

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

**P. (No. 2)**

**v.**

**FAO**

**126th Session**

**Judgment No. 4012**

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr W. P. against the Food and Agriculture Organization of the United Nations (FAO) on 7 January 2016 and the FAO's reply of 29 April 2016, no rejoinder having been submitted by the complainant;

Considering Articles II, paragraph 5, and VII 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 decision not to grant him compensation for the harm allegedly caused to him by the fact that emails that he considers to be defamatory were stored in a folder accessible to all users of the FAO's IT network.

The complainant worked at the material time as Information Management Officer within the FAO. On 18 January 2013 he filed a harassment complaint against a colleague, Ms T., on the grounds that he had been informed that there were some emails written by her containing criticism of him or his performance in an email folder accessible to all network users. The matter was referred for investigation to the Office of Inspections and Investigations (OIGI) of the World Food Programme (WFP) because of a possible conflict of interest if the matter was

referred to the FAO Investigation Panel as foreseen under Administrative Circular No. 2007/05 on harassment. The complainant was the President of the Association of Professionals in the FAO, a body proposing candidates to be appointed as members of the Investigation Panel, and he was also a member of that Panel. On 12 June the WFP OIGI issued its report entitled “Preliminary Review” of the harassment complaint. It recommended that the matter be closed as there were no reasonable grounds to warrant a full investigation.

On 4 July the complainant wrote to the Deputy Director-General for Operations explaining that he disagreed with the review of his harassment complaint made by the WFP OIGI but accepted that Ms T. was not the person responsible for publishing the defamatory comments. However, the defamatory comments had been published and his reputation damaged. The FAO had acted in breach of its duty of care in placing correspondence of a confidential nature in public files. He therefore sought damages. His request was denied on 4 September 2013. He appealed to the Director-General on 2 December 2013, asking him to review the decision of 4 September and award him damages. This appeal was dismissed on 16 January 2014 on the grounds that he had not proved that the emails he cited were defamatory or that they were widely accessed. In February 2014 the complainant lodged an appeal with the Appeals Committee contesting that decision.

In its report of 24 July 2015 the Appeals Committee examined whether the content of the emails in question was defamatory and injured the complainant’s reputation or dignity. It concluded that while the filing of the contested emails in a public folder was regrettable, it was not established that the complainant’s reputation was harmed. It found no malicious intent on the part of the author of the emails and no intention to make the emails publicly accessible. It recommended that the appeal be dismissed but that the FAO offer its apologies to the complainant for having made confidential information concerning him publicly accessible.

By a letter of 11 September 2015, which the complainant received on 19 October 2015, he was informed that the Director-General agreed with the Appeals Committee’s findings that there was no defamation or

breach of the FAO's duty of care. He also considered that the FAO had taken all actions necessary to promptly remove the emails from the publicly accessible folders once their location had been revealed to it. He therefore dismissed the appeal. That is the decision the complainant impugns before the Tribunal.

The complainant asks the Tribunal to award him 50,000 euros in damages.

The FAO asks the Tribunal to dismiss the complaint as unfounded.

### CONSIDERATIONS

1. The complainant impugns the Director-General's decision to dismiss his claim for damages. He alleges he suffered severe damage to his reputation as a consequence of a series of defamatory emails authored by Ms T. concerning him and his work performance that were stored in a publicly accessible email folder over several months.

2. He argues that allowing wrongful and defamatory emails about his person to be publicly available to potentially all staff, as the Tribunal stated in Judgment 3106, under 11, constitutes a breach of the FAO's "duty of care to ensure that material [that] injures the reputation or dignity of its staff members does not find its way into [any of] its authori[s]ed channels of communication". He maintains that the emails were "unfounded and highly offensive" and severely damaged his professional reputation and dignity. He claims that several colleagues told him about the existence of these emails and expressed dismay about their content, tone and public exposure.

3. The emails at issue were communications between Ms T., a Legal Officer, and the complainant's Division Director, new to the FAO, in which the latter's managerial concerns in dealing with the complainant were addressed. It is observed that Ms T.'s communications with the Division Director formed part of her official functions that included providing background information and advice to managers. The emails were marked confidential and in the circumstances were,

particularly having regard to their subject-matter, private communications. Additionally, there was no publication or deliberate dissemination of the information. However, the filing of confidential personnel information in a publicly accessible email folder constituted a breach of the Organization's duty to maintain the confidentiality of a staff member's personnel information. The complainant, however, did not suffer any damage because of this breach. Leaving aside the fact that the complainant did not submit any evidence whatsoever let alone evidence establishing damage to his reputation or otherwise, he contributed to the possibility of a staff member accidentally seeing the emails by not divulging the location of the emails when asked by the Administration. As soon as the emails were located, they were immediately removed. Taking this into account, there will be no award of moral damages for the breach.

4. There is another matter that requires comment. In his brief, the complainant attempted to incorporate by reference his pleading in the internal appeal process. The Tribunal has on many occasions stated that it is not acceptable to incorporate by reference into the pleadings before the Tribunal arguments, contentions and pleas contained in documents created for the purposes of internal review and appeal (see Judgment 3920, under 5, and judgments cited therein). Accordingly the Tribunal did not have regard to those documents.

#### DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 9 May 2018, Mr Giuseppe Barbagallo, President of the Tribunal, Ms Dolores M. Hansen, Judge, and Mr Michael F. Moore, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 26 June 2018.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

MICHAEL F. MOORE

DRAŽEN PETROVIĆ