

**113th Session**

**Judgment No. 3143**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms A. C. against the International Fund for Agricultural Development (IFAD) on 12 May 2010, IFAD's reply of 1 July and the complainant's e-mail of 12 July 2010 informing the Registrar of the Tribunal that she did not wish to file a rejoinder;

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

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

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

A. With effect from 1 July 2003, IFAD introduced a new scheme for the payment of the rental subsidy benefit, based on its President's Bulletin PB/07/03. The rental subsidy is payable for a period of seven years only, and had previously been paid at the rate of 80 per cent for the first four years, 60 per cent for the fifth year, 40 per cent for the sixth year and 20 per cent for the seventh year, in accordance with the rental subsidy scheme of the International Civil Service Commission (ICSC). Under the new scheme, also referred to as the "lump sum arrangement", the rate would be averaged over the whole period of entitlement. In effect, this meant that staff recruited on or after 1 July 2003 would

receive a monthly fixed amount in rental subsidy during their first seven years of service, rather than a higher amount during the first four years, which would then decrease over the next three years. In December 2009 IFAD abolished the rental subsidy lump-sum arrangement and reverted to the ICSC rental subsidy scheme.

The complainant, a French national born in 1972, was a grade P-4 staff member of IFAD from 16 January 2006 until 23 March 2007, when she resigned from her position as Investigation Officer. Prior to her separation, by an e-mail of 21 February 2007 to the Office of Human Resources, she requested a retroactive adjustment of her rental subsidy on the basis that she would be separating from IFAD before completing four years of service, so that her rental subsidy should therefore be recalculated at the rate of 80 per cent and she should be paid the resulting difference. On 5 March she sent another e-mail indicating that, according to her calculations, the amount owed to her in this respect was 1,676.04 United States dollars. The Office of Human Resources replied on 15 March 2007 that the amount the complainant had received in rental subsidy was based on an average over a seven-year period. As separation prior to the expiry of the seven-year entitlement period was not a reason warranting the recalculation of the rental subsidy lump sum paid to a staff member, the Office of Human Resources was unable to accede to her request.

That same day the complainant submitted to the President of IFAD a request for facilitation. An e-mail exchange ensued, in which the Office of Human Resources initially responded to enquiries from the facilitator and the complainant with assurances that a decision by the Administration was imminent. The Office subsequently stated that the issue would be addressed in a new President's Bulletin, which was then being drafted. Finally, on 5 March 2008 the facilitator wrote to the President to inform him that as 11 months had now elapsed without any likelihood of a resolution of the dispute, the facilitation process was terminated without any agreement having been reached between the parties.

The complainant then filed an appeal with the Joint Appeals Board. In her statement of appeal she alleged, *inter alia*, unfair

treatment on the basis that, to her knowledge, in at least one case a staff member's rental subsidy had been calculated at the most favourable rate of 80 per cent on the grounds that the staff member had a three-year contract with no guarantee of extension. On 30 July 2008 the Board asked her to identify that staff member and the source of her information. The complainant replied on 5 August 2008 that, since the case was well known to the Office of Human Resources, any enquiries in that respect should be addressed to that Office. The next day the Secretary of the Board wrote to the Office of Human Resources requesting information as to whether a different method of calculation of the rental subsidy lump sum had been applied in specific cases, and if so, what criteria were applied. In a memorandum of 28 January 2009 the Director of Human Resources replied that there were three cases in which the rental subsidy lump sum had been calculated differently. In one case, the staff member concerned had been recruited before the entry into force of the new lump-sum arrangement introduced by the President's Bulletin PB/07/03, and in the other two cases, the beneficiaries were Assistant Presidents serving under three-year contracts with no reasonable expectation of renewal. The Director of Human Resources added that the complainant could only have obtained that information by virtue of her functions, and it was inappropriate that she should seek to use it for personal purposes.

In a report issued on 7 January 2010 and submitted to the President on 29 January, the Board found that there were no grounds to accept the complainant's appeal and recommended that it should be dismissed. It also found that the complainant had misappropriated information to which she had access by reason of her functions, thereby failing to conduct herself according to the ethical standards required of staff members. By a letter of 31 March 2010 the President informed the complainant that, as her rental subsidy lump sum had been calculated in conformity with the applicable rules, he had decided to maintain the decision rejecting her request for recalculation. He added that he had nevertheless decided to dismiss the Board's conclusion regarding her ethical conduct. That is the impugned decision.

B. The complainant alleges that the decision not to recalculate her rental subsidy lump sum constitutes unfair and discriminatory treatment. The rental subsidy lump sum paid to two Assistant Presidents had been calculated at the more favourable rate of 80 per cent, because they had been serving under three-year contracts with no reasonable expectation of renewal. In her case, it had been calculated by averaging the rate applicable over the whole period of entitlement, even though her terms of appointment were less advantageous than those of Assistant Presidents, since her initial contract was for one year only and carried no expectation of renewal. In effect, IFAD failed to ensure the consistent and equitable application of the rental subsidy scheme and, by so doing, violated the principles of fairness and equity.

She also alleges that the impugned decision is flawed because it is based on an incorrect interpretation of the rental subsidy scheme designed by the ICSC, which is binding on IFAD. Indeed, the lump-sum arrangement introduced by the President's Bulletin PB/07/03 contravened the general spirit and purpose of the ICSC rental subsidy scheme, and especially the "regressive formula", which is designed to provide higher reimbursement rates during the first four years of service so as to offset increased rental costs for newcomers. In the complainant's view, whereas the ICSC scheme encourages mobility within the United Nations common system, the lump-sum arrangement constituted a disincentive for staff members of other agencies to join IFAD and was therefore contrary to the objective of its salary programme, to "attract, retain, motivate and reward the best possible workforce". Moreover, the lump-sum arrangement disregarded the fact that, as an integral part of the ICSC post adjustment system, the rental subsidy benefit is not only meant to apply throughout the United Nations common system, to which IFAD belongs, but should also vary according to the monthly fluctuations of the post adjustment index. The complainant contends that the abolition of the lump-sum arrangement in December 2009 can be interpreted as an admission by IFAD that this arrangement was fundamentally and legally flawed.

Lastly, the complainant submits that serious procedural flaws in the internal grievance procedures resulted in inordinate and unjustifiable

delays and violations of her due process rights. She denounces what she considers to have been a “mock facilitation process”, during which both she and the facilitator were misled by the Administration’s assurances that a resolution of the dispute was imminent. With regard to the proceedings before the Joint Appeals Board, she contends that the Administration demonstrated bad faith and dilatoriness, by failing to comply with the applicable rules and to respond to the Board’s repeated requests for information, and that both the Administration and the Board attempted to tarnish her reputation and to cast doubt on her professional integrity through unfounded accusations of unethical conduct. She complains that the Board acted without due diligence, breached its rules and its duty of confidentiality, and concealed from her key evidence, namely the memorandum of 28 January 2009 from the Director of Human Resources and a report entitled “Rental Subsidy Scheme and the Application of Lump Sum” prepared by the Office of Audit and Oversight in December 2007.

The complainant requests payment of 1,676 United States dollars in outstanding rental subsidy, the payment to be made in Swiss francs at the exchange rate applicable in the United Nations in March 2007. She claims 60,000 francs in moral and exemplary damages and 6,000 francs in costs, with interest at 8 per cent per annum on each sum awarded. She asks the Tribunal to order IFAD to produce the report prepared by the Office of Audit and Oversight and to execute the Tribunal’s decision on her complaint within three weeks of receiving it.

C. In its reply IFAD rejects as patently incorrect and unfounded in law the contention that it is legally bound by the ICSC recommendations. It explains that in 1978 its Executive Board had decided that IFAD would not participate in the ICSC but would have observer status. Consequently, IFAD has not accepted the ICSC Statute and is therefore under no legal obligation to implement the Commission’s recommendations. Moreover, the provision in Article IX of the Agreement between IFAD and the United Nations, according to which the Fund “agrees to co-operate with the [ICSC] on matters concerning the regulation and co-ordination of the conditions of service of

staff”, is substantively different from the provisions contained in the cooperation agreements between the United Nations and Specialized Agencies that have accepted the ICSC Statute. Those agreements specify, for example, that the United Nations and the organisation “agree to develop common personnel standards, methods and arrangements”. Accordingly, IFAD’s decision to introduce a lump-sum arrangement for the payment of the rental subsidy benefit was well within its discretion.

The Fund also submits that the amount to which the complainant was entitled in rental subsidy was calculated in conformity with the applicable rules. It draws attention to the fact that the President’s Bulletin PB/07/03 was attached to the complainant’s letter of appointment, which itself referred specifically to the calculation of the rental subsidy benefit on a lump-sum basis. By accepting and signing that letter, the complainant agreed to its terms. Moreover, she was not eligible to have her rental subsidy recalculated, since she did not meet any of the conditions warranting recalculation.

IFAD dismisses the complainant’s allegations of unequal treatment. It explains that the complainant was not in the same situation as the two Assistant Presidents whose rental subsidies had been calculated using a different formula, and that the difference between her situation and theirs warranted different treatment. The two Assistant Presidents were senior officials with corresponding representational responsibilities whose appointments were for a limited duration and did not entail any expectation of career service with the Fund. Accordingly, their compensation packages had been negotiated individually. Moreover, their appointments were not subject to the provisions of the Human Resources Procedures Manual but were entirely within the discretion of the President. In any event, even if the different treatment in their case was not appropriate and was therefore unlawful, the complainant cannot claim a right to the same unlawful treatment.

IFAD invites the Tribunal to dismiss the complaint and the complainant’s claim for damages. It submits that the complainant has not demonstrated that she suffered any injury as a result of the

impugned decision or that she has a legitimate interest in pursuing this complaint. Indeed, she informed the President of IFAD that she would donate any financial award made to a cat shelter, which illustrates that she has no personal stake in the outcome of this case. In addition, she has not adduced any evidence of bias, malice or improper purpose which would justify an award of moral and exemplary damages, nor has she shown that the length of the internal grievance process caused her any damage.

### CONSIDERATIONS

1. The complainant was a staff member of the International Fund for Agricultural Development (IFAD) from 16 January 2006 until her resignation on 23 March 2007. She seeks payment of the sum of 1,676 United States dollars which she claims is due to her by way of rental subsidy, together with moral and exemplary damages and costs. She contends that she is entitled to the amount claimed for rental subsidy on two grounds. First, she claims that the amount actually paid to her during her service with IFAD is based on a wrongful implementation of the rental subsidy scheme designed by the International Civil Service Commission (ICSC) which, she argues, is binding on IFAD. Her second claim is that the failure to pay her the rental subsidy in accordance with the ICSC scheme constituted unfair and discriminatory treatment.

2. The complainant's rental subsidy claim was first submitted on 21 February 2007, shortly before her resignation took effect. Her claim was rejected on 15 March 2007 and, on the same day, she asked to have the matter brought before a facilitator. On 5 March 2008 the facilitator informed the President of IFAD that the facilitation process had been terminated without agreement being reached. The same day, the complainant lodged an appeal with the Joint Appeals Board. In its report, which was submitted to the President on 29 January 2010, the Board recommended that her appeal should be dismissed and, acting on that recommendation, the President did so on 31 March 2010. This is the decision impugned before the Tribunal.

3. Before turning to the complainant's arguments, it is convenient to consider an application by IFAD that the complaint be dismissed on the ground that the complainant has no interest in the outcome of the proceedings. In this regard, IFAD refers to a statement by her shortly after filing her request for facilitation, that she would donate the money claimed to a cat shelter. In support of its application, IFAD refers to Judgment 764 in which the Tribunal held that a decision can only be challenged if it causes the complainant injury. The application is misconceived. If the complainant was entitled to the amount claimed, she suffered injury as a result of the decision rejecting her claim. Moreover, she is entitled to dispose of her property in any way she sees fit and retains a personal interest in the outcome of the proceedings, even if she intends, in the event of success, to give the money to a cat shelter.

4. It is not in dispute that, unless IFAD is bound by the ICSC scheme, the terms of the complainant's contract entitled her only to the money actually paid to her by way of rental subsidy. That money was paid in accordance with Section 3.2 of IFAD's Human Resources Procedures Manual which implemented the President's Bulletin PB/07/03. That bulletin, a copy of which was attached to the complainant's letter of appointment, introduced a system by which a lump-sum calculation was made of the rental subsidy payable under the ICSC scheme for seven years and that sum was then divided by 84 to give a fixed amount to be paid each month over the seven-year period. Under the ICSC scheme, however, an annual percentage of 80 per cent is payable for the first four years, reducing to 60 per cent in the fifth year, 40 per cent in the sixth year and 20 per cent in the seventh year. The result of this is that a person to whom a rental subsidy is paid in accordance with the ICSC scheme will receive more in the first four years than a person paid in accordance with the President's Bulletin PB/07/03.

5. In Judgment 1086, under consideration 6, the Tribunal held that an international organisation that had accepted the ICSC Statute "was bound to apply [its] recommendation insofar as it was not



in doubt”. The complainant contends, by reference to information available on the ICSC website, that the ICSC rental subsidy scheme applies throughout the UN common system to which IFAD belongs. She points out that the common system is “designed to avoid serious discrepancies in terms and conditions of employment, to avoid competition in recruitment of personnel and to facilitate the interchange of personnel”. However, this does not establish that IFAD has accepted the ICSC Statute. On the contrary, it appears that the Executive Board of IFAD decided in 1978 that it would not participate in the ICSC but would have observer status. Moreover, the agreement between IFAD and the United Nations requires only that IFAD “co-operate with the [ICSC] on matters concerning the regulation and co-ordination of the conditions of service of staff” and not, as in the case of certain other organisations, that it “agree to develop common personnel standards, methods and arrangements”. Even so, the Executive Board of IFAD adopted a Human Resources Policy in 2004 which, in Section 9.3, provides that “[t]he salary and benefit levels shall follow the methodology followed by the United Nations Common System, as applied to various duty stations”. That stops short of obliging IFAD to implement ICSC recommendations. Accordingly, the argument that IFAD is bound to implement the ICSC rental subsidy scheme, whether by virtue of Section 9.3 of its Human Resources Policy or otherwise, must be rejected.

6. The complainant’s argument that she was treated unfairly and in a discriminatory manner is based on the fact, admitted by IFAD, that in the case of three other staff members, it paid rental subsidies that equated with those payable under the ICSC scheme. One of the staff members concerned was appointed before the President’s Bulletin PB/07/03 was promulgated. The other two were Assistant Presidents whose recruitment is not governed by the Human Resources Procedure Manual, Section 3 of which implements President’s Bulletin PB/07/03 with respect to the rental subsidy. Moreover, it appears that the Assistant Presidents were appointed for three years without any expectation of renewal thereafter and that their salary packages were negotiated with them individually. In these

circumstances, the complainant was not in the same position in fact and in law as the three persons concerned and, in consequence, her argument that she was treated unfairly and in a discriminatory manner must be dismissed. Nor is her argument advanced by the fact that the rental subsidy scheme was changed for newly appointed staff in 2009.

7. The complainant's claim for payment of additional monies by way of rental subsidy must be dismissed. That being so, and subject to one matter to which it is necessary to refer, her claim for moral and exemplary damages must also be dismissed. The matter to which reference should be made is the internal grievance process which, taking into account the facilitation process, took a little more than three years. The facilitation process, which is a prerequisite to the filing of an appeal, took almost one year. This was due in large part to statements made from time to time by the Administration that a solution was likely to be found. The proceedings before the Joint Appeals Board took 22 months. Part of this delay – approximately five months – was due to the failure of the Administration to provide information requested by the Board. The remainder of the delay is unexplained. The issues were relatively simple, as indicated by the brevity of the Board's report. Moreover, it appears that the Board failed to make available to the complainant material that it had obtained from the Administration. In these circumstances, the complainant is entitled to moral damages in the sum of 1,000 euros with respect to the internal grievance process. Having succeeded in part, she is entitled to costs in the sum of 300 euros.

#### DECISION

For the above reasons,

1. IFAD shall pay the complainant moral damages in the amount of 1,000 euros.
2. It shall also pay her costs in the amount of 300 euros.
3. The complaint is otherwise dismissed.

In witness of this judgment, adopted on 4 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