

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

**R.**  
**v.**  
**IAEA**

**130th Session**

**Judgment No. 4300**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr R. R. against the International Atomic Energy Agency (IAEA) on 13 December 2017 and corrected on 18 January 2018, the IAEA's reply of 26 April, the complainant's rejoinder of 24 July 2018 and the IAEA's surrejoinder of 14 January 2019;

Considering the IAEA's submissions of 28 August 2018 and 4 October 2018 pursuant to the Tribunal's request and the complainant's comments thereon of 21 November 2018;

Considering the complainant's additional submissions of 11 March 2019 and the IAEA's final comments of 19 June 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 re-assignment of a colleague and the extension of that colleague's appointment beyond the normal maximum tour of service.

The complainant joined the IAEA in April 2013 under a temporary assistance contract, holding grade P-3. He worked in the Systems Development and Support Group (SDSG) of the Nuclear Information

Section (NIS) in the Department of Nuclear Energy (NE) with Mr A.A., who also held a P-3 position.

In late 2014, the complainant applied for the P-4 position of SDSG Coordinator (vacancy notice 2014/195). This vacancy notice was cancelled and re-advertised in November 2016 under the title “SDS Group Leader” (vacancy notice 2016/0640).

In early 2015, Mr A.A. was appointed as Acting Group Leader in SDSG, thus becoming the complainant’s first-level supervisor. On 20 April 2015 the complainant wrote to his second-level supervisor, Mr S., providing a list of examples of behaviour and actions concerning Mr A.A. that he perceived as “butchery of the good relationships and reputation [he had] built with hard work in the past two years, within and outside the team, and a mobbing that [was] not permitting [him] to continue to contribute” to the work of the IAEA as he could. He believed that the sooner these issues were discussed the sooner the spirit of cooperation requested by Mr S. could be achieved. Mr S. considered that there was no misconduct or harassment. The complainant was granted a fixed-term appointment on 1 June 2015 as Information Architect in SDSG at grade P-3.

The complainant wrote to Mr S. in September to inform him that the situation had deteriorated further. The complainant was transferred on 1 December 2015 to another position in the NE Department so that he would no longer work with Mr A.A., and was transferred again in April 2016 to another position in the same NE Department. As from 1 March 2017 he was placed on certified sick leave, and on 3 July 2017 he was informed that his appointment would not be extended upon its expiry on 31 May 2018.

On 15 August 2017 the complainant wrote to the Director General asking him to review the decisions to renew Mr A.A.’s appointment as Acting Group Leader and to exceptionally extend Mr A.A.’s appointment beyond the maximum tour of service of seven years in breach of Staff Rule 3.03.1. The complainant became aware of the appointment extension by a staff list published on 19 June 2017. He argued that exceptional extensions were allowed under the condition that the conduct and performance of the staff member had been of the “highest degree of excellence”. Since he had reported harassment on the part of Mr A.A. in September 2015, Mr A.A.’s conduct could not meet this condition. The complainant also noted that the Office of Internal

Oversight Services started an investigation only in February 2017 and that such a delay in investigating his allegations was an affront to his dignity. He added that his chance of being transferred back to the position of Information Architect was reduced because of the extension of Mr A.A.'s appointment and the fact that they could not work together. He requested to be allowed to file a complaint directly with the Tribunal in the event that his request for review was rejected.

On 14 September 2017 the Director General informed the complainant that his request for review was rejected. Without prejudice to the issue of whether or not the complainant had standing to request a review under those circumstances, the Director General explained that there was no decision to appoint Mr A.A. to the position of Acting Group Leader in June 2017, and that his position was that of Systems Analyst/Programmer at that point in time. The document to which the complainant referred was a staff directory that erroneously recorded Mr A.A. as Acting Group Leader. Since no decision had been taken, the Director General found that his request was irreceivable under Staff Rule 12.01.1(D)(1). With respect to the request to review the decision to exceptionally extend Mr A.A.'s appointment beyond the maximum tour of service, the Director General found that the complainant had not demonstrated "adequate standing" to challenge it. In any event, the complainant was time-barred to challenge the extension decision. The Director General agreed to waive the jurisdiction of the Joint Appeals Board (JAB) thereby allowing the complainant to file a complaint directly with the Tribunal. This is the decision the complainant impugns.

The complainant asks the Tribunal to set aside the impugned decision and thereby quash the decision to appoint Mr A.A. to the position of Acting Group Leader and the decision to grant an exceptional extension of Mr A.A.'s appointment. He seeks an award of material damages in an amount equivalent to the difference between what he would have earned had he been appointed Acting Group Leader, at grade P-4, as of June 2017, plus interest, together with moral damages, plus interest, and exemplary damages. He claims an award of interest at 5 per cent per annum from the effective date on which the waiver of the Agency's rotation policy was applied to Mr A.A. In addition, he asks the Tribunal to order the deletion of the following sentence from paragraph 74 of Part II, Section 3, of the Administrative Manual:

“Where a candidate has been performing in an acting capacity in the advertised post, he/she shall be interviewed.” Lastly, he claims costs.

The IAEA asks the Tribunal to reject the complaint as irreceivable on the ground that there was no decision to appoint Mr A.A. as Acting Group Leader after 31 January 2017 and that the complainant has no cause of action to contest decisions concerning the appointment of another staff member. It adds that the Tribunal is not competent to order the withdrawal of a provision of the Administrative Manual. It claims that the complaint is otherwise devoid of merit and argues that it is a vexatious complaint as the complainant attempts to rely on matters which properly fall under his second complaint.

#### CONSIDERATIONS

1. By letter dated 15 August 2017, the complainant submitted a request for review to the Director General. In that letter he asked the Director General “to review the decision to further renew the appointment of Mr [A.A.] to the post of *Acting Group Leader (P-4)*, in SDSG/NIS/NE, and to identically review the underlying decision to afford him of an exceptional extension in the Professional category, beyond the maximum tour of service of seven (7) years, in light of the evidenced failure, on the part of the [IAEA], to promptly investigate, in this connection, an allegation of harassment on his part”. The complainant also requested the Director General to waive the requirement to appeal to the JAB, in line with Staff Rule 12.02.1(B), in order to receive an expedited resolution by appealing directly to the Tribunal.

2. By letter dated 14 September 2017, the Director General rejected the complainant’s request for review of the two decisions in question, but granted his request to waive the requirement to appeal to the JAB in order to allow him to file a complaint directly with the Tribunal.

With regard to the complainant’s request to review the first decision, the Director General clarified: “no decision has been made to appoint Mr [A.A.] to the position of Acting Group Leader, and his position in the Agency’s official records is that of Systems Analyst/Programmer [in the] NE [Department]. The document to which you refer in your letter of 15 August 2017 is, as you noted, a staff directory internal to NIS and erroneously records Mr [A.A.] as Acting Group

Leader. Your Division has been instructed to correct this error in their internal staff directory. Against this background, no administrative decision of the sort you allege has been taken and your request *‘to review the decision to further renew the appointment of Mr [A.A.] to the post of Acting Group Leader (P-4)’* is therefore irreceivable under Staff Rule 12.01.1(D)(1).”

3. Regarding the complainant’s request to review the decision to grant Mr A.A. an exceptional extension of his appointment in the Professional category beyond the seven-year maximum tour of service, the Director General noted that the complainant had not demonstrated adequate standing to challenge that decision but that in any case the request was time-barred. He stated that, under Staff Rule 12.01.1(D)(1), a request for review of a decision must be submitted within two months of having learned of the relevant decision and he noted that by the complainant’s own admission, in his “Report of Misconduct” dated 20 January 2017 to the Director of the Division of Human Resources and to the Director of the Office of Internal Oversight Services, he had become aware around 25 July 2016 that Mr A.A. had reportedly been granted “a long-term contract”. Accordingly, the Director General rejected the request for review of that decision on the basis that the complainant’s 15 August 2017 request was time-barred and therefore irreceivable.

The Director General also stated that, without prejudice to the above-mentioned viewpoints regarding standing and receivability, “the decision to grant Mr [A.A.] an extension of his appointment was procedurally sound”. He noted that the complainant’s allegation of misconduct was raised after the decision to extend Mr A.A.’s appointment had been taken, that the complainant’s claims of harassment against Mr A.A. had been found to be unsubstantiated, and that the case had been closed in accordance with paragraph 4(d) of Appendix G of Part II, Section 1, of the Administrative Manual as notified to the complainant in a letter dated 6 September 2017 from the Acting Director of the Division of Human Resources.

4. The complainant impugns the 14 September 2017 decision in the present complaint. He bases his complaint on the following grounds:

- (a) Violation of his right to appeal by deliberate overlooking, omission and material misrepresentation of facts, due to manifest failure to conduct adequate inquiries.
- (b) Violation of his right to appeal “by misuse of authority, for the infringement of the obligation to state the reasons on which the appointment decision [was] based”.
- (c) Violation of his right to equal treatment by abuse of power, in light of manifest arbitrary decision-making.
- (d) Violation of his right to a fair and open competition with respect to the recruitment process for the position advertised in vacancy notice 2016/0640 as the decision to appoint Mr A.A. was tainted by abuse of power.
- (e) Breach of the Agency’s duty to investigate his claims of harassment both promptly and thoroughly by grave misuse of authority and absolute failure to make preliminary inquiries.
- (f) The unlawful extension of Mr A.A.’s appointment in the Professional category constituted a breach of the complainant’s contract by factually denying his right to a safe and healthy work environment for his first assignment with the IAEA.
- (g) The unlawful extension of Mr A.A.’s appointment in the Professional category violated the complainant’s right to a fair and open competition in the recruitment process for the position advertised in vacancy notice 2016/0640.
- (h) The contradictory statements and withholding of information on Mr A.A.’s contractual status have deprived the complainant of his right of appeal, and equally impaired his right to procedural fairness, in violation of the principle of good faith, and the IAEA’s concomitant duty of care towards him.
- (i) The complaint is receivable, *ratione temporis*, as “the date and reasons of the [contested] decisions were deliberately concealed from [him], with the effect of misleading him on the true merits of his case, his cause of action and thus as to whether he had an interest in exercising his right of appeal”.

5. The complainant has advanced numerous arguments which are not relevant to the present complaint. Accordingly, the Tribunal will only address those that relate to the complainant’s 15 August 2017

request for review and to the Director General's 14 September 2017 final decision that is impugned in the present complaint. Specifically, the complainant's request that the Director General review "the decision to further renew the appointment of Mr [A.A.] to the post of Acting Group Leader" and to exceptionally extend Mr A.A.'s contract beyond the seven-year maximum tour of service.

6. The complaint, insofar as it impugns the decision to exceptionally extend Mr A.A.'s appointment beyond the maximum tour of service (and any related claims), is irreceivable. The complainant, by his own admission, became aware of that extension around 25 July 2016 and he was again made aware of it during the meeting of 10 August 2016 with his second-level supervisor (Mr S.). He did not contest the decision in accordance with the relevant rules, that is to say within the two-month time limit. He was thus time-barred from contesting that decision when he did so on 15 August 2017. It is unnecessary in these circumstances to address the question of whether he would have had a cause of action to challenge the contested decision.

7. Regarding the complainant's challenge to the decision to further renew the appointment of Mr A.A. to the position of Acting Group Leader, the Tribunal is satisfied that no such decision exists. The complainant's submissions do not refute the IAEA's submissions which show that Mr A.A. was not appointed, nor re-appointed as Acting Group Leader. Mr A.A. had been temporarily reassigned to perform the duties of Acting Group Leader for the period from 1 February 2015 to 31 January 2017, after which he returned to his original P-3 post of Systems Analyst/Programmer, in the NE Department.

In light of the above, the complaint must be dismissed in its entirety.

#### DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 8 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