

**113th Session**

**Judgment No. 3132**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs E. v. S. against the International Atomic Energy Agency (IAEA) on 25 March 2010 and corrected on 9 September, the IAEA's reply of 18 November 2010, the complainant's rejoinder of 17 February 2011 and the Agency's surrejoinder of 20 May 2011;

Considering Articles II, paragraph 5, and VII 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. The complainant, a South African national born in 1951, worked for the IAEA from 1976 to 1980, and from 1982 until 30 September 2004, when she resigned from the Agency at grade G-4. On 12 January 2008 she sent a letter to the Head of the Department of Management of the Agency, to inform him of her grievances against the IAEA and to seek his assistance on their resolution. The Agency's reply, informing the complainant that she no longer had access to the administrative mechanisms for addressing her grievances, was sent on 17 June 2008. However, it was apparently never received by the complainant.

On 25 March 2010 the complainant filed a complaint with the Tribunal. Her submissions were incomplete and she did not identify the decision that she sought to impugn. The Registrar of the Tribunal therefore asked her to correct her complaint.

On 25 May 2010 the complainant sent an e-mail to the Director of the Division of Human Resources and to the Secretary of the Joint Appeals Board, restating the grievances set out in her letter of 12 January 2008. The Agency replied on 16 June 2010, attaching a copy of its letter of 17 June 2008 and informing her that the response provided therein was still valid. In her corrected submissions, the complainant indicates that she impugns the Agency's decision of 16 June 2010.

B. The complainant contends that she suffered psychological and sexual harassment by her superiors, which ultimately led to her involuntary resignation. She submits that no matter how well she performed, she was systematically ostracised and overlooked for promotion. In this regard she points out that she worked for 26 years at the Agency, of which 22 were spent at the G-4 level. The complainant also alleges that her immediate superior deliberately "deformed" her reputation and character and damaged her career by incorrectly rating her performance as "below IAEA standard" in her 2004 appraisal report. She claims that she performed a number of tasks which were never included in her job description, and that her immediate superior deliberately refused to recognise her work officially, to modify her job description or to upgrade her post.

Moreover, she submits that the Agency breached its duty of confidentiality by granting certain Agency staff unauthorised access to her personal file. Lastly, she argues that these events have prevented her from finding a new job in the IAEA or another United Nations agency.

The complainant asks the Tribunal to award her material and moral damages, including the end-of-service allowance which the Agency refused to pay when she resigned. She applies for an oral hearing. She also asks to be engaged by the Agency as a consultant in

the Professional category, in light of the tasks she actually performed in her G-4 position.

C. In its reply the IAEA submits that the complaint is *prima facie* irreceivable under Article VII, paragraphs 1 and 2, of the Tribunal's Statute. It requests the Tribunal to dismiss the complaint summarily pursuant to Article 7 of its Rules, on the ground that there is no decision to impugn, the letters of 17 June 2008 and 16 June 2010 being informational statements. It argues that the complaint is also irreceivable for failure to exhaust internal remedies. The Agency emphasises that at no time prior to her resignation did the complainant request an administrative review of any of the grievances she now raises. As a result, there has never been an administrative decision against which she could appeal, let alone a final administrative decision, as required under Article VII, paragraph 1, of the Statute of the Tribunal. Moreover, her complaint is time-barred, having been filed approximately four years after her resignation. The IAEA points out that the complainant has not submitted any new fact which was not available to her at the time of her resignation and which would justify entertaining such a tardy claim. What is more, the circumstances of her submissions to the Tribunal cast doubt over the sincerity of her grievances. It explains that the complainant approached the Tribunal in March 2010 without specifying which decision she was impugning, and then five months later corrected her submissions to indicate a "decision" that was contained in a letter dated 16 June 2010, i.e. three months after her initial filing.

The Agency also submits that the complainant's claims are entirely devoid of merit. In its view, the complainant's lackadaisical approach is indicative that her complaint is an abuse of process.

D. In her rejoinder the complainant presses her pleas. She maintains that the harassment, breach of confidentiality and the incorrect performance appraisal report for 2004 are still having severe consequences for her career, as she has been unable to find another job in any United Nations agency. She adds that, in the years prior to her resignation, she had applied for several jobs within the Agency,

but all her applications were unsuccessful. She denies that she was careless in submitting her complaint and questions the independence of the internal means of redress available to staff members alleging harassment.

E. In its surrejoinder the IAEA maintains its position, emphasising that the complainant's claims remain unsubstantiated, as she has provided no evidence or details of the facts she denounces.

### CONSIDERATIONS

1. The complainant resigned from the Agency with effect from 30 September 2004. In a letter dated 12 January 2008 to the Head of the Department of Management, she raised several grievances with regard to the period of employment prior to her resignation, including, inter alia, breach of confidentiality, mobbing, sexual harassment and defamation and she claimed continuing damage to her professional career as a result of defamatory information spread by IAEA staff. The Agency replied in a letter dated 17 June 2008, which she asserts she did not receive; having been delivered when she was on vacation, it was unclaimed and therefore sent back to the Agency. The complainant filed her complaint before the Tribunal on 25 March 2010 but was asked by the Registrar of the Tribunal on 8 April, and again on 6 August, to correct and finalise it. The complaint was corrected on 9 September 2010. In an e-mail of 25 May 2010 sent to the Director of the Division of Human Resources and the Secretary of the Joint Appeals Board the complainant explained that she had filed a complaint directly with the Tribunal as her attempts to seek an internal resolution had been "blatantly ignored" by the Agency. She reiterated the claims she had made in prior correspondence. The Director of the Division of Human Resources responded on 16 June 2010, attaching a copy of the letter of 17 June 2008, confirming the Agency's position as stated in that letter: essentially, that, as she had not raised any of the grievances at the material time through the available internal appeals mechanisms, she no longer had recourse to those mechanisms;

nevertheless, the Agency assured her that it handled confidential information with great care and in accordance with established procedures.

2. Since the case concerns only a question of law, the Tribunal sees no need to order hearings. The complainant's application for hearings is therefore rejected.

3. As the Tribunal held in Judgment 456, under 2, the purpose of Article VII, paragraph 3, of its Statute is twofold. Firstly, it enables an official to defend his or her interests by going to the Tribunal when the Administration has failed to take a decision. Secondly, it prevents a dispute from dragging on indefinitely and from coming before the Tribunal at a time when the material facts have altered or can no longer be determined with certainty. This would undermine the necessary stability of the parties' legal relations, which is the very justification for a time bar. As pointed out in Judgment 2901, under 8, it follows from these twin purposes that, if the Administration fails to take a decision on a claim within sixty days, the person submitting it not only can, but must refer the matter to the Tribunal within the following ninety days, i.e. within 150 days of his or her claim being received by the organisation, otherwise his or her complaint will be irreceivable. In the present case, the 150 days mentioned above expired at the latest in mid to late June 2008. The complainant did not receive any response to her claim within sixty days of her sending the letter of 12 January 2008; this is not in dispute. Therefore, she had a further ninety days to refer the matter to the Tribunal on the basis of an implied decision rejecting her grievances. In some cases, even a response received subsequently can be considered as nullifying and replacing the implied decision. However, neither letters from the Agency responding to the complainant can be considered as an administrative decision which would nullify and replace the implied decision rejecting her grievances outlined in her letter of 12 January 2008. It is clear that they did not contain any expression of will on the part of the Agency to allow the complainant to use the internal

mechanisms she chose not to use at the time she left the service of the Agency. Instead, the first letter limited itself to informing her that she had far exceeded the time limit for bringing formal grievances against the Agency and the second letter merely stated that the information contained in the first letter was still valid. That being so, the 150-day time limit mentioned above has expired and the complaint must be considered irreceivable and therefore be dismissed.

#### DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 9 May 2012, Ms Mary G. Gaudron, Vice-President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Ms Dolores M. Hansen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 4 July 2012.

Mary G. Gaudron  
Giuseppe Barbagallo  
Dolores M. Hansen  
Catherine Comtet