

The Administrative Tribunal,

Considering the complaint filed by Mr A. T. v. d. W. against the International Organization for Migration (IOM) on 24 December 2002 and corrected on 30 January 2003, the IOM's reply of 4 April, the complainant's rejoinder of 6 June and the Organization's surrejoinder of 14 July 2003;

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. The complainant was born in 1956 and has Dutch nationality. He was appointed to the IOM's Regional Office in Drachten, in the Netherlands, on a contract from 1 April 2000 to 31 March 2002, as a District Office Administrator. The first two months were probationary.

From May 2000 issues regarding the complainant's performance were raised in weekly team meetings. On 6 November 2000 his colleagues recorded their criticisms in a detailed note to his supervisor. On 14 November the supervisor raised the matters in a discussion with the complainant. During a subsequent meeting on 28 November it was agreed that the complainant would be offered a second chance - primarily for a period of three months - with responsibilities within a different district, and would have extra coaching. On 1 December 2000 he was transferred to a position in Zwolle, Netherlands.

The complainant had a discussion about his performance with his supervisor on 12 February 2001. On an appraisal interview form completed the same day his performance was rated "insufficient". In a further discussion of 27 February the complainant was advised to resign before the end of March, otherwise, allowing for one month's notice, the supervisor would take steps to end his contract with effect from 1 May 2001. He received a copy of a report of that conversation. On 4 March the complainant wrote to the Chief of Mission to request reconsideration of the situation. An exchange of letters ensued between the complainant's counsel and the Organization. Because the Organization was expecting the complainant to resign no official letter of termination was sent to him immediately. The Chief of Mission, responding to a request from the complainant's counsel, confirmed on behalf of the Director General the decision to terminate the complainant's contract, with effect from 1 June, on the basis of Regulation 9.2 of the Staff Regulations for employees of the IOM Mission in the Netherlands, which provides for termination if the staff member's services are unsatisfactory. However, the complainant was discharged from his functions as from 1 May 2001.

He sent in a notice of appeal dated 25 April 2001, addressed to the Director General and contesting the decision to terminate his service. His appeal was subsequently heard by the Joint Administrative Review Board, which in a report of 30 September 2002 dismissed his claims. By a decision of 2 October 2002 the Director General endorsed the Board's recommendation to dismiss the complainant's appeal. That is the impugned decision.

B. The complainant contests the decision to end his employment, principally arguing as follows. First, he contends that it was tainted by substantive irregularities. He sees "hidden motives" and "abuse of purpose" behind the Organization's action. He believes that some of the problems arose because the management was sensitive to his own criticism of how various tasks and responsibilities were divided up within particular districts. Nonetheless, when he was confronted with criticism he tried to improve his performance but was exposed to his supervisors' unwillingness to solve matters in a reasonable way.

Second, he submits that there were procedural irregularities both in the way the decision was taken and in the way

the evaluation of his performance was conducted. In the first district he worked in there was collusion against him by other team members. Accusations about his performance were exaggerated and were based on mere assumptions and insinuations; they were not properly investigated and he was not given a real opportunity to improve. His supervisor held "inquiry interviews" with his colleagues and compiled written reports of those conversations, which, despite the fact that they were used against him, were never revealed to him. Moreover, his supervisor's reports on discussions he had had with him were not a neutral reproduction of what was said but were phrased in such a way as to make his future employment seem inadvisable. Again, it was clear during the assessment interviews held three months after his transfer to Zwolle that his supervisor's opinion of his work was not based on objective criteria, but rather on superficial impressions and assumptions. Despite not having the type of coaching he was expecting in Zwolle, he had a better chance to prove himself and there were no significant problems concerning cooperation with colleagues.

He also alleges that in reviewing his case the Joint Administrative Review Board did not act in an independent way, but instead followed the position of the Administration.

The complainant seeks the quashing of the decision to terminate his contract; payment of his salary for the remainder of his contract, that is from 30 April 2001 to 31 May 2002; access to the reports made by his supervisor of the "inquiry interviews" held with his colleagues; compensation for travel expenses over the five months in Zwolle; and legal costs.

C. The Organization replies that there were no substantive irregularities. It points out that the Director General has delegated power to appoint and terminate local staff to the Chief of Mission. There was no error of law, mistaken conclusion or any other irregularity in the termination of the complainant's contract. As is clear from the case law, it is the Organization and not the Tribunal that determines whether a staff member's performance is satisfactory. The decision ultimately taken to separate the complainant from service was based on a long process of evaluation of his performance. No ill will, hidden purpose or malice motivated that decision: it was taken solely on the basis of his performance.

Nor was there any procedural irregularity. His performance was evaluated as objectively as possible and he was given numerous opportunities to respond to the criticisms. The complainant was made aware of the discussions held between his colleagues and his supervisor on the subject of his performance; he was given a written summary of those conversations when he met with his supervisor on 28 November 2000. In order to preserve good working relations it was deemed preferable not to reveal names of individuals consulted. The IOM strongly denies the complainant's allegations that there was lack of truthfulness in his supervisor's reports on meetings where his performance was at issue, pointing out that he was given the opportunity to have corrections incorporated. The assessment of the complainant's performance was conducted over the whole period of his employment. The procedures followed were fair and reasonable. This applies as well to the assessment that took place after the three-month period in Zwolle. Contrary to allegations he makes, he was given coaching and support there.

It does not accept the complainant's contentions regarding the treatment of his case by the Joint Administrative Review Board. Rather, it considers that the Board made a "complete and independent" assessment of his case.

In respect of his claim to travel expenses, the Organization says that expenses incurred in the context of his transfer were met in accordance with the IOM's standard conditions of employment.

D. In his rejoinder the complainant enlarges on his pleas. He denies that he was given a written summary of the conversations that his supervisor had with the other team members. In their meeting of 28 November 2000 his supervisor gave only an oral summary of what was said.

E. In its surrejoinder the Organization recognises that the complainant was not given a written summary of the conversations in question. It says he was nonetheless given a written record of the meeting of 28 November and had the opportunity to make comments thereon. It submits that this does not affect the legality of its action in separating him from service.

## CONSIDERATIONS

1. The complainant was appointed as a District Office Administrator at the IOM's Regional Office in Drachten, in

the Netherlands, on 1 April 2000 on a two-year contract until 31 March 2002. Within two months or so, members of the complainant's team started complaining about his performance to the supervisor. Consequently, discussions took place in November 2000 between the complainant and his supervisor regarding his performance, which resulted in the transfer of the complainant to a position in Zwolle, Netherlands, on 1 December 2000. This transfer was for three months, with a possibility of extension until the end of his contract providing that his performance was satisfactory. On the other hand, if his performance in Zwolle should be unsatisfactory the contract would be terminated.

2. On 27 February 2001 the complainant's supervisor again met with the complainant to discuss his performance. The supervisor suggested that the IOM was not the place for the complainant and that he should start looking for another position. He suggested that the complainant could resign before the end of March, or he (the supervisor) would recommend ending the complainant's appointment with effect from 1 May 2001. This meeting was followed up by written notes confirming the content of the discussion. On 21 March the Chief of Mission and the Deputy Chief of Mission met with the complainant to discuss the latter's future with the IOM. During this meeting, it was suggested to him that the IOM would assist him with finding new employment. On 6 April the Chief of Mission, in response to a letter from the complainant's counsel, confirmed the decision to terminate the contract but with effect from 1 June 2001. The complainant was nonetheless discharged from his functions as from 1 May 2001. His recourse to internal appeal procedures was unsuccessful and, following a report by the Joint Administrative Review Board which recommended dismissing his claims, the decision to terminate his contract was confirmed by the Director General. That is the impugned decision.

3. In his complaint to the Tribunal, the complainant argues that the termination of his contract was flawed by substantive and procedural irregularities and that the Administration had hidden motives. He also says that it constituted an "abuse of purpose". He asks for the decision terminating his contract to be quashed and seeks payment of his salary between 30 April 2001 and 31 May 2002. He requests access to reports made by his supervisor on interviews held with his colleagues. He also claims compensation for procedural expenses, and compensation for five months of travel expenses when he worked in Zwolle.

4. The determination of standards of performance of a staff member of an international organisation, the evaluation of such performance and whether or not the services of any particular staff member have been satisfactory are matters which call for the exercise of a large measure of discretion and judgement on the part of those charged with the administration of an international organisation and the Tribunal will not interfere with such exercise of judgement save in very specific circumstances which, though pleaded, have not been established here.

5. Other than the complainant's own unsupported assertions, there is simply no evidence before the Tribunal to establish the existence of any substantive irregularities in the termination of the complainant's contract that would justify interference by the Tribunal.

6. IOM Staff Regulation 9.2(a)(iii) specifically provides that the Director General may terminate the appointment of an official if his services are unsatisfactory. Staff Rule 9.21 states that an official's appointment may be terminated under the authority of Regulation 9.2(a)(iii) "if, in the judgement of the Director General, he has not satisfactorily performed the functions assigned to him".

7. Within the IOM, the Director General has delegated the power to appoint and terminate local staff to the chief of mission. The complainant was given training in the requirements of the job which he undertook and was given adequate opportunity to know what was expected of him. He was appraised on a number of occasions and was offered individual support, particularly after his move to Zwolle, to improve his performance. The decision ultimately taken was based on a long process of evaluation of his performance, and was in compliance with the Organization's internal standards and procedures. There is no credible evidence of ill will, malice or hidden purpose motivating the decision.

8. The procedures followed by the Organization leading up to the termination of the complainant's appointment were complete, fair and reasonable. The Organization says it had taken steps to ensure that his performance was evaluated as objectively as possible. Throughout his employment, there were regular team meetings among staff where problems could be addressed, and in which the complainant's performance was often in issue. The complainant's supervisor had numerous meetings with him where his performance was discussed, and an appraisal form was completed. In each case, it was noted that his performance was unsatisfactory and improvement was necessary. He was given a further chance to improve his performance when he was transferred to Zwolle. Coaching

and support were offered, though not apparently taken up fully. The decision to terminate his contract due to his performance was not taken hastily or arbitrarily.

9. The complainant contends that his supervisor's reports were biased and unfair but, again, there is nothing but his own assertion to this effect. He was given the opportunity to make corrections to these reports. If he failed to do so, that is not something that the Tribunal can correct.

10. The complainant says that during discussions with his supervisor he was not able to read written reports of inquiry interviews that his supervisor held with colleagues about his performance. That is not required. What was necessary, and what was provided to him, was that he be given a proper right of rebuttal and that all the facts pertaining to his evaluation be made available to him, without necessarily providing him with the source documents from which such facts are drawn. Here, the complainant was given an oral summary of conversations between his supervisor and colleagues about his performance, which was discussed with him during his meeting with his supervisor on 28 November 2000 and followed up by a written summary. Revealing the identity of individuals would not have benefited the situation or promoted any remaining goodwill in working relations in the office. As noted, however, the complainant was given a full opportunity to reply to any allegations about him and to correct the record, and that is enough.

11. The complainant's claim for travel expenses over the five months that he was transferred to Zwolle has not been substantiated. The Organization notes that travel expenses incurred in connection with the complainant's transfer have been met in accordance with the Organization's standard conditions of employment.

12. The complainant's allegations concerning the fairness and adequacy of the internal appeal proceedings are without substance. He was given full opportunity to state his case and to reply to the case put forward by the Administration. Indeed, most, if not all, of his difficulties before the Board seem to have been due to his insistence on making use of documents in the Dutch language which is not one of the official languages of the Organization; that was his own choice and it ill becomes him to complain of it now.

13. No grounds for the Tribunal's intervention having been shown, the complaint must be dismissed.

## DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 7 November 2003, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Vice-President, and Mrs Florida Ruth P. Romero, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 4 February 2004.

Michel Gentot

James K. Hugessen

Florida Ruth P. Romero

Catherine Comtet