

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

*Registry's translation,
the French text alone
being authoritative.*

C. d. L. (No. 2)

v.

OIE

129th Session

Judgment No. 4233

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr J.-P. M. C. d. L. against the International Office of Epizootics (OIE) – also known as the World Organisation for Animal Health – on 2 December 2015 and corrected on 29 December 2015, the Organisation's reply of 17 February 2016, the complainant's rejoinder of 13 April and the OIE's surrejoinder of 19 May 2016;

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 not to award him compensation for the moral harassment which he alleges he has suffered.

The complainant joined the OIE in 1994 under a fixed-term appointment. On 1 February 2006 he was appointed Head of the Human Resources and Budget Management Unit. In June 2010, following internal restructuring, the unit was split into two and he was placed in charge of the Human Resources Unit under the supervision of the new Deputy Director General, Ms E. On 16 January and 31 July 2014 he was given two warnings under Article 9.2 of the Staff Regulations of the OIE, relating to the recurrence of numerous errors in his work,

amongst other things. On 5 August, in response to the complainant's observations regarding the disciplinary measures imposed on him, the Director General informed him that Ms E. and he planned to review the organisation of the Human Resources Unit with a view to reducing his workload and enabling him to make fewer mistakes. On 15 September, in the wake of an audit ordered by the European Commission which had revealed blatant shortcomings on the complainant's part that were liable to damage the OIE's credibility, the Director General sent him a call to order instructing him to rectify the situation without delay. The complainant submitted a report on the measures taken to Ms E. on 30 September.

On 17 October 2014 the complainant received an email from Ms E. concerning the recruitment of Mr d.S., who until then had been an OIE external consultant. The email contained the thread of exchanges between Mr d.S. and Ms E., in which there was a statement by Ms E. to the effect that she intended to have the complainant removed from his position as Head of the Human Resources Unit. The complainant had a discussion with the Director General on 21 October. The next day he submitted written allegations of moral harassment by Ms E., who, according to him, "probably" intended to push him into a "voluntary departure" by burdening him with a heavy workload, giving him two disciplinary warnings, side-lining him from the conclusion of important contracts and obliging him to perform tasks that did not match his qualifications and experience. The complainant requested that the Director General find a solution that was "acceptable and accepted by everyone" and expressed his willingness to move within the Organisation to a certain extent. On 28 October he was admitted to hospital with cardiac arrhythmia.

In November 2014, in the complainant's performance appraisal report for that year, Ms E. mentioned failings and a lack of organisation on his part which had led her to request the redefinition of his duties and responsibilities, and her loss of confidence in his capacity to discharge his duties as the Head of the Human Resources Unit. In his observations, the complainant denied the failings attributed to him but

“in a spirit of appeasement”^{*} stated that he did not object to the proposed redefinition.

On 6 January 2015 the complainant received an email from Ms E., who proposed to indicate, in her draft message introducing Mr d.S., that he would be responsible for “matters pertaining to human resources”^{*}. On 13 January the Director General informed the complainant that a meeting would be organised with Ms E. with a view to updating his duties and responsibilities within the Organisation. Ultimately, however, the meeting did not take place.

On 19 January the complainant was placed on sick leave. Although it was initially expected that his absence would last a few days, it was extended several times. The medical certificates variously specified arterial hypertension, burnout, and depression and anxiety resulting from a workplace dispute. Mr d.S. was assigned to the complainant’s post on a temporary basis from 28 January. On 5 February, when the complainant was still absent, he initiated criminal proceedings in the national courts alleging moral harassment by the Director General and Ms E.

On 1 July the complainant was advised of the decision taken by the Director General pursuant to Article 60.2(c) of the Staff Rules to stop paying his full salary from 19 July, the date on which he would have taken six months of sick leave, and not to grant him half pay after that date. By two letters dated 3 August, the complainant requested that the Director General award him 25,000 euros in compensation for the alleged moral harassment and reconsider the decision of 1 July. His requests were rejected on 7 September. In respect of the claim for compensation specifically, the Director General told the complainant that it was necessary to await the outcome of the legal proceedings that he had brought before the national courts. The same day, the complainant was informed of a proposal to dismiss him for the numerous errors and oversights in his work. On 1 October, he was called before the OIE Council to make any relevant comments on that proposal. Following its

^{*} Registry’s translation.

meeting, the Council announced that he was to be dismissed with immediate effect.

On 13 October the complainant requested that the decision of 7 September to refuse to pay him compensation for moral harassment be reconsidered. By a letter of 22 October 2015, which constitutes the impugned decision, he was informed that his request had been denied.

The complainant requests the Tribunal to set aside the decisions of 7 September and 22 October 2015; to order the OIE to pay him 25,000 euros in compensation for the moral and physical injury caused by the moral harassment which he considers that he has suffered, to pay interest of 5 per cent on that sum for late payment, and to pay compound interest; and, lastly, to award costs against the OIE.

The OIE requests the Tribunal to dismiss the complaint in its entirety and to award costs against the complainant.

CONSIDERATIONS

1. By his second complaint, the complainant impugns the decision of 22 October 2015 which confirmed the decision of 7 September not to pay him compensation of 25,000 euros for moral harassment.

2. It is well established that an international organisation has a duty to its staff members to investigate claims of harassment thoroughly and objectively (see, for example, Judgments 3071, consideration 36, 3314, consideration 14, 3337, consideration 11, and 4013, consideration 10). The OIE is under such an obligation even though the existing rules do not provide for any specific procedure to deal with harassment complaints. Indeed, it would be desirable for the Organisation to address this matter and to adopt such a procedure, possibly drawing on those which exist in most international organisations and on the case law of the Tribunal.

In this case, no investigation was conducted. In principle, the Tribunal should set aside the decision not to compensate the complainant for moral harassment and refer the case back to the Organisation for the complainant's allegations of harassment to be properly considered.

However, in his complaint, the complainant lists exhaustively the actions which, in his view, constitute harassment, and the OIE responds in its submissions. Consequently, for the sake of procedural efficiency, the Tribunal will not remit the case to the Organisation but will consider the issue itself.

3. The harassment which the complainant considers he suffered resulted, according to him, from a series of measures that were taken in his regard over a period of one and a half years, including two disciplinary warnings, a call to order, the withdrawal of his assistant despite his repeated requests for help, verbal admonishments, some in public, an increase in his workload, the deterioration of his working relationship with his superiors, relegation to subordinate tasks, requests for access to his computer while he was on sick leave, the conduct of an audit on the day after he went on holiday, a poor appraisal of his performance, and the cessation of the payment of his full salary from 19 July 2015.

Under the Tribunal's case law, harassment can be the cumulative effect of a series of actions which, in isolation, might not be viewed as harassment (see, for example, Judgments 3485, consideration 6, 3599, consideration 4, and 4034, consideration 16) even if they were not challenged at the time of the events (see Judgment 3841, consideration 6). However, firstly, the person alleging harassment bears the burden of proving the allegation (see Judgments 2067, consideration 5, 2100, consideration 13, 2370, consideration 9, and 2406, consideration 13) and, secondly, the only actions which can be said to constitute harassment are those for which there is no reasonable explanation (see Judgments 2370, consideration 17, 2524, consideration 25, 3447, consideration 9, 3996, consideration 7B, 4038, consideration 18, and 4108, consideration 7).

4. The complainant has failed to prove several of his allegations. As far as the unduly hurtful character of certain verbal admonishments is concerned, although the file shows that the complainant was upbraided for professional shortcomings on two occasions, he has not established that those admonishments were excessive or misplaced. He does not explain in his submissions what the relegation to subordinate

tasks, such as filing, consisted of. If he is referring to managing the personal files of OIE staff members, which were shown during preparations for the audit required by the European Commission to be mostly incomplete, it was the complainant's responsibility to put them in order, in particular by placing in them documents in his possession.

The OIE provides reasonable explanations for the measures taken in the complainant's respect. Thus, the call to order which was sent to him on 15 September 2014 concerned blatant omissions in the management of the personal records of the Organisation's staff members. The requests for access to his computer while he was on sick leave were justified in view of the need to manage the individual records of staff members. The negative appraisal of his performance was based on the identification of certain professional errors and shortcomings. The audit required by the European Commission was initially not supposed to cover human resource management, and it was only during the first meeting with the auditors at the OIE's offices that they made a request in that regard. The complainant cannot therefore submit that those operations were intentionally carried out during his absence. The partial withdrawal of his assistant was explained by organisational reasons, owing, in particular, to a colleague's maternity leave. As regards the increase in his workload, the OIE explains that other people were assigned some of the complainant's tasks in an effort to reduce his workload.

The deterioration in his working relationship with his superiors is, at least in part, attributable to his unsatisfactory performance.

The decision to cease paying the complainant's full salary from 19 July 2015 was found unlawful by the Tribunal in Judgment 4232, delivered in public this day on the complainant's first complaint. However, that unlawful act is not sufficient on its own to establish harassment.

The Tribunal notes that the warnings issued to the complainant were based on professional errors that have been substantiated. It could be asked whether the OIE did not intend, through those warnings, to use disciplinary measures to sanction conduct which should rather have been regarded as unsatisfactory performance. However, that question

need not be determined in any event since the written evidence shows that those warnings are not sufficient to establish harassment, whether viewed in isolation or in conjunction with the flaw referred to above regarding the decision to cease paying the complainant's full salary.

In conclusion, the facts referred to by the complainant in support of his allegations of moral harassment do not establish that he suffered such harassment.

5. The complainant also submits that the various measures taken in his regard aimed to bring about his departure from the Organisation without the indemnity for termination provided for in Article 80.3 of the Staff Rules. According to him, those measures were not taken for a legitimate purpose but reflect a hostile attitude which, under the Tribunal's case law, warrant their classification as harassment. He relies in this respect on Judgment 2521.

He points to, in particular, two emails from the Deputy Director General as evidence of this. The first, dated 17 October 2014, which mistakenly included the thread of an exchange of emails between the Deputy Director General and Mr d.S., an external candidate, in which she wrote that her goal was to have the complainant removed from his position as Head of the Human Resources Unit, and another email, dated 6 January 2015, in which she proposed to present the duties of Mr d.S. – who had been hired in the meantime – as follows: “[Mr d.S.] will, among other responsibilities, take charge of all the OIE's legal and administrative matters, including matters pertaining to human resources.”

It is correct that, as part of a reorganisation of the Human Resources Unit which was managed by the complainant, the Deputy Director General planned to have a new head appointed to the unit, under whose supervision the complainant would be placed. However, it cannot be inferred from this that the Organisation sought to bring about his departure without paying the termination indemnity.

This plea cannot be accepted.

6. Lastly, the complainant alleges various breaches of the duty of care.

These include the decisions to stop paying his full salary from 19 July 2015, to propose that he be dismissed, and to call him before the OIE Council with the view to dismissing him while he was on sick leave. Although the decision to cease paying his salary and his dismissal – each of which is the subject of a judgment also delivered this day – were unlawful, they did not involve a breach of the duty of care that would entitle the complainant to compensation over and above that awarded in those judgments.

Moreover, the complainant considers that the Organisation breached its duty of care in that, if he were found to be incapable of performing his responsibilities as Head of the Human Resources Unit after 11 years in that post, management should have offered him a new position.

However, the file submitted to the Tribunal shows that following the difficulties experienced by the complainant, the unit was reorganised and his duties redefined in collaboration with him. The OIE cannot therefore be taken to task in that respect.

The complainant further submits that the breach of the duty of care arose from various actions that have already been put forward to substantiate the existence of harassment, such as public verbal admonishments, relegation to subordinate filing tasks and the failure to warn him of an audit that was to be conducted on his unit the day after he went on annual leave. However, as has been explained above, those circumstances have not been established or can be reasonably explained. In the circumstances of the case, the Tribunal considers that nothing in the file supports a finding that the Organisation breached the duty of care.

7. In conclusion, the complaint must be dismissed.

8. The OIE's counterclaim for costs must also be dismissed since the complaint is not vexatious.

DECISION

For the above reasons,

The complaint is dismissed, as is the OIE's counterclaim.

In witness of this judgment, adopted on 7 November 2019, Mr Patrick Frydman, President of the Tribunal, Ms Fatoumata Diakité, Judge, and Mr Yves Kreins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 10 February 2020.

(Signed)

PATRICK FRYDMAN

FATOUMATA DIAKITÉ

YVES KREINS

DRAŽEN PETROVIĆ