

Y. (No. 2)

v.

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

121st Session

Judgment No. 3597

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Miss A. Y. against the International Federation of Red Cross and Red Crescent Societies (hereinafter “the Federation”) on 16 August 2013 and corrected on 30 September 2013, the Federation’s reply of 4 February 2014, the complainant’s rejoinder of 18 March and the Federation’s surrejoinder of 26 June 2014;

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

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

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

The complainant challenges the relief she was awarded as the result of a harassment complaint she filed with the Federation.

With effect from 1 February 2009 the complainant joined the Federation’s Zone office for the Middle East and North Africa (MENA Zone) under a one-year contract.

In November 2009 Mr B. took up his functions as the new Head of MENA Zone. In or about late April and early May 2010 the Under Secretary General (USG) of the Programme Services Division visited the MENA Zone office and conducted interviews with various staff

members. The USG met with the complainant, who made allegations of harassment, including sexual harassment, against Mr B., her second-level supervisor.

The Head of the Human Resources Department and the Legal Counsel were informed that allegations had been raised against Mr B., but the identity of the complainant was not disclosed to them. The Administration took no specific further action at that time but continued to monitor the situation.

On 31 August 2010 the complainant's contract expired and she separated from service. On 2 December 2010 she lodged a formal complaint via the Federation's Safecall system – the system used by the Federation to allow claims to be lodged without going through the line management – alleging that she had been subjected to harassment, including sexual harassment, by Mr B. and accusing the Secretary General, the Head of the Human Resources Department and the Legal Counsel of mismanagement, breach of duty and wilful misconduct. In June 2011 she submitted the details of her complaint to the external consultant hired by the Federation to investigate the matter. Included in her statement were allegations that the Secretary General, the Head of the Human Resources Department and the Legal Counsel had violated the Federation's Code of Conduct.

The external consultant investigated only the complainant's allegations of harassment and she was informed of the outcome of that investigation in September 2011. On 5 February 2012 she filed a grievance with the Federation with respect to the handling of her complaints. In the absence of a decision by the Federation on that grievance the complainant filed an internal appeal which was received by the Appeals Commission on 29 August 2012.

On 26 November 2012 the Federation issued a final administrative decision on the complainant's grievance of 5 February. It was held that the Federation did not breach its obligations to the complainant by not investigating her allegations against Mr B. before she reported the matter via Safecall. Furthermore, the Federation did not fail to pursue the claim of harassment after the complaint was made via Safecall. Lastly, it did not fail to pursue the allegations of breaches of the Code

of Conduct she had made against the Secretary General, the Head of the Human Resources Department and the Legal Counsel.

The Appeals Commission issued its report and recommendations to the Secretary General on 14 March 2013. It recommended in particular that the complainant be awarded four months' salary and benefits for the period from 1 September to 31 December 2010 plus interest calculated at prevailing rates for Swiss francs during the relevant period, moral damages in the amount of 20,000 Swiss francs and a maximum of 5,500 Swiss francs for professional psychological counselling services (to be used within six months from the complainant's receipt of the report), and that a maximum of 7,500 francs (to be used within six months from the date of the complainant's receipt of the report) should be made available to her for assessment and job search services. In addition, it recommended that she be provided with a certificate of employment acknowledging the work she had performed during her career with the Federation, and that she be provided with a copy of her employment file to the extent and in the manner that this had been done for other employees. The Appeals Commission further recommended that she be awarded costs in the amount of 1,000 francs and that all of her other allegations and claims should be rejected.

By a letter of 15 May 2013 the complainant was informed that the Secretary General had decided to follow the Appeals Commission's recommendations. That is the impugned decision.

The complainant refers to the claims for relief she made in her internal appeal. She seeks the payment of salary, a monthly subsistence allowance, pension fund contributions and any other professional earnings that have not been granted by the Federation. She claims compensation for "actual", moral and exemplary damages and she seeks payment of one year's salary for injury to her health and loss of career opportunities. She claims compensation in respect of a lost opportunity for a scholarship and she requests that she be provided with a certificate of employment. She asks to be provided with written evidence that her separation from service did not occur as a result of any fault on her part. She seeks a written apology, and costs. Lastly, she claims interest at the rate of 10 per cent on all amounts awarded.

In her rejoinder she reserves the right to claim further remedies, including additional compensation, as the Tribunal deems fair.

The Federation asks the Tribunal to reject the complaint.

CONSIDERATIONS

1. The complainant impugns the Secretary General's decision, dated 15 May 2013, in which he endorsed the Appeals Commission's recommendations as outlined in its report of 14 March 2013. She submits that the amounts she was awarded for moral and material damages and costs are not sufficient compensation for the actual injury she incurred as a consequence of the harassment she suffered. She bases her complaint primarily on two grounds. First, only some of the claims for relief which she raised in the internal appeal were granted. Second, the Appeals Commission and the Secretary General erred in not considering the individual responsibility of the Secretary General, the Head of the Human Resources Department and the Legal Counsel, for violations of the Code of Conduct.

2. The Tribunal notes that as an administrative body the Appeals Commission has the authority to review the details of appeals and, when necessary, to recommend a precise remedy. According to well settled case law, the findings of such an internal body warrant deference. Where any internal appeal body has heard evidence and made findings of fact, the Tribunal will only interfere in the case of manifest error (see, for example, Judgments 2295, under 10, 3400, under 6, 3439, under 7, and 3447, under 8). The complainant does not present evidence of any legal error or mistake made by the Appeals Commission in its considerations and consequent recommendations, nor does she substantiate her assertion that the Appeals Commission incorrectly disregarded some of her claims. The Tribunal finds that it is not enough to claim that an award is insufficient; such a claim must be substantiated by evidence.

3. In the present complaint the complainant contends that the Appeals Commission erred in not finding that her claims regarding the Secretary General, the Head of the Human Resources Department and the Legal Counsel were founded. She submits that she reported her claims of harassment to the USG in late April/early May of 2010. He then reported these claims to aforementioned officials but nothing further was done with regard to these claims. The Appeals Commission found that the Federation had repeatedly explained to the complainant the differences in procedure for harassment complaints and allegations of violations of the Code of Conduct. Specifically, that in order to initiate an investigation into alleged violations of the Code of Conduct she would need to formally submit the relevant facts and evidence. However, as the complainant wished to remain anonymous at that time, she did not file the specific allegations and evidence that were needed to initiate the investigation. The Appeals Commission noted that “[i]n short, at no time did she present any proof that would have justified opening an investigation of a Code of Conduct violation involving the individuals concerned. Since she had not laid the basis for an investigation under the Code of Conduct to be launched, she cannot claim that the Federation delayed in initiating one”. The Tribunal accepts the reasoning of the Appeals Commission.

4. With regard to her allegation of unequal treatment, the Appeals Commission found, in particular, that the colleagues of the complainant who were dissatisfied with the work environment during the same period and who had succeeded in finding other posts did so with the Federation’s assistance. However, they were successful because they had been proactive in searching and applying for vacancies. In contrast, the complainant had taken a more passive approach and therefore the Federation could not be held responsible for the fact that no post was identified for her. The Tribunal considers that, given these circumstances, any differences in her treatment by the Federation did not constitute unequal treatment.

5. The complainant submits that she did not receive her certificate of employment or the other documents which she had

requested. According to the evidence provided to the Tribunal, the Federation sent the complainant a draft “acknowledgement letter” on 23 March 2013 and the complainant then requested that she be able to submit comments and corrections. The Federation asserts that the complainant has not yet sent any such comments. In her rejoinder the complainant admits to having received “a very basic draft of [a] certificate of employment”. The Tribunal is satisfied that the Federation has fulfilled the recommendation of the Appeals Commission in this respect to the best of its ability considering that it appears to have been willing to consider any comments or corrections from the complainant. As she did not send any, there was no need to resend the same document. With regard to the other documents requested, the Tribunal accepts the Federation’s submissions in this respect and notes that the e-mails she asks for were apparently deleted, thus there is nothing which can be done at this point.

6. The complainant claims payment of 31,000 pounds sterling for the loss of the opportunity to be awarded a scholarship for a Masters degree offered by a specific school. The Appeals Commission noted that the complainant provided evidence only of her earlier eligibility for this scholarship, subject to having employment, and found that whether or not she would have gained acceptance to this program and actually been awarded this scholarship was purely speculative. Therefore, it did not find this claim justified. The Tribunal finds that the claim was not properly justified as the complainant did not give any evidence that, aside from the employment criteria, she would have been fully eligible for this scholarship.

7. The complainant claims that she should be paid interest on all awards at a rate of 10 per cent per annum with effect from 1 September 2010 until the date of final payment. The Appeals Commission recommended that the complainant be awarded the amount equivalent to the salary and benefits to which she would have been entitled between 1 September and 31 December 2010, plus interest calculated at prevailing rates for Swiss francs in the relevant period. The Tribunal finds that the Appeals Commission’s recommendation to set the interest

rate according to the prevailing rates for Swiss Francs was reasonable and the Federation has shown that the interest rate paid, at 2 per cent, was actually higher than the prevailing rates in the relevant period.

8. The complainant claims that she should be paid the equivalent of 12 months' salary including all benefits and emoluments, plus interest. She bases this request on an alleged offer of a contract for the period 1 September 2010 to 31 August 2011 but she does not present any evidence that such an offer existed. This claim is unfounded.

9. The complainant claims moral, "actual" and exemplary damages in the amount of 500,000 euros plus interest on all amounts, and costs in an amount higher than 1,000 euros. The Appeals Commission, having taken account of the situation as well as the complainant's particular fragility following her harassment, recommended that an award of moral damages in the amount of 20,000 euros, plus an allowance of up to 5,500 euros for professional psychological counselling services, and an allowance of up to 7,500 euros for assessment and job search services. This Tribunal finds that these awards are appropriate. The Tribunal does not find any reason to disturb these recommendations and does not find a further award of damages to be appropriate.

10. The complainant seeks a written apology. The Tribunal is not empowered to order apologies (see, for example, Judgments 3069, under 5, and 2636, under 16).

11. In light of the above, the Tribunal finds that the complaint is unfounded and it must be dismissed. As the complainant does not succeed, her claim for costs is denied.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 30 October 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