

The Administrative Tribunal,

Considering the second complaint filed by Ms G.C. against the Food and Agriculture Organization of the United Nations (FAO) on 4 January 2005, the Organization's reply of 5 April, the complainant's rejoinder of 4 May and the FAO's surrejoinder of 30 June 2005;

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. Facts relevant to this case are to be found in Judgment 2520, also delivered this day. Suffice it to recall that the complainant, a French national born in 1946 who currently holds the grade P-4 position of Economist, Agricultural Economics, in the Food Security and Agricultural Projects Analysis Service (ESAF), submitted an internal complaint to the Director of the Human Resources Management Division (AFH) on 9 April 2002, alleging that she had suffered moral harassment by her immediate supervisor – the Chief of ESAF – for a number of years. Her specific allegations against her supervisor were set out in a Note she had sent to her second-level supervisor – the Director of the Agricultural and Development Economics Division (ESA) – one year earlier, which had been kept in her personnel file at her request and which she now wished to present as a formal complaint. In that Note, dated 9 April 2001, she accused her supervisor of frequently adopting a hostile attitude towards her, of showing neither respect for nor understanding of her or her work, of masking existing tensions by adopting a false attitude and of trying to give the impression that she – the complainant – was at fault.

On 29 April 2002 the Director of AFH acknowledged receipt of her internal complaint and informed her that an investigation would be conducted by a Personnel Officer (Legal Matters). She also asked whether, in the context of that investigation, the complainant would object to that complaint being forwarded to her immediate supervisor for comment. The complainant replied, on 2 May, that she did object to that course of action. She pointed out that she had purposely withheld her complaint until it was clear that her supervisor would be retiring, and that in view of the latter's bias towards her, "any observations [her supervisor] might make would be further prejudicial".

The Personnel Officer who conducted the investigation nevertheless interviewed the immediate supervisor, as well as the complainant, the Division Director and three other staff members. She issued her investigation report in August 2002 which, in addition to the issue of harassment, covered two other issues pertaining to the selection procedure for a vacant post, which are the subject of the complainant's first complaint before the Tribunal (see Judgment 2520, also delivered this day). She noted that the complainant had not produced any documentary evidence to support her allegations, but had asserted that "the files" contained several examples of the alleged harassment. During her interview, however, the complainant had orally given six examples, on which the other staff members interviewed had been asked to comment. The Personnel Officer concluded that the complainant's allegations were not supported by the findings of fact she had made.

By a memorandum of 8 August 2002 the Chief of the Human Resources Policy, Planning and Systems Service (AFHP) informed the complainant that he concurred with the findings and conclusions contained in the investigation report, a copy of which he attached for her attention. He considered that the report had covered her allegations in a thorough and exhaustive manner, and that it presented a fair and objective assessment of the circumstances of her complaint. In closing, he expressed the hope that the complainant would now consider the matter closed.

On 7 November 2002 the complainant wrote to the Director-General to appeal against the decision conveyed to her by the Chief of AFHP on 8 August. She reiterated her allegations of harassment and accused the Organization of failing to take corrective action in respect of an unacceptable and unpleasant situation of which it was fully aware. She also criticised the Personnel Officer's investigation, the results of which she described as "faulty, inadequate

and not thorough". The complainant considered that the Organization should adopt immediate changes of policy and procedure to ensure that such a situation, which had had serious repercussions on her health, would not recur. She claimed compensation in an amount not lower than 15 per cent of her gross annual pay for the years during which she had suffered harassment, and she requested that the investigation report be declared null and discarded.

Her appeal having been dismissed, in a letter of 30 December 2002, by the Assistant Director-General, Administration and Finance Department (AF), the complainant lodged an appeal with the Appeals Committee on 8 February 2003. In a report dated 13 May 2004 the Committee concluded that the information presented to it did not constitute convincing evidence of harassment. Nevertheless, the Committee considered it "unacceptable that a staff member [...] ha[d] had to work for years in a conflictual and hostile environment", and it observed that the senior management of the Department bore an important responsibility in this case, through its failure to take effective measures to remedy the situation. According to the Committee, the Organization owed a duty of care to its staff even if there was blame on both sides, and it was the Organization's responsibility to "intervene and explore alternative solutions". As for the investigation procedure, the Committee found that it was correct, though it felt that the terms of reference might have been broader. Noting that the Organization had referred to present difficulties in the working environment, it recommended "that a solution acceptable for both parties be found urgently".

By a letter of 15 October 2004, which constitutes the impugned decision, the Director-General informed the complainant that he agreed with the Committee's conclusion that the information presented did not constitute convincing evidence of harassment. However, he rejected its finding that there was "blame on both sides" because, in his view, the evidence showed that the conflictual relationship the complainant had experienced with her past and present supervisors was due mainly to her own attitude and behaviour. Consequently, he decided not to accept the Committee's recommendation, which stemmed from that finding.

B. The complainant maintains that she was subjected to harassment by her immediate supervisor for ten years. In particular, she asserts that her supervisor excluded her from meetings, hired less experienced consultants to perform work that had been assigned to her, withheld information relevant to her work, repeatedly altered her arrangements for duty travel and denied her secretarial support, thus delaying her work. She submits that the "unhealthy, hostile and conflictual environment" in which she had to work not only created stress and had a negative impact on her work, but also adversely affected her health.

She criticises the Personnel Officer who undertook the investigation of her claim of harassment for "fail[ing] to undertake a thorough search of the relevant files that would have produced the necessary substantiation" for her allegations. She also asserts that the investigation report contains a number of factual errors.

The complainant denounces the fact that in the impugned decision, despite the Appeals Committee's finding that the situation in her Service was deplorable, the Director-General did not recognise any need for adjustment or correction. In her view, the principle upheld by the Tribunal in Judgment 1018 whereby an organisation is responsible for taking whatever measures are necessary to reduce tension amongst staff, should apply to this case.

She also points out that in its submissions to the Appeals Committee, the Organization raised a new issue which is outside the scope of her internal complaint, by referring to alleged difficulties in her current working relations with her new supervisor and with the Division Director, and particularly to the former's decision to withhold the within-grade salary increase she was due to receive in March 2003. She acknowledges that this decision was eventually revoked, but nevertheless views it as an act of "mobbing" by the Organization.

The complainant seeks financial compensation in an amount equal to at least 15 per cent of her annual gross salary for ten years, representing the time during which she was subjected to harassment and stress by her former supervisor. She also claims 25,000 United States dollars on account of the Organization's failure to take remedial action in respect of the unsatisfactory working conditions of which it was aware, and a further 25,000 dollars in costs. Lastly, she requests that the investigation report be "discarded [and] removed from all personnel files".

C. In its reply the Organization submits that the complainant's allegations of harassment are unsubstantiated. Rejecting her criticism of the investigation report, it observes that it was not for the Organization to search for evidence to support her allegations, and that the alleged factual errors in the investigation report concern details that have no bearing on the issue of whether she suffered harassment. Referring to the fact that her immediate supervisor was interviewed during the investigation notwithstanding the complainant's refusal to allow her internal complaint to be forwarded to her, it explains that the elementary rules of due process required that her supervisor

be informed of the allegations against her and given an opportunity to respond.

The Organization argues that it cannot be deemed to have failed in its duty to intervene in order to restore good working relations, since in this case the situation appears to have resulted from “the complainant’s own propensity to imagine malicious plots against her, resulting in allegations which she cannot prove”. Relying on the case law, it emphasises that allegations of harassment must be borne out by specific facts, and that the burden of proof lies with the party alleging harassment.

Lastly, the Organization rejects the complainant’s allegation of mobbing, which it describes as “not germane to the core of the issue of the present complaint”. It adds that, in any case, the complainant was granted her within-grade salary increase on the date when it fell due.

D. In her rejoinder the complainant presses her pleas. She asserts that, even though the Appeals Committee did not use the word “harassment”, the elements of harassment were present, as the Committee itself found when it concluded that “a situation existed that was characterized by conflict, tension and unfriendly exchanges”.

E. In its surrejoinder the Organization reiterates that the complainant has not demonstrated that harassment or mobbing occurred. It considers that the arguments presented in her rejoinder are not new.

CONSIDERATIONS

1. Some of the background facts relating to this complaint are set out in Judgment 2520. They need not be repeated. It is sufficient to state that on 9 April 2002 the complainant made a formal complaint of harassment against her former immediate supervisor, attaching an earlier Note which set out the matters which, she said, constituted that harassment. She claimed that her former supervisor had:

- frequently adopted a hostile attitude towards her;
- shown neither respect for, nor understanding of, her or her work;
- masked existing tensions by adopting a false attitude; and
- always sought to give the impression that the complainant was at fault.

She claimed that the attitudes which had existed for several years had worsened in the last three years and complained that they had diminished her value and jeopardised her work relations. She also claimed that the supervisor had refused to answer her correspondence, had systematically blocked information relevant to her work, had criticised her without giving specific examples and had attempted to isolate her from other colleagues and to provoke mistakes on her part.

2. The complaint of harassment was referred to a Personnel Officer (Legal Matters) for investigation. Apparently, the complaint was not provided to the former supervisor as the complainant objected to that course. However, the supervisor was interviewed and asked to respond to specific matters upon which the complainant relied to support her claim. The complainant was also interviewed, as was her second-level supervisor. The investigator made various findings of fact and concluded, by reference to those findings, that harassment had not been established.

3. On 8 August 2002 the Chief of the Human Resources Policy, Planning and Systems Service (AFHP) informed the complainant that he accepted the findings and conclusions contained in the investigation report. The complainant then lodged an appeal with the Director-General. So far as is presently relevant, the complainant sought a monetary award for the damage suffered as a result of the claimed harassment. She also sought the quashing of the investigation report on the ground that the results of the investigation were “faulty, inadequate and not thorough”. Her appeal was rejected and the complainant then filed an appeal with the FAO Appeals Committee.

4. The Appeals Committee concluded that, there then being no established procedures for the investigation of complaints of harassment, those employed in the present case could be considered correct. It further held that the information presented did “not constitute convincing evidence of harassment”. However, it described the situation as “conflictual” and the working environment as “hostile” and held that both the complainant and her immediate

supervisor had “contributed to the development of the hostile environment”. It deplored the fact that management had let the situation continue for so long and, by reference to material provided by the Organization and relating to the period after the supervisor’s retirement, said that “this problem had still not been addressed”. The Committee also observed that, “even if there was blame on both sides”, the Organization owed the complainant a duty of care and recommended that “a solution acceptable for both parties be found urgently”.

5. By a letter of 15 October 2004 the Director-General informed the complainant that he did not accept the Committee’s recommendation. Instead, he invited her to have recourse to mediation which was about to be introduced as a pilot scheme. That decision, which necessarily endorses the finding that harassment had not been established, is the subject of this second complaint. The complainant now seeks a monetary award “for the ten years she has been subject to harassment and stress from her former first level supervisor, who created the conflictual and hostile environment”. Additionally, she seeks compensation for the FAO’s failure to correct the “unsatisfactory working environment” and costs.

6. It is convenient at this stage to point out that the only issues properly before the Appeals Committee were those relating to the claim that the complainant had been harassed by her former supervisor. That was a specific claim and the material upon which the complainant relied in the investigation was limited to actions and behaviour which she attributed specifically to her immediate supervisor. As the Appeals Committee noted, the appeal was “directed against the findings of the [...] investigation report and the methodology used in the investigation”. It is clear that the complainant argued before the Appeals Committee that the FAO had been negligent. However, that was an argument based on the Organization’s failure to institute measures to prevent and correct harassment by her former supervisor. As already noted, the FAO introduced material in its submissions to the Committee relating to events subsequent to the retirement of the supervisor against whom the complaint of harassment was directed, apparently to establish that the complainant was the cause of her own problems. The complainant now seeks to rely on those and other subsequent events to establish continuing harassment and negligence.

7. Although the FAO puts no argument as to receivability, it is necessary to emphasise that the only issues which can properly be the subject of the complaint are the question of harassment by the complainant’s former immediate supervisor, the adequacy of the investigation of her complaint in that regard and her consequential claim for compensation. In view of its very specific nature, and given the material upon which the complainant relied in support of it, the original harassment claim was not one that required or permitted consideration of the question whether there had been harassment by any other person or, if the claim failed, whether there had nonetheless been a breach by the FAO of its obligations towards the complainant (see Judgment 2524). Moreover, the claim for damages for breach of the duty of care based on the FAO’s failure to rectify an unsatisfactory work environment not involving harassment by her immediate supervisor was made for the first time in this Tribunal. Accordingly, that claim is not receivable.

8. As already indicated, the complainant was interviewed in the course of the investigation of her complaint of harassment. According to the investigation report, she was then asked to provide evidence to support her allegations as she had not provided supporting documentation with her complaint. When the complainant replied that “the files” contained several examples of harassment, she was asked to recount the relevant events. She then nominated six matters as examples of harassment by her former immediate supervisor, the substance of which was conveyed to that person and to the complainant’s second-level supervisor. It emerged that one of the matters raised as an example concerned a decision taken, not by her immediate supervisor, but by her second-level supervisor. For four other matters, the immediate supervisor provided explanations which were accepted by the investigator. The sixth matter upon which the complainant relied related to her performance appraisal reports.

9. The complainant relied on the fact that her immediate supervisor had completed only three performance appraisal reports in 12 years and had criticised her in those reports without giving specific examples. She contended that the reports constituted evidence of an attempt to block her career. The immediate supervisor acknowledged that she had been lax in completing performance appraisal reports for staff generally but indicated that she stood by the criticisms made of the complainant. Those criticisms were concerned with the complainant’s personality, not her work. They included statements that the complainant had “a sharp temper” and tended “to express herself in a highly emotive manner”. The second-level supervisor said that he agreed with those criticisms and added that the complainant also tended not to accept his supervisory role.

10. The complainant points to two factual errors as indicating the faulty nature of the investigation report. However, neither of those matters is in any way material to the question of harassment. More significantly, she

contends that the investigator did not “undertake a thorough search of the relevant files” which, she argues, would have substantiated her claim of harassment. The investigator’s findings were based, in part, on documentary evidence produced by the complainant’s immediate supervisor and the absence of documentary evidence from the complainant. However, no opportunity was provided to the complainant to produce any documents and, although she referred to evidence “in the files”, no further enquiry was made by the investigator. Additionally, the complainant points to a statement by the investigator that she, the investigator, was not aware of any other complaints against the supervisor in question. Had there been other complaints, they might have supported the claim of harassment, but the absence of complaint could not be used to support the contrary proposition.

11. The complainant provided documentary evidence in support of her claim of harassment to the Appeals Committee, as well as a statement from a former staff member as to the existence of a hostile work environment following the appointment of the immediate supervisor. In these circumstances, it is appropriate to grant relief with respect to the investigation report only if the material upon which the complainant relied before the Appeals Committee should have led to a finding that she had been harassed as claimed.

12. The Tribunal has frequently pointed out that it is for the person alleging harassment to prove specific facts supporting that allegation (see Judgments 2067, 2100, 2370 and 2406). In the present case, the objective facts are not in dispute. The question is whether the actions and decisions in question were taken for a legitimate purpose, albeit one that might have been achieved by other and better means, or whether they resulted from some purpose or attitude, such as hostility, which would justify their characterisation as harassment. As with the facts relied on to establish harassment, it is for the person making the allegation to establish that the acts or decisions in question were accompanied by some purpose or attitude which allows them to be so characterised.

13. To ascertain the purpose of the acts and decisions in question in this case, it is convenient to begin with the performance appraisal reports to which reference has already been made. The assessment of the complainant’s personality in those reports is, to a large extent, borne out by the documentary evidence which she produced to the Appeals Committee. The documents consist, in the main, of e-mails sent by the complainant to her former immediate supervisor, many of which were unanswered. The Tribunal endorses the statement by the Appeals Committee that their “language, tone and style were often inappropriate and hostile”. Moreover, they demonstrate hostility on the part of the complainant towards her supervisor and a lack of respect for the latter’s supervisory role. The fact that many of the e-mails went unanswered is more readily explicable on the basis that a reply would have exacerbated the situation than on the basis of malice, ill will or hostility towards the complainant or her work.

14. Nothing in the documentary evidence submitted by the complainant to the Appeals Committee detracts from the explanations given by her supervisor to the investigator with respect to the matters on which the complainant relied to establish harassment. Although it may be that a different course could have been taken or a greater effort made by the supervisor to explain her actions to the complainant, it cannot be inferred that those actions were taken for other than legitimate purposes.

15. Lastly, the statement provided by a former staff member and produced before the Appeals Committee does not establish that the complainant was harassed by her former immediate supervisor.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 3 November 2005, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Vice-President, and Ms Mary G. Gaudron, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 1 February 2006.

Michel Gentot

James K. Hugessen

Mary G. Gaudron

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 15 February 2006.