

**R. (No. 13)**

v.

**IAEA**

**134th Session**

**Judgment No. 4523**

THE ADMINISTRATIVE TRIBUNAL,

Considering the thirteenth complaint filed by Mr R. R. against the International Atomic Energy Agency (IAEA) on 3 October 2018 and corrected on 19 November 2018, the IAEA's reply of 7 March 2019, the complainant's rejoinder of 24 July and the IAEA's surrejoinder of 21 November 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 decision to temporarily reassign him to another post following his allegations of harassment against his supervisor, as well as administrative measures taken in relation to his performance during his temporary reassignment.

The complainant joined the IAEA in April 2013. In June 2015 he was granted a three-year fixed-term appointment as Information Architect, at grade P-3, in the Systems Development and Support Group (SDSG) of the Nuclear Information Section (NIS) in the Department of Nuclear Energy (NE).

By an email of 9 October 2015 to the Head of the NIS, the complainant requested to be temporarily reassigned to a different unit within the Department of Nuclear Energy in light of the tensions within the NIS and the alleged harassment he had endured from his immediate supervisor.

The complainant was temporarily reassigned to a position of IT Systems Technician/Software Developer in the Office of the Deputy Director General in the NE Department with effect from 1 December 2015. The title of his position was changed retroactively to Nuclear Support Systems Analyst. By a letter of 1 April 2016 from the Acting Head, Recruitment and Staff Development Section, Division of Human Resources, the complainant was asked to confirm his acceptance of the temporary reassignment to the Office of the Deputy Director General, NE, from 1 December 2015 to 31 August 2016.

On 28 February 2017 the complainant went on sick leave.

On 9 November 2017 the complainant requested that the Director General review his decision to temporarily reassign him, alleging that it constituted a demotion and a hidden disciplinary measure, that he had never been formally informed of the reasons for the reassignment and that there was no record that he had been formally notified of the decision. The complainant also alleged that the reassignment was an egregious act of institutional harassment. He requested that the decision to temporarily reassign him be declared null and void and to amend his employment record accordingly. He asked that the decision of 2 December 2016 to initiate a procedure to address unsatisfactory performance be set aside. He also claimed moral damages and requested that the IAEA disclose the reasons for the reassignment, provide proof that he was formally informed, provide the job description of the post to which he was reassigned as well as information about its classification and a copy of his work plan.

By a letter of 23 November 2017 the Director General rejected his request for review, noting that it was the complainant himself who had requested to be reassigned following allegations of harassment and that he had participated in consultations with the Staff Council, NE

management and Human Resources in that regard. He rejected his allegations of institutional harassment.

On 23 December 2017 the complainant lodged an appeal with the Joint Appeals Board against the decision of 23 November 2017.

The complainant separated from service on 31 May 2018 upon the expiry of his fixed-term contract.

In its report of 14 June 2018 the Joint Appeals Board noted that the decision to reassign the complainant had been notified to him in writing on 1 April 2016 and that he ought to have contested the decision within two months of the written confirmation. However, as the complainant contested the decision on a number of grounds which, according to him, had been made known to him only in October and November 2017, and as the Director General had raised no objection based on time limits, the Board decided to deal with the complainant's appeal on the merits. It found that the complainant was well aware of the reasons for the reassignment, as the decision was taken as a result of his own request. It also found that he had been given a sufficiently clear plan of activities for the relevant period and that there was no evidence of unfair treatment, institutional harassment or prejudice. It therefore recommended that the complainant's appeal be dismissed as unfounded.

By a decision of 5 July 2018 the Director General informed the complainant that he had decided to accept the Board's recommendation to dismiss his appeal. That is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision, to amend his employment record accordingly, to declare null and void his 2015 and 2016 performance reports and to substitute such reports with certificates of satisfactory service. He claims material damages in an amount equal to two years' salary, and moral damages in the amount of 100,000 euros. He also claims exemplary damages in the amount of 30,000 euros, as well as costs in the amount of 2,000 euros, with interest on all sums awarded.

The IAEA requests the Tribunal to dismiss the complaint as unfounded in its entirety.

## CONSIDERATIONS

1. The complainant impugns the Director General's decision of 5 July 2018 to endorse the Joint Appeals Board's recommendation of 14 June 2018 and to dismiss his 23 December 2017 appeal. He had appealed against the rejection of his request for review of the decision to temporarily reassign him to a position of IT Systems Technician/Software Developer in the Office of the Deputy Director General in the NE Department with effect from 1 December 2015.

2. The complainant impugns the decision on the following grounds:

- (a) The temporary reassignment constituted an unlawful demotion and a hidden disciplinary sanction;
- (b) The temporary reassignment was in breach of the IAEA's duty of care towards him, in concomitance with a series of examples of mismanagement and omissions, amounting to institutional harassment;
- (c) The Joint Appeals Board's review of his appeal was tainted with delay, omissions, and unreasonable outcome;
- (d) The IAEA acted in breach of Staff Rule 3.06.2 in failing to provide him with a work plan during the course of the temporary reassignment; and
- (e) His 2016 performance review was improperly conducted.

3. Regarding his first plea, the complainant contends that the IAEA did not show due regard, in both form and substance, to his dignity. A transfer with a change in the job title to "IT Systems Technician/Software Developer" and without a job description for his position caused him an additional humiliation and constituted a demotion, because such posts are typically General Service level positions.

4. It is clear from the evidence presented that the decision to temporarily reassign the complainant was taken as a result of his own request that he be transferred. In the complainant's 9 October 2015

email to the Head of the NIS, Mr S., with the subject line “RE: Insubordination”, he himself stated:

“In conclusion, I inform you that I had a conversation on these matters both with our Administrative Officer and our Staff Council President and I have already expressed my wish to be temporarily reassigned to a different unit within our Department. It is a wish I express with a heavy heart, considering the successes of our collaboration, but also with the conviction that it is the best way to continue producing value for our Organization as an employee, given that a working relationship with you and some elements of the NIS section seems, unfortunately, compromised beyond repair.”

Mr S. replied in an email of 16 October 2015, informing the complainant that “[a]fter consultation with your Supervisor and with the NE-AO, please be informed that I have no objections to your reassignment to a different part of the Agency”.

By the 1 April 2016 letter from the Acting Head, Recruitment and Staff Development Section, Division of Human Resources, the complainant was asked to confirm his acceptance of the temporary reassignment to the Office of the Deputy Director General, NE, from 1 December 2015 to 31 August 2016. The complainant signed the letter.

5. Although the 1 April 2016 letter did not expressly state the reasons for his temporary reassignment, the complainant was obviously aware that the IAEA had made efforts to accommodate his own request for a temporary reassignment, by creating a P-3 post in the Office of the Deputy Director General, NE, to remove him from the working environment that he found uncomfortable. In addition to the above correspondence, in his 9 November 2017 letter to the Director General, the complainant again confirmed that the temporary reassignment followed his two written complaints of harassment against his then first-level supervisor. More importantly, as can be seen from the complainant’s employment record, the position to which he had been reassigned was, at all times, at the P-3 level, without changing the grade and step he previously held. With regard to the title of the position, although it was initially labelled as “IT Systems Technician/Software Developer”, it was later changed with retroactive effect to Nuclear Support Systems Analyst to more accurately reflect his functions. It was

not until 23 October 2017 that the complainant accidentally learnt of the mislabelling of the position to which he had been reassigned, in the context of another appeal lodged before the Joint Appeals Board. The Director General, in the decision of 23 November 2017, explained that “the [Agency’s internal HR system] reflect[ed] the two titles in [the complainant’s] employment records”, but he agreed to change the title of the position from 1 December 2015 to 31 March 2016 to that of Nuclear Support Systems Analyst. The complainant’s employment record was accordingly updated with retroactive effect.

6. The Tribunal’s case law establishes that, as stated for example in Judgment 3488, consideration 3:

“[I]n the interest of an international organisation, an executive head of the organisation has a wide discretion regarding restructuring, staff appointments and assignments. The Tribunal may interfere only on the limited grounds that the decision was taken *ultra vires* or shows a formal or procedural flaw or mistake of fact or law, if some material fact was overlooked, if there was misuse of authority or an obviously wrong inference from the evidence [...] (see Judgments 883, under 5, 1556, under 5, and 2635, under 5).”

In the present case, the temporary reassignment, upon the complainant’s own request and at the same grade and step, though the title of the position had been originally mislabelled, was not motivated in any way by bad faith, nor abuse of authority. The complainant provides no evidence to the contrary. The Tribunal is satisfied that the temporary reassignment was neither a demotion, nor a hidden disciplinary sanction. The complainant’s first plea is unfounded.

7. It is convenient to deal with the complainant’s third, fourth and fifth pleas before considering his second plea. In his third plea, the complainant contends that the Joint Appeals Board breached Staff Rule 12.01.1(D)(9), which provides that it shall submit its report to the Director General within three months after undertaking consideration of the appeal. The IAEA argues that, while it is true that the Joint Appeals Board took a little longer than the three-month period set out in the Staff Rule, given that the period of time included the Christmas and New Year season, and given the large workload before the Board

due to the 12 separate appeals submitted by the complainant, it cannot be said that there was unreasonable delay in the internal appeal process.

Staff Rule 12.01.1(D)(9) reads:

“In considering an appeal, the Joint Appeals Board shall act with the maximum of dispatch consistent with a fair review of the issues before it. The Board shall submit its report to the Director General within three months after undertaking consideration of an appeal. [...]”

In the present case, after the complainant lodged the appeal on 23 December 2017, the Joint Appeals Board, on 11 January 2018, notified him that the composition had been convened to hear his appeal. It rendered the report on 14 June 2018. As acknowledged by the IAEA, the three-month internal deadline was not respected. However, considering that during this period of time the Joint Appeals Board considered multiple appeals from the complainant, it cannot be said that there was an inordinate delay in the internal appeal process. Most importantly, the delay itself is not enough to award damages. The complainant bears the burden of proof and he must provide evidence of the injury suffered, of the alleged unlawful act, and of the causal link between the unlawful act and the injury (see Judgments 3778, consideration 4, 2471, consideration 5, and 1942, consideration 6). The Tribunal finds that the complainant has not articulated the adverse effects of the delay and supported them with evidence (see Judgments 4493, considerations 7-8, and 4487, consideration 14). His allegation and claims for compensation for unreasonable delay are therefore unfounded.

8. The complainant further asserts that the Joint Appeals Board demonstrated prejudice against him in paragraph 30 of its report, erred in fact and law and, in particular, erred in referring to an OIOS report without providing him with a copy of that report. The allegations are unfounded. It is well settled in the Tribunal’s case law that the complainant bears the burden of proving allegations of bias, prejudice and malice (see, for example, Judgments 3380, consideration 9, and 4382, consideration 11). The complainant did not provide evidence in this regard. He only identifies paragraph 30 of its report; however, the statement made therein that “the appeal itself demonstrates a similar pattern to the previous 12 other appeals by the [complainant] in 2017,

of repeating allegations of perceived harassment on the part of colleagues” was based on the factual observation and entirely within the Joint Appeals Board’s mandate. Finally, the Joint Appeals Board did not err in referring to the finding of the OIOS final investigation report that Mr C. was aware of Mr K.’s comments in the 2016 performance review report and considered them fair and not requiring moderation. The Joint Appeals Board did not base its recommendations on the outcome of the OIOS report. Moreover, the complainant was informed by OIOS in its 8 March 2018 letter that he would not be provided with a copy of the report, but he would be provided with detailed information by email from OIOS. Therefore, there was no need for the IAEA to provide a copy of the OIOS report as the complainant was provided with the relevant information for his claim and the rest of the report was not related to the issue. The Tribunal finds no procedural flaw, or error of fact and law in the internal proceedings. The third plea is unfounded.

9. In his fourth plea, the complainant contends that the IAEA breached its duty of care towards him and violated Staff Rule 3.06.2 in failing to provide him with a work plan during the course of the temporary reassignment. However, the evidence shows that the IAEA has given due regard, in both form and substance, to the complainant’s dignity, by providing him with work at the same level as in his previous post. Despite transitory circumstances surrounding the temporary reassignment, the complainant was given the opportunity to discuss an initial work plan with his then supervisor. His assignments had been first informally tracked on the assignment board, before he was informed of his work plan on 21 April 2016. The complainant has not provided any convincing evidence to prove that the IAEA violated its duty of care or the provisions of the Staff Rules. The fourth plea is therefore unfounded.

10. In his fifth plea, the complainant contends that his 2016 performance review was not evaluated in a timely manner, and that both Mr C. and Mr K. did not fulfil their responsibilities as supervisors. The Tribunal notes that in the complainant’s sixth complaint with the Tribunal



he challenged the decision not to renew his fixed-term contract beyond its expiry date. The Tribunal dismissed his complaint on the ground that the decision impugned had not been taken based on his performance, but instead had been based on the IAEA's best interests. In that case, the Tribunal relevantly held that "[l]ikewise, the complainant's performance was under question but the performance review process could not be finalised due to the complainant's extensive absence on sick leave" (see Judgment 4346, consideration 4).

The Tribunal further finds that the performance review process could not be finalised due to the complainant's objection to the applicability of the unsatisfactory performance procedure. After the complainant's then supervisor Mr K. issued a first formal warning on 6 December 2016, the complainant, on 9 January 2017, demanded the Administration to quash and set aside the warning, to remove it from his personnel file, and to destroy any record of it. The complainant challenged the decision to issue a first formal warning of unsatisfactory performance and to initiate the procedure for addressing unsatisfactory performance in his third complaint before the Tribunal, which was dismissed as irreceivable in Judgment 4466, delivered in public on 27 January 2022. The Tribunal nevertheless notes that the impasse continued to the point where he went on sick leave on 28 February 2017, where he remained up until the time of his separation from the IAEA. The complainant's allegation is therefore unfounded. Accordingly, the claim to substitute the 2016 performance report with a certificate of satisfactory service will be dismissed.

The Tribunal notes that the complainant's claim regarding his 2015 performance report was not raised in the internal proceedings. This new claim must therefore be dismissed.

11. Finally, with regard to the second plea of institutional harassment, the complainant submits that he was misled into accepting the temporary reassignment and was deliberately exposed to a toxic work environment in the acquiescence of the IAEA's Administration. He alleges that "a series of examples of mismanagement and omissions, occurred in concomitance with the complainant's transfer, [...] taken as

a whole have severely affected the complainant's career, dignity and economic livelihood". The Tribunal's case law has it that "decisions which appear to be managerially justified when taken individually, can amount to institutional harassment when the accumulation of repeated events of mismanagement or omissions, for which there is no reasonable explanation, deeply and adversely affect the staff member's dignity and career objectives" (see, for example, Judgment 4345, consideration 8; see also Judgments 3250, 4111 and 4243). However, as mentioned above, the temporary reassignment was lawful, and there is no basis on which to hold that the IAEA breached its duty of care towards the complainant. Actions taken by the IAEA after the reassignment were also managerially justified, reasonable and lawful under the circumstances. The complainant has not produced concrete evidence to prove that he suffered repeated events of mismanagement or omissions that deeply and adversely affected his dignity and career objectives. His second plea is therefore unfounded.

12. In light of the above considerations, the complaint should be dismissed in its entirety.

#### DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 23 May 2022, Mr Michael F. Moore, President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 6 July 2022 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

HONGYU SHEN

DRAŽEN PETROVIĆ