

B.
v.
WHO

130th Session

Judgment No. 4302

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr I. B. against the World Health Organization (WHO) on 17 September 2018 and corrected on 25 September 2018, WHO's reply of 9 January 2019, the complainant's rejoinder of 18 February and WHO's surrejoinder of 22 May 2019;

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 final decision taken on his request for review of his 2016 performance appraisal.

The complainant, who joined WHO in 2003, was granted a continuing appointment as a Senior Workplace Technician at grade G.6 in January 2010. During the period covered by the contested appraisal, he held the position of Administrative Assistant in the Staff Association Secretariat, still at grade G.6.

In November 2015 the complainant filed a complaint of harassment against a colleague, Mr B., who was also performing functions within the Staff Association.

On 12 June 2017 the complainant was appointed to a post at grade G.5, for which he had applied, and which was located in another service.

In his End-Year performance appraisal (ePMDS) for 2016, the complainant obtained the overall rating “partially unsatisfactory”. On 16 June 2017 he submitted a request for review of his 2016 ePMDS, in which he contended that his supervisor’s assessment was not supported by any evidence and was tainted with negligence, partiality and abuse of authority. He requested, amongst other measures, that a new 2016 ePMDS be drawn up and that compensation be awarded to him for moral and professional injury. Following a meeting with the Human Resources Department (HRD) held on 30 June, the complainant was provided with a revised 2016 End-Year ePMDS, which he subsequently signed, as did his first-level and second-level supervisors. The overall rating was changed from “partially unsatisfactory” to “fully satisfactory”, three objectives were changed from “partially achieved” to “fully achieved” and five mandatory competencies were revised from “partially demonstrated” to “fully demonstrated”.

By a memorandum of 2 August 2017, the complainant was informed that, as the revised 2016 End-Year ePMDS complied with the applicable provisions of WHO’s regulatory framework, the work-related concern he had raised had been resolved. He was also informed that, given the manner and timeliness with which the matter had been addressed, he would not be awarded compensation for alleged moral damages or costs.

On 27 September 2017 the complainant filed an appeal against that decision. He requested that WHO recognize that his supervisors were prejudiced against him and that they had shown negligence. He requested that WHO issue a letter addressed to him recognizing his supervisors’ shortcomings and outlining what process would be undertaken by WHO to ensure that they would benefit from further guidance to improve their management skills. He also asked to be awarded compensation for moral and professional injury, as well as costs.

In its report of 18 April 2018, the Global Board of Appeal (GBA) concluded that the decision of 2 August 2017 was taken in accordance with WHO’s Staff Regulations and Staff Rules. In addition, the GBA had not found any evidence of bad faith, bias, personal prejudice

or abuse of authority. Therefore, the GBA recommended that the complainant's appeal be dismissed.

On 18 June 2018 the complainant was informed that the Director-General had decided to endorse the GBA's recommendation and that his appeal was dismissed. That is the impugned decision.

The complainant asks the Tribunal to award him compensation in the amount of 20,000 Swiss francs for the professional damage suffered due to the wrong handling of his 2016 End-Year ePMDS, as well as compensation for his "demotion" from grade G.6 to grade G.5. He further claims 20,000 francs in moral damages for WHO's failure to sanction his supervisors and 50,000 francs in moral damages for its failure to address his complaint of harassment. He claims interest for the delay in the administration of justice. He also seeks an award of costs.

WHO submits that the complainant's allegations of harassment are irreceivable as they are the subject of other proceedings and/or irrelevant to this complaint. For the remainder, it asks the Tribunal to dismiss the complaint as entirely devoid of merit.

CONSIDERATIONS

1. This case was initiated by the complainant's request, dated 16 June 2017, to review his 2016 End-Year ePMDS, which he alleged was improperly conducted. In that request, he sought the following relief:

- (1) A new 2016 ePMDS from which all negative comments as well as the negative assessment by the supervisors would be removed;
- (2) Recognition of his achievement and fulfilment of all objectives;
- (3) Recognition of *parti pris* (prejudice) and negligence by his supervisor;
- (4) A new rating; and
- (5) Compensation for moral and professional injury.

2. The memorandum of 2 August 2017, which the complainant received on 8 August 2017, informed him of the Administration's decision to revise his 2016 End-Year ePMDS. The complainant accepted that decision. However, he subsequently appealed it to the GBA on the ground that that decision did not completely and

satisfactorily consider other claims for relief which he had sought in his request for review. He stated that while the decision granted the revision of his ePMDS, it did not recognize the prejudice and the negligence of his supervisor and did not compensate him for moral and professional injury. He requested recognition of the prejudice and the negligence of both his first and his second-level supervisors by way of a letter addressed to him recognizing the shortcomings in their assessment and outlining what process WHO would undertake to ensure that supervisors take full responsibility for the performance of their staff and peers and follow the guidelines and Staff Regulations and Staff Rules in that regard. He requested compensation for moral and professional injury and reimbursement of legal fees.

3. In the impugned decision of 18 June 2018, the Director-General accepted the GBA's conclusion that the administrative review decision was taken in accordance with WHO's Staff Regulations and Staff Rules and that there was no evidence of bad faith, bias, personal prejudice, abuse of authority, nor evidence of mistake of fact or law. The Director-General also accepted the GBA's recommendation to dismiss the complainant's internal appeal in its totality.

4. WHO correctly submits that the complainant's claims are irreceivable to the extent that they are based on his allegations of harassment, which are the subject of separate proceedings (see, for example, Judgments 3291, under 6, and 2742, under 16). The complainant's request for a letter that recognizes that his two supervisors mismanaged his ePMDS is also irreceivable because the Tribunal is not competent to order a measure of this kind.

5. As earlier indicated, before the GBA, the complainant had complained that the Administration did not award him compensation for moral and professional injury caused by his supervisors' wrongdoing and the negligent attitude of the Administration. This is mirrored in his main claim before the Tribunal in which he seeks 20,000 Swiss francs for professional injury which he alleges he suffered due to the manner in which his 2016 End-Year ePMDS was conducted. He bases the claim on the ground that his supervisors did not follow the prescribed procedures and WHO's Performance Management and Development Framework of 9 February 2015. He states that they did not take the process seriously and thereby showed bad faith. He also states that he

was forced to request the review of his 2016 End-Year ePMDS because his supervisors failed to conduct that ePMDS process properly in keeping with their duty and responsibilities under WHO's policy and rules concerning performance management. He insists that his supervisors negligently mismanaged the ePMDS process and that, among other things, their evaluations of his performance were clearly unsupported by any evidence or justification. The complainant points out that, although specifically requested by him, his first-level supervisor failed to provide any evidence to substantiate his (the supervisor's) evaluation of his (the complainant's) objectives and competencies. As well, his second-level supervisor agreed with the "unsubstantiated assessment" without providing any evidence as to why she did so. The complainant submits that his supervisors' negligence is evidenced by the fact that he provided justification to defend his position during the review of his supervisors' evaluation and it is clear that their faulty and baseless evaluation was done because of personal prejudice against him. He further submits, in effect, that as the review process was a mechanism to correct his supervisors' evaluation it was an official recognition of their wrong-doing and negligent mismanagement of the evaluation, which directly affected his employment and his health.

6. The Tribunal finds that the foregoing request for moral damages, which concerns damages stemming exclusively from the original decision, is unsubstantiated as the ePMDS was revised and the complainant failed to properly motivate the claim. The Administration had accepted that the initial evaluation rating in the complainant's 2016 End-Year ePMDS was wrong when it changed the overall rating from "partially unsatisfactory" to "fully satisfactory". It also changed three objectives from "partially achieved" to "fully achieved" and five mandatory competencies were revised from "partially demonstrated" to "fully demonstrated". The decision of 2 August 2017 rejected the other claims for relief which the complainant had sought for the following reasons:

"The revised and now completed 2016 ePMDS (which is attached to this memorandum) complies with the applicable provisions of WHO regulatory framework. I am pleased that the administrative review process resulted in the completion of your ePMDS, thus resolving the work-related concern you had raised. Given the manner and timeliness with which this matter has been addressed, I have decided not to award compensation for legal costs or alleged moral damages."

7. Against this background, the complainant's main claim fails. Additionally, the review of his ePMDS was not in itself an official recognition of his supervisors' wrong-doing or negligent mismanagement of the ePMDS process as he asserts. In fact, the review was an integral aspect of that process which yielded the result which the complainant sought and accepted: the revision of his 2016 End-Year ePMDS. Moreover, the review was conducted in a timely manner which ensured that the evaluation did not adversely affect his career, salary or terms of employment. He was informed of the revision in less than two months after he requested the review. Additionally, the complainant provides no evidence to support his assertion of personal prejudice or bad faith on the part of his supervisors in their initial evaluation. In fact, they both signed off on the revised ePMDS. He provides no evidence to prove that he suffered any injury or loss as a result of his supervisors' initial evaluation (see, for example, Judgment 4156, consideration 5).

8. Inasmuch as the complainant has not established that the impugned decision is tainted with reviewable error, the complaint must be dismissed in its entirety.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 1 July 2020, Ms Dolores M. Hansen, Vice-President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 24 July 2020 by video recording posted on the Tribunal's Internet page.

DOLORES M. HANSEN

GIUSEPPE BARBAGALLO

HUGH A. RAWLINS

DRAŽEN PETROVIĆ