

**118th Session**

**Judgment No. 3377**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr C. B. against the Food and Agriculture Organization of the United Nations (FAO) on 12 September 2012 and corrected on 27 September, the FAO's reply of 19 December 2012 and the letter of 7 February 2013 from the complainant's counsel informing the Registrar of the Tribunal that he would enter no 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 and the pleadings may be summed up as follows:

A. The complainant joined the FAO in December 2003 under a three-year fixed-term contract as Senior Programme Officer, at grade P-5. He was assigned to a post funded by the Government of Italy and his appointment was extended on a regular basis until 31 January 2008. On 1 February 2008 he was promoted to the position of Senior Liaison Officer within the Office of the Legal Counsel, at grade D-1, and assigned to work on a 12-month project also funded by the Italian authorities.

By a memorandum of 10 November 2009 he was informed that, as the Italian Government would not fund the project in question beyond 31 December 2009, his appointment was being extended until that date but would not be renewed thereafter. Consequently, he would be separated from the FAO effective 31 December 2009.

On 15 January 2010 the complainant appealed to the Director-General against “a series of actions and a refusal to act”. He alleged that he had been deprived of his responsibilities since January 2007, and that he had suffered a series of harassing actions seeking to undermine him in his work, in his professional relations, as well as to interfere with his contractual status and tenure within the FAO. He also alleged that his supervisors had consistently refused to act when he complained about his work environment, and he claimed moral and material damages in the amount of 320,000 euros, as well as costs.

The complainant’s appeal was rejected on 16 March 2010, on the ground that the decision not to renew his fixed-term contract had been taken in accordance with applicable rules governing fixed-term appointments and that he had been given reasonable notice of the decision. It was noted that his appointment could not be extended beyond 31 December 2009 due to the cessation of funding and the closure by the Italian authorities of the project which had financed his post. His allegations of harassment were found to be time-barred.

On 11 May 2010 the complainant lodged an appeal with the Appeals Committee as well as a complaint of harassment with the Director, Human Resources Management Division (CSH). In his complaint of harassment, he indicated that he did not believe the FAO Policy on the Prevention of Harassment contained in Administrative Circular No. 2007/5 of 23 January 2007 was the appropriate procedure for dealing with his grievance, but that he had filed it to ensure that he had pursued all internal avenues of redress.

By a letter of 24 June 2010 the Director, CSH, informed the complainant that his harassment complaint had been reviewed. Noting that the complainant’s express wish was for his allegations of harassment to be dealt with within the ambit of his appeal before the Appeals Committee and that his complaint of harassment involved no

new evidence but was essentially a re-statement of the allegations already made in his appeal, the Director informed him that his complaint would not be dealt with under the formal procedure set out in the Policy. He added that the fact that the complainant was seeking monetary compensation, which is not envisaged under the Policy on the Prevention of Harassment, also justified that his complaint be dealt with within the ambit of his internal appeal before the Appeals Committee.

In its report of March 2012 the majority of the Appeals Committee found that, while no work had been performed by the complainant during the three-year period considered, he had not demonstrated that he had been “deprived of work” or how this situation had come about. There was no evidence that any action had been taken by anyone to deprive him of work or to refuse to assign him work. On the contrary, the Committee found that the available evidence showed that he had not taken any action to actually implement his terms of reference, and that his allegation that he had not been able to prepare a workplan due to lack of cooperation from other parts of the Organization was unsubstantiated. However, the majority found that the Organization had not taken appropriate measures to follow up on his communications reporting that he had no work and that it had failed to take action to resolve the situation. It concluded that this situation of inactivity was the result of a shared responsibility deriving from lack of concrete action by the complainant and from poor management by the Organization. Concerning his allegations of harassment, the majority concluded that, based on the available evidence, harassment, as defined by the FAO Policy, had not taken place and his separation had not been the final result of harassing actions. Accordingly, the majority recommended that his appeal and associated claims be dismissed. Two members of the Committee submitted separate minority reports.

By a letter of 29 May 2012 the Director-General informed the complainant that he had decided to accept the majority’s recommendations and to reject the appeal as unfounded. That is the impugned decision.

B. The complainant contends that he was entirely deprived of work for the last three years of his employment at the FAO. He submits that he was not assigned any work by his supervisor and that he was not able to work independently because of the opposition of the Chief of the Field Programme Development Service for the Technical Cooperation Department (TCAP), who was able to block any activity involving his terms of reference. In his view, one of the main obstacles to his work was the overlapping of his terms of reference with those of other Units within the Organization. He contacted the responsible Chiefs and wrote to the Director-General in July 2008 requesting a new assignment, but his continued protest against the refusal to assign him any work remained unanswered. Referring to the Tribunal's case law on the duty of international organisations to treat their staff with dignity, he argues that this duty entails doing all that is practicable to see that a staff member is given work. The FAO breached its duty to treat him with dignity and, by excluding him from any substantial work, it caused him unnecessary injury for which he is entitled to compensation.

Further, he submits that the Assistant Director-General for the Technical Cooperation Department and the former Chief of TCAP engaged in a series of harassing actions against him, which culminated in the non-renewal of his contract. First, he was excluded from a high level conference, as he was removed from the list of Protocol Aides assigned to the Italian delegation, which was "highly offensive to his personal dignity and seriously damaged his reputation". Second, he alleges that high officials sabotaged a request made by Brazil to establish a field project that would have enabled him to obtain a new assignment within the Organization. Third, he denies that there were insufficient funds to renew his contract and claims that he was treated differently from other staff members also working on technical cooperation projects funded by the Italian Government. He alleges that there were "petty actions such as the repeated refusals" on the part of unnamed individuals within the Technical Cooperation Department to authorize the extension of his contract for a reasonable duration. Fourth, he submits that the Chief, TCAP, breached the confidentiality

provisions of the Organization's Policy on the Prevention of Harassment, by copying three people in his reply to the complainant's confidential letter of November 2008 expressing his intention to file a complaint of harassment against the Chief, TCAP. In addition, he submits that his supervisor breached the Policy on the Prevention of Harassment by failing to prevent harassing acts in spite of his many oral and written requests for assistance and protection. Lastly, he argues that the Organization's failure to allow him to transfer to another post constituted the final harassing act, as it was the consequence of the attacks made against his dignity for the last three years of his appointment.

The complainant asks the Tribunal to quash the impugned decision. He claims material and moral damages in the amount of 320,000 euros and requests one year's salary and allowances for his "illegal separation", as well as costs. He also asks the Tribunal to order the production of several documents.

C. In its reply the FAO submits that the decision not to renew the complainant's contract was taken in full respect of the applicable rules and procedures. It recalls in particular that under its Staff Rule 302.9.7, a fixed-term appointment "shall expire automatically and without prior notice on the expiration date specified in the letter of appointment". Nevertheless, the Organization points out that he was provided with the reason for the non-renewal of his contract, namely, that the decision resulted from the Italian authorities' decision not to continue funding the project on which he was employed, and he was given seven weeks' notice. It submits that the correspondence between the Organization and the Italian authorities, which it produces as evidence before the Tribunal, shows that it went to great lengths to secure funding for the complainant's position.

The Organization denies that he was "deprived of work". It was for the complainant, who was promoted to a D-1 post, to undertake his duties and responsibilities according to his terms of reference. As a staff member at the D-1 grade, he was required to undertake important activities with minimal guidance. There is simply no evidence that he

was prevented from doing so. On the contrary, he demonstrated a lack of initiative and willingness. Concerning the lack of a performance appraisal, it notes that his performance had not been regularly appraised in the past and that he has not produced any evidence to show that he requested a performance appraisal. Consequently, the FAO submits that there was no breach of its duty of care towards the complainant.

The FAO denies that the evidence submitted and the incidents referred to by the complainant amount to harassment. It maintains that the non-renewal of his contract was due to the cessation of funding for the project upon which he was employed, and that there is no evidence to support a link between the decision not to renew his appointment and the alleged harassment. In accordance with the Tribunal's case law, the burden of proof for harassment is on the party who pleads it, and allegations of harassment must be borne out by specific facts. The FAO points out that the complainant did not lodge a complaint of harassment according to the procedure set forth in the Policy on the Prevention of Harassment at any time during his service, and that he only filed it, as he himself admits, as a strategy in his internal appeal once his appointment had expired. Regarding his allegations of exclusion from the Protocol Aides Service of the high level conference, the FAO explains that it was considered inappropriate to have a senior official at the D-1 level acting as a protocol aide assigned to the Italian delegation, given that there were numerous junior colleagues who had volunteered to perform that function. Moreover, there is no evidence to support the view that this seriously damaged his reputation. As for his allegations of sabotage concerning the Brazilian request to finance a field project, these amount to mere speculation and are contradicted by the evidence.

The FAO further denies the complainant's claims that there was sufficient funding to extend his appointment, as the project under which he worked was to conclude its activities on 31 May 2009. No "petty actions" were undertaken by the Organization which, contrary to his allegations, took action to extend his appointment for as long

as was practicable given the difficult funding situation. His allegation of unequal treatment is also unfounded, as he was not in the same situation as other staff members whose posts were funded under different projects. Concerning the alleged publication of the confidential complaint of harassment, the FAO argues that the reply from the Chief, TCAP, was not improper or offensive and that copying three other persons on his e-mail, which did not contain any information about the complaint of harassment, was in no way an act of harassment. In fact, the complainant himself responded to that e-mail by stating that he “personally had no problem about it”.

Lastly, the Organization submits that since there was no harassment, neither was there any breach of the obligation to prevent harassment. It denies that the non-renewal of his appointment was in any way a consequence of the alleged deprivation of work or alleged harassing actions. It underlines that, as he held a fixed-term appointment, there was no obligation on the FAO to transfer him to another post, and it notes that there is no evidence that he applied for any vacant position within the Organization to secure his future employment.

#### CONSIDERATIONS

1. The complainant joined the FAO in December 2003 under a three-year fixed-term appointment. He was assigned to a post funded by the Government of Italy. His appointment was extended on a regular basis until 31 January 2008. On 1 February 2008 he was promoted to the position of Senior Liaison Officer within the Office of the Legal Counsel, at grade D-1, and assigned to work on a 12-month project, which was also funded by the Italian Government. On 10 November 2009 he was informed that, as the Italian Government would not fund the project beyond 31 December 2009, his appointment was being extended until that date, after which he would be separated from the FAO. The complainant initiated the underlying internal proceedings by a letter to the Director-General of the FAO dated 15 January 2010.

2. Briefly stated, his case is that during the last three years of his employment the FAO breached its duty to treat him with dignity, which constituted harassment. He alleges that he was deprived of work and sustained other harassing actions by superior officials, which nothing was done to prevent. He alleges that the termination of the project and his separation from the Organization after 31 December 2009 ultimately resulted from the harassing actions, which rendered his separation unlawful. Accordingly, he submits that he has suffered serious injury by the compendium of his claims, thereby entitling him to material and moral damages, and costs.

3. The Director-General dismissed the initial complaint. A majority of the FAO's Appeals Committee recommended the dismissal of the appeal. In so doing, the Appeals Committee found on the available evidence that both the complainant and the Organization were responsible to the extent that the complainant did not work during the material time. The majority found, however, that this did not constitute a deprivation of work. The majority also concluded from the evidence that harassment did not occur and his separation from the FAO was not unlawful.

4. In the impugned decision, contained in the letter of 29 May 2012, the Director-General accepted the recommendations of the majority of the Appeals Committee. The complainant seeks an order setting aside that decision. He seeks an award of one year's salary and allowances for "illegal separation" from his employment with the FAO, as well as for material and moral damages and costs.

5. As far as harassment is concerned, the FAO has a Policy on the Prevention of Harassment. For the relevant period, it was contained in its Administrative Circular No. 2007/05 of 23 January 2007. By its Guiding Principles, the Organization assumed the duty to ensure that its staff members are treated, and treat one another, with dignity and respect, free from abuse and harassment. The FAO states that it will not tolerate any type of harassment within the workplace



or associated with work performed on its behalf. It also states that allegations of harassment will be fully, fairly and promptly dealt with in a confidential manner.

6. The Circular defines harassment as “any improper behaviour by a person that is directed at, and is offensive to, another individual and which the person knew or ought reasonably to have known would be offensive”. According to the Circular, harassment comprises objectionable or unacceptable conduct that demeans, belittles or causes personal humiliation or embarrassment to an individual. It may include “continual exclusion of a person from normal communication, work or work related social activities”. In Judgment 3104, under 6, for example, the Tribunal emphasized that not giving enough work to a staff member, which led her to feel marginalised and humiliated, offended her dignity and constitutes an element of the breach of duty of care by an international organisation.

7. The complainant’s submission that he was deprived of work is plainly borne out on the evidence. This is reflected in the impugned decision itself. The following aspects of it bear detailed reproduction in order to provide a full perspective:

“[T]he Appeals Committee noted that the majority of the Committee members considered in respect of your claim that you were deprived of work for three years that ‘there was sufficient evidence to demonstrate that no work had been performed by [you] during the three-year period’. It was further considered that you ‘did not demonstrate that [you were] deprived of work, but rather that [you] took no initiative to do the work assigned and to carry out [your] ToRs’. **The majority of the Committee members noted that ‘the Organization did not take the appropriate measures to follow-up on [your] communications reporting that [you] had no work’ and found that this ‘reflected very poor management by the Organization of its human resources and financial resources’. It was concluded on this point that ‘the situation in which [you] found [yourself] not having work for three years was the result of a shared responsibility on the part of the Organization and [you]’.**

With respect to your claim that you had been subject to harassment, the majority of the Committee members considered the incidents you put forward in support of your claim and noted that **‘the events described by**

**[you] were single events and the element of continuity was not established' in order for these events to fall under the definition of harassment in the Policy on the Prevention of Harassment ("continual exclusion of a person (...) from normal communications, work or work related social activities").** The majority of the Committee members were accordingly of the view that 'harassment, as defined under the Policy, did not occur'." (Emphases added.)

8. With respect, the effect of the highlighted aspects of the first paragraph of the foregoing quotation is an admission, first, that the complainant was deprived of work, and, second, that the Organization was, albeit partially, responsible for that deprivation. It was also an admission that he complained about the deprivation, but the Organization did not follow up with appropriate measures, because of very poor management by its human resources and financial resources departments. The effect of the highlighted aspects of the second paragraph of the foregoing quotation is a virtual admission that there were incidents that were harassing. The passage seeks to suggest that harassment as defined by the Circular was vitiated because they were single, rather than continuous events, acts of exclusion from normal communication and work, which did not constitute harassment under the Policy on the Prevention of Harassment. This is borne out by the evidence as they both speak to harassment by the deprivation of work.

9. The complainant's evidence is that when his first post was abolished on 31 December 2006, he was placed under the direct supervision of the Assistant Director-General of the Technical Cooperation Department (ADG/TC), who never assigned any work to him. He produced two documents dated 1 February and 16 February 2007, which support this. His e-mail of the latter date was addressed to his previous and to his new supervisor. In it, he complained that since his post was abolished, he had been without a clear position inside the Organization. He indicated that when he had raised the issue in the past with both of them, they had assured him of a quick resolution. He expressed frustration that the matter had not been resolved and stated, in conclusion, that his self-esteem impelled him to

ask that the matter be resolved. In February 2008 he was promoted to a director's post at grade D-1. The underlying rationale is unclear, but he never had a performance appraisal. He received new Terms of Reference for that post, which required him, among other things, to prepare a workplan and a study. He did not prepare them, but complained that he encountered obstacles in carrying out his duties.

10. In response, the Organization argues, in effect, that no one obstructed the complainant's work. Rather, he did not attempt to work according to his Terms of Reference. The Organization states that his new Terms of Reference in grade D-1 required him to undertake important activities with minimal guidance, as the post required him to demonstrate a sense of initiative and responsibility. His work did not depend on receiving concrete assignments from others. The Organization submits that by not completing the workplan and asking to be released from that duty as well as by not completing a study which fell under his Terms of Reference, the complainant demonstrated lack of initiative that was needed at the level of Director and by his Terms of Reference. With respect, these submissions gloss over managerial responsibilities.

11. In the first place, taking initiative and responsibility should not mean that a person at the level of the complainant was to work in a vacuum in the Organization. There were others whose cooperation and work interrelations and interactions were necessary to facilitate him to carry out his Terms of Reference. It is from this perspective that the Tribunal notes that the complainant cites the overlapping of his Terms of Reference with those of others in the Organization as an obstacle that he tried to overcome. His Terms of Reference required him to work with non-governmental organisations (NGOs) and civil society organizations (CSOs) in close collaboration with the appropriate units of the FAO, including the Knowledge and Communication Department. The Office for Strategic Planning (ODGS) and the Technical Cooperation Department's Field Programme Development Service (TCAP) also had similar

responsibilities. The Tribunal observes that in his communication of 9 June 2008 to his second-level supervisor, the complainant asked to be relieved of the responsibility to draw up a workplan. He cited the difficulty caused by overlapping responsibilities and the lack of coordination and cooperation. The Terms of Reference required him to participate in and to contribute to meetings, seminars and events that were relevant to the activities of the FAO that were organised by host country local institutions, NGOs and CSOs.

12. Accordingly, the complainant's work required coordination with the work of others who undertook related activities with and in other relevant departments and units. This does not appear to have occurred. The Organization does not assert that it did. This was a function of internal management, which obviously failed.

13. Those who were in the relevant supervisory or managerial capacities to the complainant needed to ensure that the objectives of the project on which he worked were met and to suggest remedial or other appropriate action if they were not being met. There is no indication that there was ever an evaluation of the 12-month project which financed his post, until its very end. The FAO admits that no appraisal was done on the complainant's own performance over the relevant three-year period. This was notwithstanding that the Staff Regulations and the Staff Rules require it. Against this background, the FAO's responses that the complainant did not attempt to work according to his Terms of Reference and that he lacked the initiative that was needed at his level under his Terms of Reference appear to be disingenuous. The evidence shows that the Organization breached its duty to ensure that the complainant's dignity was preserved with meaningful work during his last three years in the Organization. It was, in effect, a continual exclusion from work over that period. This constituted harassment that the FAO's Administrative Circular No. 2007/05 expressly proscribes. The complaint is well founded on this ground.

14. The evidence further shows that the Organization also breached its duty to ensure that his complaints were addressed in a proactive manner. Circular No. 2007/05 charges persons who are in supervisory positions to ensure adherence to the Policy on the Prevention of Harassment by taking early corrective measures to avert or correct any act that threatens or compromises a staff member's dignity. There is no evidence that such early corrective measures were taken to address the complainant's situation. The complaint is also well founded on this ground.

15. The Tribunal however finds that the complaint is unfounded on the other acts of harassment which the complainant alleges. There is no proof that he was excluded from the high level conference as an act of harassment, as he contends. There is insufficient evidence, as against speculation or surmise, that persons within the FAO were instrumental in blocking a request by Brazil to establish a field project, to be financed by the Italian authorities. The complainant insists that had that project come to fruition, the Italian Government would have continued to fund the project under which he worked at the FAO. He would not then have been separated on 31 December 2009 as he would have automatically transferred to Brazil to continue his work. The exchange of letters on this matter, which the FAO has produced in the Tribunal, does not support his assertion. In fact, in a letter of 8 June 2009 the Italian authorities informed the FAO that the project would not be further funded due to a decrease in funds for multilateral activities and recently adopted strict guidelines on Italian cooperation for the period 2009-2011.

16. It is observed that the documents referred to in the previous paragraph were not disclosed to the complainant during the internal appeals process. It is well established in the Tribunal's case law that a document upon which a decision is based cannot be withheld from the concerned staff member. This disclosure obligation is not overcome by disclosure in the context of the Tribunal's proceedings. However in the present case, the failure to disclose the correspondences did not prejudice the complainant (see Judgment 2899, under 23).

17. There is also insufficient evidence to prove that the complainant's employment was not extended because the FAO refused to authorize the extension for a reasonable duration in a timely manner. It is apparent that the project was not extended by mutual decision by the Italian authorities and the FAO as the memorandum of 10 November 2009 indicates. Neither is there any evidence, as against surmise and speculation, to prove that the project was not extended because persons in the FAO undermined the complainant's position with the Italian authorities.

18. The complainant submits that the act of publishing his confidential material, by the Chief, TCAP, constituted harassment within the terms of the Policy on the Prevention of Harassment. The complainant had sent an e-mail communication dated 18 November 2008 to the Chief, TCAP, informing him that he had prepared a harassment complaint against him. He asked him "to verify the possibility of some mediation with you which allows the suspension of [his harassment]". He provided no particulars of the harassment in the communication. In his response, the Chief, TCAP, expressed surprise and offered some advice concerning who was responsible for various areas which touched the complainant's work and he copied his response, as well as the complainant's letter to him, to the complainant's supervisor, the person administratively responsible for the project funding the complainant's post and the ADG/TC, whom he considered to be the relevant persons to contact regarding the complainant's responsibilities and personnel matters. The Tribunal does not see anything in the correspondence that was confidential in the terms of the Policy on the Prevention of Harassment.

19. There is insufficient evidence to prove that there was a link between the harassing acts found in considerations 13 and 14 of this judgment and the complainant's separation from the FAO. As no link was found between the separation and the alleged harassing acts discussed in considerations 15, 16 and 17 of this judgment, his claim that his separation was unlawful as the end result of harassment is unfounded. It will be accordingly dismissed.

20. The breaches of the Organization's duty identified in considerations 13 and 14 of this judgment justify an award for moral injury, which is set *ex aequo et bono* at 20,000 euros.

21. The complainant is entitled to 6,000 euros costs.

#### DECISION

For the above reasons,

1. The impugned decision contained in the Director-General's letter of 29 May 2012 to the complainant is set aside to the extent that it rejected the claim of harassment.
2. The Organization shall pay the complainant moral damages in the amount of 20,000 euros.
3. The Organization shall pay the complainant 6,000 euros in costs.
4. All other claims are dismissed.

In witness of this judgment, adopted on 15 May 2014, Mr Giuseppe Barbagallo, President of the Tribunal, Ms Dolores M. Hansen, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 9 July 2014.

GIUSEPPE BARBAGALLO  
DOLORES M. HANSEN  
HUGH A. RAWLINS  
DRAŽEN PETROVIĆ