that of the complainant.

2. In summary, the complainant's case is that because he tried to stop financial corruption directed by the Programme Coordinator and the Programme Officer of the PCU, they retaliated against him by a series of harassing incidents and prevented the extension of his contract for a second term. He also alleges that they exposed him to security risks by breaching United Nations recommendations, as they refused to provide him with a satellite phone, contrary to the recommendation given by the UNDSS.

3. The complainant alleges that retaliation was the real reason why his contract was not extended. He states that the Programme Coordinator “seduced” a governmental official to reject the FAO’s request to extend his contract, because he had complained to the Assistant Director-General and Regional Representative for the RNE about irregularities in the project, and he did not follow the Programme Coordinator’s instructions to slow or to stop the activities of the project. He further states that he had also opposed the Programme Coordinator’s suggestion to give a 20 per cent salary incentive to the same official from the project, because that official had not done any work for the project activities. The complainant’s allegation of retaliation was similarly framed in his first formal complaint to the Director of CSH on 9 January 2009 with his other allegations of harassment and deprivation of the proper telephone communication facilities. The Director of CSH correctly referred all of these allegations to the Investigation Panel on Harassment on 2 May 2009, as they could have all constituted harassment if they were proved.

4. However, as framed, the complainant’s allegation of retaliation also invites consideration whether it caused the wrongful non-extension of his contract. The FAO’s reply to the complaint appreciates this, as it sets out the bases on which the Tribunal would make that determination. Accordingly, the FAO reproduces the bases, which the Tribunal has set out for the consideration of this matter, when it states as follows in its reply:

“Regarding the claim that Respondent 1 retaliated against the Complainant by ‘*seducing a government officer to reject the FAO request to renew [the complainant’s] contract*’ for a second term after his initial 12-month probationary period, the Tribunal has repeatedly held that the decision not to renew a contract is a discretionary one reviewable only on limited grounds (Judgment No. 2048, Consideration 13). While ‘*there must be a valid reason for any decision not to renew a fixed-term appointment and ... the reason must be given to the staff member*’ (Judgment No. 1154, Consideration 4) ‘*a high degree of deference ought to be accorded to an organisation’s exercise of its discretion regarding decisions concerning probationary matters including the confirmation of appointment, the extension of a probationary term, and the identification of its own interests and requirements*’ (Judgment 2646, Consideration 5). It is established case law of the Tribunal that ‘*the*

reason for probation is to enable an organisation to assess the probationer's suitability for a position' (Judgment No. 2646, Consideration 5). And 'where the reason for refusal of confirmation is unsatisfactory performance, the Tribunal will not replace the organisation's assessment with its own' (Judgment No. 1418, Consideration 6)."

5. These statements are to be considered within the context of the applicable provisions of the FAO Administrative Manual.

6. The complainant had a fixed-term appointment, which, under Staff Rule 302.4.102 was an appointment for a continuous period of one year with a specific expiration date. While Manual paragraph 305.5.123 provides that such an appointment does not carry any expectation of extension and expires according to its terms, Manual paragraph 305.5.25, which relates to staff members serving in field project offices, states as follows:

“.5.251 Confirmation of the appointment of staff members is dependent upon the satisfactory completion of their probationary period including such elements as (i) satisfactory performance of the duties and responsibilities assigned to them, and (ii) satisfactory conduct, as evidenced by official supervisory evaluations, other pertinent evidence, or both.

.5.252 Division directors, in certifying that the staff member has satisfactorily met the conditions set forth in Manual para. 305.5.251 recommend confirmation of the staff member's appointment to the departmental or office head concerned.

.5.253 When the division director considers that more time is required to determine the staff member's suitability, he/she may request extension of the probationary period as provided under Manual para. 305.5.22. The division director notifies the staff member accordingly, stating the reasons. A copy of this memorandum must reach the department or office head (or Director, Human Resources, WFP for WFP staff) six weeks prior to the date the probationary period would have been completed.

.5.254 Division directors who are considering an extension of the probationary period ensure that the first within-grade salary increment is suspended for the staff member concerned.

.5.255 The department or office head (or Director, Human Resources, WFP for WFP staff) decides on the appropriate action to be taken under Manual para. 305.5.253 and advises the staff member and the division director accordingly.

.5.256 Separation. If the division director considers that separation is in the Organization's interest because the probationary period will not be satisfactorily completed, no later than six weeks prior to the date the probationary period expires he/she notifies the staff member in writing, stating the reasons for the proposal. The staff member has five working days following receipt of the memorandum in which to comment. A copy of the staff member's comments is sent to the Director, Human Resources Management Division, [CSH] (or to Director, Human Resources, WFP for WFP staff) along with any supporting documentation. After consideration of the staff member's reply or, failing such reply, at the close of the five-day period, the division director submits through the department or office head a recommendation to the Director, Human Resources Management Division, who forwards it to the Director-General for decision, with further comments as necessary. The Director, [CSH] advises the division director and the staff member of the Director-General's decision. Copies of the report, the notification and other relevant documents are sent to the Personnel Officer for inclusion in the staff member's personnel file."

7. The FAO's case is that the complainant's appointment was not extended because of performance issues, which the complainant's supervisors had communicated to him throughout his tenure as Chief Technical Advisor. According to the FAO, he had repeatedly failed to follow the reporting procedures, as set out by the PCU, and would not communicate through the proper channels. The Tribunal considers that the documentary and other evidence confirm this allegation and shows that this was an issue between the complainant and his supervisors, particularly between September 2007 and March 2008. The FAO alleges that there were other performance issues, including repeated bad spelling errors and lack of good judgement. The Tribunal observes, however, that there is nothing that indicates that the complainant was properly supervised or that there was any performance appraisal of his work, as would have been required in order to satisfy the requirements of Manual paragraph 305.5.251. Whether his performance and conduct were satisfactory were, according to that paragraph, functions of supervisory evaluations and/or other pertinent evidence.

8. Moreover, it is clear that the complainant's separation was not done in conformity with the provisions of Manual paragraph 305.5.256. It is uncontroverted that in June 2008 the complainant learned from

national counterparts (engineers) that his contract would not be extended when it was due to expire on 6 September 2008. Subsequently, on 21 June 2008 he asked the Programme Coordinator whether this information was true. He was told that he would be apprised at the Chief Technical Advisors' meeting on 24 June 2008, when the status of contracts was to be reviewed. At that meeting, however, he was only made aware that the word "pending" was entered beside his name. He went to the Programme Coordinator concerning the matter on 25 June 2008. The latter informed him that an official in the Saudi Ministry of Agriculture did not approve the extension of his contract because his first progress report contained spelling mistakes and because someone had informed him (the official) that he (the complainant) was not a good professor at King Saud University. The complainant states that he was given no chance to discuss and correct the matter and he was also told by the Deputy Minister of Agriculture that the non-extension of his contract was "built on the decision of [the official] who [had] mentioned that [his] performance in the project was weak".

According to the complainant, it was the "FAO Office in Riyadh" that was to inform the Ministry of the achievements of the project between six to eight months from the commencement, but never did. The PCU later informed him that the decision not to renew his contract was due to the unhappiness by the Saudi Ministry of Agriculture with spelling mistakes in his reports, lack of good judgement and a bad reputation. No evidence has been produced to prove that the complainant had a bad reputation and there has been no explanation as to what amounted to that bad reputation.

9. The Tribunal considers that, in breach of due process, none of the requirements set out in the foregoing conditions contained in Manual paragraph 305.5.25 was followed in the decision not to extend the complainant's contract. The decision was not made by the FAO in accordance with those provisions. Moreover, it was unduly influenced by a person in the Ministry of Agriculture. In the face of the failure by the FAO to observe due process in making the decision not to extend the complainant's appointment as a Chief Technical Advisor after one year into a five-year project, the decision was unlawful and he is entitled

to material damages. It is unimportant that by a memorandum of 30 June 2008 to the Programme Coordinator the complainant stated that he did not want his contract renewed. His right to be afforded due process had by then been breached by the prior unlawful decision not to extend his appointment.

10. In relation to the harassment complaint, the FAO has a Policy on the Prevention of Harassment. For the relevant period, it was contained in its Administrative Circular No. 2007/05 of 23 January 2007. By the Guiding Principles of this Policy, the FAO assumed the duty to ensure that its staff members are treated, and treat one another, with dignity and respect, free from abuse and harassment. The Policy states that the FAO will not tolerate any type of harassment within the workplace or associated with work performed on its behalf. It also states that allegations of harassment will be fully, fairly and promptly dealt with in a confidential manner. Supervisors are charged with the responsibility of informing their staff about the Policy; setting an example; fostering a positive work environment in which harassment does not occur and ensuring adherence to the Policy, including taking corrective action if needed. The Policy recognises that situations of harassment may be greater in mission or field projects and requires mission and field project leaders to act promptly when improper behaviour is brought to their attention, and to be sensitive to the problems that may be caused by the behaviour of country officials towards members of field project teams that might be interpreted as harassment.

11. The Policy defines harassment as “any improper behaviour by a person that is directed at, and is offensive to, another individual and which the person knew or ought reasonably to have known would be offensive”. According to the Policy, harassment comprises “objectionable or unacceptable conduct that demeans, belittles or causes personal humiliation or embarrassment to an individual”. It may include degrading tirades by a supervisor or a colleague; continual unjustified and unnecessary comments or deliberate insults related to a person’s professional competence; threatening, abusive or insulting comments,

whether oral or written; mimicking, making fun of or belittling; continual and unfounded refusal of leave applications or training.

12. The Tribunal has consistently stated, as in Judgment 2406, under 13, for example, that allegations of harassment must be supported by specific facts presented by the person who makes the complaint, who bears the burden of proving harassment. The Tribunal has also stated, in Judgment 3065, under 10, for example, that an accusation of harassment requires that “an international organisation both investigate the matter thoroughly and accord full due process and protection to the person accused”. Furthermore, “[i]ts duty to a person who makes a claim of harassment requires that the claim be investigated both promptly and thoroughly, that the facts be determined objectively and in their overall context [...], that the law be applied correctly, that due process be observed and that the person claiming, in good faith, to have been harassed not be stigmatised or victimised on that account”.

Additionally, the Tribunal has consistently stated, as in Judgment 2295, under 10, for example, that it is not the Tribunal’s 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 such a body is entitled to considerable deference. So that where in the present case the Investigation Panel 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.

13. The Tribunal finds that this is a case in which the Investigation Panel fell into manifest error when it found that the complainant was not harassed. That error was adopted by the Appeals Committee when it accepted that Panel’s findings and recommended that the complainant’s claim for compensation for harassment be dismissed. Consequently, the Director-General erred by accepting this recommendation in the impugned decision.

14. Against the background of the complainant's harassment complaint of 9 January 2009 to the Director of CSH, and the Investigation Panel's Report, the Tribunal finds that the complainant's harassment complaint was mishandled. The Panel erred when it stated, for example, that insulting the complainant in a formal FAO meeting that he attended and in the presence of other Chief Technical Advisors and consultants by accusing him of cheating was an incident which, although it did cause some embarrassment to the complainant, was not so severe as to have a lasting negative impact on him. The Panel further erred when it stated that this was a single incident and therefore could not have constituted harassment without considering with it other such incidents. The Panel made other findings which the Policy on the Prevention of Harassment proscribes and which fall within the definition of harassment. The Panel wrongly excused them on the grounds that harassment was not intended, when the Tribunal has consistently stated, as in Judgment 3400, under 7, for example, that intention is not an essential element for establishing harassment. In the FAO context, in particular, it is only necessary that the person who allegedly engaged in the harassing behaviour knew or ought reasonably to have known that it was offensive.

15. In his complaint of 9 January 2009, which the Panel considered, the complainant made a number of allegations of harassment. They included the following allegations: that he was harassed by the Programme Coordinator and Programme Officer on a number of occasions throughout the time that he worked as the Chief Technical Advisor for the project; early in his tenure he found that the funds which were allocated for his management of the project were significantly reduced; the Programme Coordinator had directly interfered in the project fund management; he had complained in an early letter about financial irregularities in the project and the misuse and mismanagement of project funds, but he was pressured by the "office in Riyadh" to keep things as they were before he came to the project. According to the complainant, during a visit which the Programme Coordinator paid to the Jazan Agriculture Research Centre, on 25 February 2008, he pressured him to use project funds to operate the Centre when the Centre received funds continuously from the Ministry of Agriculture for that purpose. The Programme

Coordinator had also asked him to make a 20 per cent incentive payment to a government official and he had refused to do so on the ground that that official had not done any work on the project; his two supervisors, the Programme Coordinator and the Programme Officer, had developed a hostile attitude towards him and had continuously and persistently harassed him and had exposed him to danger by denying him a satellite telephone. The telephone was an important security tool for field officers, which the UNDSS recommended.

16. The complainant further alleged that the Programme Coordinator had insulted him by an unjustified allegation that he (the complainant) had sent him wrong information in an e-mail message which was copied to all FAO Chief Technical Advisors and consultants in Saudi Arabia. Additionally, that at a meeting of FAO Chief Technical Advisors on 29 January 2008, the Programme Coordinator embarked upon a degrading tirade against him and insulted him by accusing him of cheating because he had communicated directly with the Technical Officer at FAO's headquarters. The complainant also alleged that the Programme Coordinator had insulted and belittled him in a prior e-mail accusing him of lack of transparency for the same reason. The reference was to an e-mail message which the Programme Coordinator had sent to him and copied to others on 16 October 2007. In the e-mail, the Programme Coordinator took issue because the complainant had sent a communication to the Technical Officer at FAO's headquarters under separate cover, when the guidelines required that it be sent to him (the Programme Coordinator).

17. The Programme Coordinator's complaint was in the following terms:

"Sending your reports to [Mr A.] without copying me and then sending them separately to me has only one explanation: **lack transparency and no respect of the already established rules**. So please note that I am dealing with [Mr A.] for more than 10 years and that we have always been working in total transparency because we are both convinced that this is the only way we can achieve our activities' goals."

The Programme Coordinator then asked the complainant to use the established channels of communication and to address all official reports to him and to copy the “budget holder” in official e-mails. The Programme Coordinator further stated that by copying the e-mail to the headquarters Technical Officer, he was asking him to disregard the e-mail with the report sent to him by the complainant until it was officially submitted by the PCU.

18. The complainant also alleged that the Programme Coordinator and the Programme Officer forced him to attend a training workshop in Najran, notwithstanding that he had asked to be excused, as he was at the time very busy beginning several research and other activities. At this workshop he was asked to train engineers on deciduous fruits when he is a tropical fruit expert, while a Chief Technical Advisor of another FAO project sent an excuse for not attending the training workshop, which was accepted.

19. The complainant further alleged that, as he had sustained a snake bite at the Jazan Agriculture Research Centre, he had sent a message to the Programme Coordinator seeking advice on medication with which to treat it. However, when he attended a workshop on 5 November 2007, the Programme Officer used the incident to make fun of him and a joke of the incident in the presence of other colleagues embarrassing and humiliating him. The complainant also alleged that the circumstances surrounding his separation from the project, and, in particular, the delay in his separation clearance constituted harassment because the Programme Officer refused to send his clearance to the FAO Regional Office in Budapest until he (the complainant) had directed a complaint about it there. According to the complainant, even his business cards from the “Riyadh office” were not given to him until after he was informed on 25 June 2008 of the non-extension of his contract.

20. The Tribunal accepts the Investigation Panel’s finding that the Programme Coordinator was unhappy with the complainant’s behaviour because he continually refused to follow established procedures. It also accepts its finding that the Ministry of Agriculture

was unhappy with the complainant. The Panel noted that some witnesses had testified that there were interpersonal problems between the complainant and a government official. Incidentally, that official was the same person to whom the complainant was asked by the Programme Coordinator to pay the 20 per cent incentive. However, it is clear that the Panel did not apply the Policy on the Prevention of Harassment correctly. For example, there were instances in which the Panel applied considerations of intentional harm and malice when these are irrelevant considerations in the finding of harassment. The Panel erred when it found that the respondents, i.e. the Programme Coordinator and the Programme Officer, intended no harm to the complainant by failing to issue him with a satellite telephone, as no one else was issued with one, and that, additionally, the decision by the Ministry official to switch the complainant's home phone line back to the Centre in August 2008, thereby cutting off his home phone, was not done with malice and in any case was not attributable to the respondents.

21. In relation to the allegation concerning the disconnection of his home phone in August 2008, the Panel found from the evidence that the phone line was supposed to have been connected to the Centre, but that the complainant had connected it to his home and the same Ministry official had transferred it back to the Centre, in light of the complainant's absence from work during that month. The Panel concluded that this was not the decision of the Programme Coordinator or the Programme Officer, but it expressed concern that they had indicated that the complainant had essentially abandoned his post at the time, when in fact the Programme Coordinator had asked him to take leave then. The Panel stated that it was unclear whether the complainant had actually taken leave. Importantly, however, it did not matter whether this action was taken by the Programme Coordinator or by the Ministry official, since the FAO's Policy on the Prevention of Harassment requires field project leaders to protect field officers from improper behaviour by country officials. The respondents did not do so.

22. As to the allegation that the complainant was harassed and felt embarrassed when the Programme Officer belittled him by teasing

him in the presence of his colleagues about the snake bite that he had sustained, the Investigation Panel found that this was intended as a joke at the complainant's expense and not to embarrass him and it caused the complainant "no lasting harm". The complainant felt that he was belittled and embarrassed and other persons provided evidence, to which the Panel referred, which shows that the incident amounted to harassment, particularly when considered together with the other incidents already mentioned. Whether this particular incident that related to the snake bite had any lasting harm on the complainant was an irrelevant consideration. The Tribunal observes that the Panel noted that the Programme Officer did not really answer this allegation, although he said that he would never have joked about such a thing because he was the FAO's security focal point. Inasmuch as this incident reflected objectionable and unacceptable conduct and tended to cause the complainant embarrassment, it was in error that the Panel concluded as follows:

"But even if the panel agreed that the incident took place on 5 November 2007 [...] (with teasing or joking by Respondent #2 [...] at [the complainant's] expense – though the evidence was slim in any case), the panel could not find that this fell anywhere within FAO's harassment policy."

23. As to the allegation that the Programme Coordinator swore at the complainant, chastised him loudly and accused him of cheating and of lack of transparency, the Investigation Panel found that the e-mails and rebukes occurred because the complainant continuously refused to follow the proper lines of communication. It also found, in error, that they were not intended to humiliate or to embarrass him but rather to "get him to toe the line". The Panel found that "tense exchanges" occurred between the Programme Coordinator and the Programme Officer, on the one hand, and the complainant who felt humiliated, on the other, during the formal FAO meeting of Chief Technical Advisors. However, the Panel concluded, again in error, that even if it found that this was a degrading public tirade, it had no lasting effect. This was an irrelevant consideration, especially since it was not a single incident. While the Tribunal accepts that the rebukes and degrading tirades were caused by the complainant's failure to follow the proper lines of communication, this did not provide an excuse for the use, for example, of the language

contained in the e-mail of 16 October 2007, which is reproduced in consideration 17 of this Judgment. It is harassing language within the definition of the FAO's Policy on the Prevention of Harassment.

24. The complainant complained in his letters of 19 and 25 August 2008 of obstruction to his work, mismanagement of the project, financial irregularities, and other harassing circumstances. In contravention of the FAO's Policy on the Prevention of Harassment, the Tribunal's consistent statements that harassment complaints must be dealt with promptly, and the Standards of Conduct for the International Civil Service, which are contained in Appendix A to Section 304 of the FAO Manual, no action was taken in response to the allegations made by the complainant in those letters. The OIG only responded to the complainant's letter of 25 August 2008 when in a letter of 3 December 2008 the complainant reminded the OIG that he had sent the earlier letter and repeated some of his allegations. The OIG's response was that the project had already been audited. In fact, as the Appeals Committee found, the audit in question was carried out in March 2008, prior to the complainant's letters. There is no evidence that either the Regional Representative for RNE or the OIG, to whom the letters of 19 and 25 August 2008 were respectively addressed, intervened or took appropriate or corrective action in response to what had been reported by the complainant. The failure by the Administration to take urgent steps to deal with the complainant's earlier complaints bears out the complainant's assertion that the matter was not managed in accordance with the FAO's Policy on the Prevention of Harassment.

25. The complainant's work required proper supervision. This function of internal management obviously failed because his two supervisors did not provide it. Those who were in the relevant supervisory or managerial capacities to the complainant needed to ensure that the objectives of the project on which he worked were met. They were to suggest remedial or other appropriate action if they were not met. There is no evidence that the complainant's work was ever evaluated or appraised during his tenure on the project. In addition, there is no evidence that prompt or proactive measures were taken, as the Policy

on the Prevention of Harassment contained in Circular No. 2007/05 requires, to address the complainant's situation.

26. This is the background against which the Tribunal finds that the FAO mismanaged the complainant's harassment complaint and the Investigation Panel erred when it applied the provisions of the FAO's Policy on the Prevention of Harassment and the Tribunal's case law wrongly and found that harassment was not proved. The Tribunal further finds that, notwithstanding that the Appeals Committee agreed with the Panel that there was no conclusive evidence that the complainant had suffered harassment, its statement in the following passage from its report to the Director-General is not only an indictment on the FAO for the manner in which it mishandled the complainant's prior harassment complaints, but also amounts to a finding that the complainant suffered harassment, which was both personal and institutional. The Panel erred when it found otherwise. The Appeals Committee, whose recommendations the Director-General accepted, erred when it adopted the Panel's findings and recommendations on the harassment claim, even as it made the following finding which seems to accept that the complainant was harassed:

"13. Although the Investigation Panel did not find conclusive evidence of harassment, the Committee underlined that there was certainly clear evidence that the appellant's situation had not been properly managed (e.g. UN Security recommendations not followed, no response provided to the appellant's reports regarding financial irregularities, apparently no evaluation done of the appellant's work, no prior warning of his non-renewal, delays in the separation formalities). In addition, the Committee noted that there had been no mediation by anyone to attempt resolution of the difficulties between the appellant and colleagues in the Riyadh office. With reference to the Panel report finding "*regret[able] that Respondents [had] felt the need to denigrate complainant's technical capabilities*", it noted that the lack of trust between the appellant on one side and [the respondents] on the other side appeared to have been mutual from the start. It seemed clear that the appellant was not knowledgeable of the rules and had not followed the appropriate reporting channels, but at the same time it also seemed clear that the appellant, new in the Organization, had not been assisted by [the respondents]. The Committee also underlined that the absence of involvement of the RNE gave the impression that the Riyadh office was managed on its own."

27. In the foregoing premises, the complaint is well founded on the ground of harassment, which, compendiously was egregious and entitles the complainant to significant moral damages.

28. The complainant is entitled to material damages for the loss of the opportunity to have his appointment confirmed. He is also entitled to moral damages for the harassment which he suffered. In the circumstances of this case, the Tribunal assesses the total damages in the global amount of 200,000 United States dollars. The complainant is entitled to costs in the amount of 800 United States dollars.

DECISION

For the above reasons,

1. The impugned decision is set aside.
2. The FAO shall pay the complainant damages in the sum of 200,000 United States dollars.
3. It shall also pay him costs in the amount of 800 United States dollars.
4. All other claims are dismissed.
5. The application to intervene is dismissed.

In witness of this judgment, adopted on 3 November 2015, Mr Giuseppe Barbagallo, Vice-President of the Tribunal, Ms Dolores M. Hansen, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 3 February 2016.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

HUGH A. RAWLINS

DRAŽEN PETROVIĆ