

The Administrative Tribunal,

Considering the second complaint filed by Mr L.S. O.G.-Z. against the Pan American Health Organization (PAHO) on 13 October 2004, PAHO's reply of 24 January 2005, the complainant's rejoinder of 30 March and the Organization's surrejoinder of 12 July 2005;

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

Having examined the written submissions;

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

A. Facts concerning the present case can be found in Judgment 2477, delivered on 6 July 2005, in which the Tribunal ruled on the complainant's first case. The complainant is a former staff member of PAHO. He joined the Organization under a two-year fixed-term appointment that was due to expire on 5 August 2002. As explained in Judgment 2477, his first complaint to the Tribunal stemmed from a decision of 2 May 2002 by which PAHO extended his contract for five months only – until 31 December 2002. He filed an internal appeal against the decision of 2 May. In his first complaint to the Tribunal he challenged a final decision, dated 5 February 2004, in which, on the recommendation of PAHO's Headquarters Board of Appeal, the Director of PAHO dismissed his appeal, with the exception of a request he had made to have all negative memoranda from his supervisor expunged from his personnel file.

By an e-mail of 30 September 2002, the Chief of Personnel offered him a further extension of his appointment until 30 June 2003, which he accepted. The Chief of Personnel wrote to him on 10 January 2003, saying that unless by 31 March there was a marked improvement in his work, productivity and working relationships, he would not be reappointed when his contract expired at the end of June. By a letter of 27 March the same official, now Human Resources Manager, notified the complainant that his supervisors' evaluation of his performance remained unfavourable and that his current contract would not be renewed; consequently, he would be separated from the Organization on 30 June 2003. Attached to the letter were evaluations of the complainant's performance, made by his first and second-level supervisors on 26 and 27 March respectively: they covered the first three months of the year and the one from his first-level supervisor also gave an overall assessment covering the whole period during which the complainant had been with PAHO.

On 22 May 2003 the complainant notified his intention to file an internal appeal against that decision. He filed a formal statement of appeal on 13 June 2003, seeking, *inter alia*, full payment of any within-grade increases that had been withheld and the expunging from his personnel file of all memoranda considered by the Board to contain false accusations against him.

The PAHO Headquarters Board of Appeal issued its report on the complainant's case on 14 May 2004. The Board considered that there was a great deal of overlap between his first internal appeal, which was directed against the decision of 2 May 2002, and the second one, directed against the decision of 27 March 2003, and principally found against him. It said it could not make any recommendation regarding statements concerning behaviour and attitude, because it was unable to ascertain their accuracy. It did, however, recommend expunging any documents containing demeaning vocabulary from the complainant's file. By a letter of 12 July 2004, which the complainant says he received on 20 July, the Director of PAHO dismissed the complainant's claims. She noted, *inter alia*, that the Organization had already satisfied the Board's recommendation regarding strongly worded documents, because those in question had been removed from his personnel file as a result of a recommendation made by the Board in the context of his first internal appeal. In this second complaint the complainant challenges the decision of 12 July.

B. The complainant takes issue with the reasons for not renewing his contract, as given in the letter of 27 March 2003, which notably concerned his productivity and working relationships. Invoking the grounds for appeal set out in Staff Rule 1230.1, he alleges personal prejudice on the part of his supervisor, incomplete consideration of the

facts, and failure to observe or apply correctly the provisions of the Staff Regulations and Rules, or the terms of his contract. He argues that the Director of PAHO's final decision cannot stand.

For one thing, he submits that he was the victim of "supervisory harassment". He claims that his first-level supervisor abused his managerial authority by engendering a hostile working environment, adding that as a result of his supervisor's actions he suffered injury to his personal dignity and professional reputation. In support of these allegations, he points out that the Board of Appeal found that there were contradictory signals regarding his performance, that there was "poor use" of the Performance Planning and Evaluation System (PPES) procedures, and that the assessments given were not conducive to a healthy work environment. He further notes that the Board expressed concern about the unnecessarily "strong language" used by his supervisor. It is, he adds, inevitable that working conditions such as those described would exert a "negative impact" on the morale and productivity of any staff member.

He refers to similar critical comments put forward by the Board of Appeal in its report on the first internal appeal he filed. He notes that the Board found that the strong language used by his supervisor in written communications to him was "unacceptable to the standards of PAHO". Furthermore, he objects to comments contained in the letter of 27 March 2003 that were critical of his performance, protesting that they were unsubstantiated and untruthful, particularly as he was receiving recognition for his services from other sources, not least in the form of a PAHO Field Office 60th anniversary award received in December 2002.

While making it clear that he is not claiming reinstatement, the complainant seeks the quashing of the decision of 27 March 2003; the restoration of his "original contract conditions"; payment in respect of any within-grade increases that were withheld including the "accelerated" within-grade increase; the expunging from his personnel file of "all negative or derogatory memos" written by his supervisor; letters of apology from three officials that he names; material damages; moral damages; and all expenses as well as legal costs.

C. In its reply the Organization notes that much of the complainant's brief is identical to that filed in the context of his first complaint, which the Tribunal ruled on in Judgment 2477. The material facts are the same in both cases and the substance of the two cases is the same. In his first case he asked the Tribunal to quash the decision to extend his contract only by five months, whereas in the present case, he seeks the quashing of the decision not to extend it thereafter. According to the Organization, it is clear that the latter decision is but a mere extension of the first one. Although he seeks the quashing of a different decision in this second complaint, his other claims are virtually the same as those in his first complaint.

PAHO states that in not renewing the complainant's contract, it acted within its discretionary authority. The complainant never argues that he met his work objectives, and in the circumstances, the action taken by the Organization was appropriate. He was given an opportunity to improve, and was also given several warnings, but all to no avail.

The Organization submits that there is no basis for the complainant's allegation of harassment and that the Board of Appeal found no evidence of bias, harassment or a hostile work environment. It further submits that his supervisors attempted to encourage and motivate him. It adds that the anniversary award referred to by the complainant was conferred on all staff at the El Paso Field Office, where he was employed. Furthermore, the Organization considers that the decision on the non-renewal of his contract was not tainted by bias or procedural irregularity; it was taken in full consideration of the facts and should therefore stand.

It contends that there are no grounds for granting the redress the complainant claims. His request for the restoration of his "original contract conditions" is without merit as PAHO was under no obligation to renew his contract. He was not entitled to a within-grade increase, even though he had passed a language proficiency test, as he did not meet the essential requirement of satisfactory service. His request for the expunging of derogatory memoranda is moot, because as a result of his first internal appeal all correspondence containing strong language was removed from his personnel file. His request on this score has thus been satisfied. As for the letters of apology that he asks for, there are no grounds for issuing any such letters as the officials he names have done nothing wrong, and his claims are devoid of merit. Given that its actions were reasonable, PAHO considers that there are no grounds for awarding him damages or costs.

D. In his rejoinder the complainant presses his pleas. He states that he was justified in filing two separate complaints with the Tribunal as he is challenging two different administrative actions taken by PAHO at two

different points in time.

Referring to the letter of 27 March 2003 from the Human Resources Manager, he contends that the “evaluations” of his performance that were attached to that letter did not correspond to the PPES format, and that he was not given an opportunity to reply to criticisms made against him. He adds that there was no PPES evaluation of his performance for 2003.

E. In its surrejoinder PAHO points out that in Judgment 2477 the Tribunal recognised the propriety of the Organization’s decision not to renew the complainant’s contract. On the matter of the assessment of his performance in 2003, it states that a PPES appraisal would normally cover a full year’s performance, and that under the circumstances no such report was required. The complainant’s contract was scheduled to expire in June 2003 and on the basis of his previous performance evaluations it was considered proper and reasonable for the Organization to warn him of the need to improve, and then monitor his performance.

## CONSIDERATIONS

1. The complainant is a former official of PAHO. His employment history – from August 2000, when he commenced employment as an Epidemiologist stationed in El Paso, until 2 May 2002, when PAHO informed him that, instead of renewing his fixed-term contract, it would be extended until 31 December of that year to give him an opportunity to improve his performance – is set out in Judgment 2477. In that judgment, the Tribunal held that the decision of 2 May 2002, which was based on the complainant’s unsatisfactory performance, was not vitiated by any reviewable error. The complainant cannot now challenge that decision or any part of it.

2. On 30 September 2002 the complainant was offered a further extension of his contract until 30 June 2003. The e-mail containing the offer indicated that the Chief of Personnel would shortly be visiting El Paso and wished to discuss with him his “contract, conduct and performance”. The complainant accepted that offer and the meeting took place on 18 October 2002.

3. In the complainant’s 2002 appraisal under the Performance Planning and Evaluation System (PPES), his first-level supervisor, with whom the complainant had an unhappy relationship, reported, as he had in 2001, that the complainant had failed to meet a number of important work objectives. His second-level supervisor also said that his “most relevant work objectives” had not been achieved. Following this, the Chief of Personnel wrote to the complainant on 10 January 2003, referring to his 2002 PPES appraisal, to his supervisors’ reports of his unsuitable behaviour and to a statement by the Country Program Analyst criticising his “level of knowledge and co-operation”. The letter also stated that, unless there was a marked improvement in his work, productivity and relations with his first-level supervisor by 31 March, the complainant’s contract would be neither extended nor renewed. The letter also said that the complainant’s supervisors would contact him to “establish a suitable work plan and monitoring program”.

4. The complainant’s first-level supervisor wrote to him on 27 January 2003 specifying four areas in which he should concentrate his activities. In early February, his second-level supervisor wrote requesting certain information as soon as possible. On 26 March his first-level supervisor reported that only one of the tasks specified in his letter of 27 January had been performed. Similarly, his second-level supervisor reported on 27 March that he had not received any of the information requested in February. On the same day, 27 March, the Chief of Personnel (now Human Resources Manager) wrote to the complainant informing him that his contract would not be renewed beyond 30 June.

5. An appeal was submitted by the complainant to PAHO’s Headquarters Board of Appeal with respect to the decision of 27 March not to renew his contract. The Board recommended that any documentation containing “demeaning vocabulary” be expunged from the complainant’s personnel file but otherwise recommended that his appeal be dismissed. The Director of PAHO advised the complainant on 12 July 2004 that she accepted the recommendations of the Board. That decision is the subject of the present complaint. It is not disputed that the complaint is receivable.

6. The complaint raises the same grounds relating to the decision of 27 March 2003 as were raised with respect to the earlier decision of 2 May 2002, namely, personal prejudice and incomplete consideration of the facts. Additionally, the complainant alleges failure to observe “the provisions of Staff Regulations or Staff Rules or the

terms of [his] contract". Further, he alleges harassment by his first-level supervisor. He does not seek relief by way of reinstatement, but claims payment of within-grade increases; the expunction of all negative or derogatory remarks by his first-level supervisor from his personnel file; written apologies from his first-level supervisor, from the Human Resources Manager, and from the Country Program Analyst who reported adversely on the complainant's performance and behaviour on 15 November 2002. He also seeks material, moral and "compensatory" damages, and costs. Additionally, he requests an oral hearing in which to give evidence and to call his first-level supervisor as a witness.

7. It is convenient first to deal with the complaint of harassment by and prejudice on the part of the complainant's first-level supervisor, it being contended that these matters were overlooked in his PPES appraisals and in the subsequent decision not to renew his contract. The first question that arises in this context is whether there was harassment or prejudice. Certainly, there is evidence of strong criticism by his first-level supervisor involving, in the period leading up to the decision of 2 May 2002, what has been described as "inappropriately strong language". However, criticism of a subordinate's performance and behaviour, even in inappropriately strong language, does not, of itself, evidence harassment or prejudice. Certainly, that is so where, as here, the performance and behaviour in question are confirmed by other senior and responsible officials. That being so, and there being no other evidence to support the complainant's claims, the allegations of harassment and prejudice must be rejected.

8. So far as there was an unsatisfactory relationship between the complainant and his first-level supervisor and, in consequence, a difficult work environment, these matters were clearly taken into account by the complainant's second-level supervisor and by the Human Resources Manager in their dealings with him. There is no evidence that these matters and the complainant's allegations of harassment and prejudice were not taken into account in the decision not to renew his contract. Indeed, the documentary evidence is to the effect that they were all properly considered.

9. The complainant's contention that there was a failure to observe relevant provisions of the Staff Regulations, Staff Rules and of his contract relates to what he perceives to have been deficiencies in the preparation of his PPES appraisals. Whether or not there were deficiencies – a matter on which the Tribunal makes no finding – it is clear that work objectives were set in a timely manner, that the complainant was informed of the problems associated with his performance, that he was twice given an opportunity to improve that performance but that, even so, his work was still considered unsatisfactory by his supervisors at the end of March 2003. That being so, the deficiencies, if any, relating to the preparation of the complainant's PPES appraisals were not material to the decision of 27 March 2003 not to renew his contract.

10. The materials upon which the complainant relies fail to establish anyway to answer of harassment, prejudice, incomplete consideration of the facts or any material error in relation to the decision not to renew his contract. Accordingly, there is no occasion to order an oral hearing or to allow the calling of witnesses and the complaint must be dismissed. As the complaint must be dismissed, it is not necessary to consider the complainant's claim for the deletion of material from his personnel file or the question of apologies. However, it is convenient to note that there is no evidence that any criticism expressed in "demeaning vocabulary" remains on his file or that any of the matters in respect of which an apology is sought are anything other than the expression of an honest and reasonable belief relating to the complainant's performance or behaviour, and the supervisor concerned was entitled to raise such matters with the complainant or to record them for the proper purposes of the Organization.

## DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 28 October 2005, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Vice-President, and Ms Mary G. Gaudron, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 1 February 2006.

Michel Gentot

James K. Hugessen

Mary G. Gaudron

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 15 February 2006.