

P. (No. 5)

v.

FAO

126th Session

Judgment No. 4015

THE ADMINISTRATIVE TRIBUNAL,

Considering the fifth complaint filed by Mr W. P. against the Food and Agriculture Organization of the United Nations (FAO) on 15 April 2017 and corrected on 10 May, the FAO's reply of 21 August and the email of 10 October 2017 by which the complainant informed the Registrar of the Tribunal that he did not wish to file a rejoinder;

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 award him damages for the alleged leaking of confidential information concerning him.

On 23 January 2014 the complainant, who was an FAO staff member, received an email from a newspaper asking him to comment on the fact that he had claimed compensation for alleged damage by the FAO to his image. On 27 January he forwarded this email to the Director of the Office of Human Resources (OHR) enquiring about the fact that confidential information concerning him had reached that newspaper. That same day the newspaper released a short article explaining in particular that the complainant was the President of the Association of Professionals and that he "sought compensation of [...] 50,000 [dollars]

from the [FAO] for sending a slur against him by email to thousands of staff”. On 30 January 2014 the Director of OHR replied to the complainant, stating that the FAO had often wondered how confidential information was disseminated to that newspaper.

On 14 May the complainant wrote to the Director-General requesting the payment of 50,000 euros for the FAO’s failure to ensure the confidentiality of his initial claim. He alleged that the leaking of that information coupled with the allegation made in the newspaper’s article that he had requested compensation to blackmail the FAO had caused “immeasurable damage to [his] reputation”, significant stress and damage to his health. The complainant was informed by a memorandum of 23 June that his claim for damages was rejected as unfounded. The FAO considered that it had made all reasonable efforts to ensure the confidentiality of information relating to his claim. On 30 June the complainant appealed to the Director-General, asking him to set aside the decision of 23 June and to award him the requested damages. The Director-General dismissed his appeal on 8 August. On 30 September 2014 the complainant lodged an appeal with the Appeals Committee challenging that decision.

In the meantime, on 14 August 2014, the Office of the Inspector-General (OIG) informed the complainant that his complaint regarding the unauthorised disclosure of confidential information to a newspaper had been reviewed. Based on interviews of staff members and a review of the IT system, there were no reasonable grounds to believe that any staff member had shared confidential information.

The Appeals Committee issued its report on 23 December 2016. In its view, the FAO could not be considered responsible for the alleged leak of information, irrespective of whether such leak had actually occurred or not. It concluded that there was no proof of negligence on the part of the FAO and that the complainant had failed to produce any evidence to establish whether a breach of confidentiality had indeed occurred. The Appeals Committee held that it was likely that the newspaper had just “picked up some rumours”. It therefore recommended rejecting the appeal.

By a letter of 22 February 2017, which the complainant received on 1 April, the Director-General informed him that he agreed with the recommendation of the Appeals Committee to reject 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, plus “moral damages for the delay in the internal complaint and appeals process”.

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

CONSIDERATIONS

1. This complaint was preceded by an internal appeal. The complainant submits that at some point between his filing of the appeal and the in-house units receiving and dealing with the appeal, “word of [his] appeal must have been leaked and/or a copy of [his] Appeals document itself [...] must have fallen into unauthorized hands”. He contends that but for the FAO’s failure to take all reasonable efforts to ensure the confidentiality of his appeal, the information would not have been provided to the newspaper.

2. First, it is observed that there is no evidence the newspaper was in possession of the complainant’s internal appeal document. The newspaper’s 23 January 2014 email to the complainant relevantly states:

“We have received a couple of letters from someone claiming to represent ‘Concerned Insiders’ at FAO highly critical of FAO [Association of Professionals] leadership.

In particular this person refers to a request by yourself to the FAO for damages of 50,000 euros for alleged damage to your image from an email that was inadvertently sent to 6,000 people at FAO. The damages claim, according to the letter, was examined by a [World Food Programme] board at FAO request and then declined.”

3. It is noted that in the above email from the newspaper to the complainant, the newspaper specifically states that the person who provided the information “refer[red] to a request” made by the complainant. The newspaper’s 27 January 2014 article states that the

complainant did not respond when asked about the “report”, that is, the information related to the complainant in the email. The article goes on to say that the “report” was “backed by what [was] purportedly a copy of a confidential memorandum” authored by the complainant. This, coupled with the inaccuracies in the article itself, supports a finding that the newspaper did not have a copy of the complainant’s appeal document. Beyond the statement in the article, there is no evidence indicating whether or not the person who contacted the newspaper had a copy of the appeal document.

4. Based on the information given to the newspaper, although not entirely accurate, it is evident that the individual who contacted the newspaper had some information about the complainant’s appeal. The question is whether the information about the complainant’s appeal was acquired as a consequence of the FAO’s negligence or a breach of its duty of care to protect the confidentiality of information. The record shows that the FAO has a detailed set of policies, rules and procedures to protect confidential information. In an attempt to identify the individual or individuals responsible, the OIG undertook a review of the complainant’s complaint concerning the “unauthorized sharing of confidential information” with the newspaper. The OIG interviewed staff members directly responsible for handling the information and reviewed all the data available on the FAO’s internal IT systems. Although the OIG was able to determine that the information was not publicly available on the FAO IT systems, it was unable to find that any specific individual shared the information.

5. The complainant argues that if the FAO had taken all reasonable efforts to ensure the confidentiality of his appeal and if the FAO had adequate procedures in place to guarantee strict confidentiality of information, the information at issue would not have ended up with the newspaper. This argument is fundamentally flawed. In the absence of any other evidence, the fact alone that the newspaper acquired some information about the complainant’s request for compensation does not prove negligence on the part of the FAO or that it breached its duty of

care. Moreover, the complainant has not adduced any evidence that would support a finding of negligence or a breach of the FAO's duty of care.

6. Lastly, in the complaint form submitted to the Tribunal, the complainant seeks "moral damages for the delay in the internal complaint and appeals process". As the complainant did not make any submissions in his brief in relation to this claim, it will not be considered. It is also observed that 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.

In light of the above, the complaint will be dismissed.

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