

R. (No. 6)

v.

IAEA

131st Session

Judgment No. 4346

THE ADMINISTRATIVE TRIBUNAL,

Considering the sixth complaint filed by Mr R. R. against the International Atomic Energy Agency (IAEA) on 14 August 2018 and corrected on 5 October 2018, the IAEA's reply of 14 January 2019, the complainant's rejoinder of 20 April and the IAEA's surrejoinder of 25 July 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 not to renew his fixed-term appointment beyond its expiry date.

The complainant joined the IAEA in April 2013 under a temporary assistance contract. On 1 June 2015 he was granted a three-year fixed-term appointment, at grade P-3, as Information Architect in the Systems Development and Support Group (SDSG) of the Nuclear Information Section (NIS) in the Department of Nuclear Energy (NE). As there were tensions within the team, the complainant was temporarily reassigned on 1 December 2015 to another position in the Office of the Deputy Director General in the NE Department. Early 2017 he was placed on certified sick leave.

On 3 July 2017 the Acting Director of the Division of Human Resources (MTHR) informed the complainant that the Director General had decided not to renew his appointment beyond its expiry date of 31 May 2018. The decision was taken in the best interests of the IAEA in promoting a harmonious work environment in which all staff could feel comfortable performing their ongoing tasks, and a smooth functioning of the Department. He also noted the terms of the complainant's appointment, in particular that it did not carry any expectation of, or right to, extension, renewal, or conversion to another type of appointment. A few days later, on 7 July, the complainant asked the Acting Director to provide him all the documentary evidence on which the Director General had based his decision. On 19 July, the Acting Director forwarded to him some documents while stressing that the Director General had taken his decision having regard exclusively to the Deputy Director General's comment that the renewal of his appointment was not in the interests of the Agency to promote a harmonious work environment.

On 17 August 2017 the complainant wrote to the Director General asking him to review the non-renewal decision. By a letter of 14 September, the Director General rejected his request for review indicating, inter alia: "extensions or renewals of fixed-term appointments are offered at my discretion, taking into account the criteria set out in Staff Rule 3.03.1(F)(2) [...] I decided not to extend your appointment beyond 31 May 2018. In taking my decision, please note that I had exclusive regard for the recommendation submitted to the Joint Panel on Professional Staff (P-Panel) by [Mr C., the Deputy Director General]". The Director General also informed the complainant that he had not taken into consideration his performance review reports of 2015 or 2016, nor had he considered the comments made therein by the complainant's former supervisor (Mr S.). The Director General reiterated that his decision was based on the Deputy Director General's recommendation to the P-Panel and "further to the best interests of the Agency in ensuring the smooth functioning of the Department of Nuclear Energy". He went on to write: "In considering the best interest of the Agency, I took into account your working relationships with your fellow colleagues and noted that several of your colleagues made informal complaints about your temperament and approach. Furthermore, I noted that your temperament and your approach towards your colleagues led to the fact that several staff in your Division did not feel comfortable performing their daily tasks. I further considered that, in spite of the fact that your approach

had been pointed out to you on several occasions by your supervisors, you were unwilling to accept advice in this regard.” In response to the complainant’s statement that he had not been subject to any disciplinary process, he replied: “Please note that your conduct at work need not rise to the level of misconduct in order for me to find that an extension of your appointment is not in the interest of the Agency, in accordance with the criteria set out in Staff Rule 3.03.1(F)(2).” He also denied the complainant’s request for waiver of the jurisdiction of the Joint Appeals Board (JAB). With regard to the complainant’s request to be provided with all documentary evidence on which his decision was based, he noted that the Acting Director of MTHR had already given him a copy of the submissions provided to the P-Panel in that respect and added that he “was aware of the various reports from [the complainant’s] colleagues about difficulties concerning [his] temperament and approach”. He also listed examples of incidents where the complainant’s colleagues had reported his “aggressive verbal behaviour”, or “lack of responsiveness on [his] part to meet in connection with a work-related task”, and feeling “extremely uncomfortable” in interactions with the complainant.

The complainant filed an appeal with the JAB on 13 October 2017 challenging the decision to reject his request for review.

In its report of 20 April 2018, the JAB found that the complainant had shown no evidence that the Director General’s decision was in any way based on fraud, egregious procedural flaws, mistakes of law, cavalier overlooking of material facts, breach of due process or grave abuse of power, as he contended. The complainant had made allegations of misconduct and harassment against a number of his colleagues in a pattern similar to the allegations he had made in other internal appeals, and had ignored the fact that these allegations had been investigated by the Office of Internal Oversight Services (OIOS), which had concluded that they were unfounded. The JAB considered that the fact that he persisted in making these allegations and in effect ignored the findings of the OIOS was indicative of his temperament and approach to his work and colleagues. It therefore concluded that the Director General had properly exercised his discretion in not renewing his fixed-term appointment.

By a letter of 17 May 2018, the Director General informed the complainant that he had decided to reject his appeal. He stated that his “temperament and approach were not conducive” to maintaining a “stable, cooperative and productive working environment” and that his conduct

did not need to rise to the level of misconduct in order for him to find that the renewal of his appointment was not in the interests of the Agency. He added that his decision was in no way a disciplinary measure. Concerning the complainant's allegations that Mr S. and Mr C. had failed to inform him of the abolition of his post, that the non-renewal decision constituted a breach of the Agency's duty of care and was based on "secret documents", that the IAEA had failed to follow the unsatisfactory performance procedure and that he was a victim of institutional harassment, the Director General refrained from commenting on the ground that these matters had not been raised in the request for review. That is the decision the complainant impugns before the Tribunal.

The complainant asks the Tribunal to set aside the impugned decision. He seeks an award of material damages in an amount equivalent to what he would have earned for a period of five years from his date of separation and for "consequential damages" for loss of employment. He claims moral damages for injury to his professional reputation and his dignity, and for breach of due process in the internal appeal. He also claims exemplary damages for taking a "hidden and retaliatory sanction for exercising his right to complain of harassment". Lastly, he claims interest and costs.

The IAEA asks the Tribunal to reject the complaint as devoid of merit.

CONSIDERATIONS

1. The complainant impugns the IAEA Director General's 17 May 2018 decision to accept the JAB's recommendation to maintain his 14 September 2017 decision not to renew the complainant's appointment as Information Architect in NIS/NE beyond its expiry date of 31 May 2018.

2. The complainant bases his complaint on the following grounds:

- (a) violation of Staff Rules 3.03.1(F)(2) on fixed-term appointments, and 3.06.4 on unsatisfactory performance, including arbitrariness, abuse of authority, errors of fact, and misappraisal and omission of facts;
- (b) breach of good faith and mutual trust; and
- (c) breach of the right to due process in the internal appeals proceedings.

3. Staff Rule 3.03.1(F) provides as follows:

“(F) Fixed-term appointments may be issued for established posts and for periods each not exceeding five years.

Professional and higher categories

(1) [...]

(2) The initial fixed-term appointment may be extended or renewed, subject to the maximum tour of service, normally for periods of two years taking into account the following criteria:

- (i) The need for continuity in the specific functions assigned to the staff member’s post;
- (ii) The availability of funding;
- (iii) The staff member’s conduct and performance; and
- (iv) The best interests of the Agency.”

4. The complainant submits that the wording of Staff Rule 3.03.1(F)(2) requires that all four criteria must be considered together. This interpretation is mistaken. It is enough that one of the criteria forms the basis for the non-renewal decision (see Judgment 4088, consideration 14). In the present case, the Director General based his decision on the fourth criterion: “[t]he best interests of the Agency”. Each of the first three criteria is specific and the fourth is general. In the Tribunal’s view, the fourth criterion serves to regulate situations not governed by the previous criteria. While the complainant’s temperament was not considered conducive to a harmonious work environment, the Director General did not deem that his behaviour rose to the level of misconduct, which would have triggered a disciplinary procedure. Likewise, 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. Considering this, the Tribunal finds that the Director General correctly based his decision not to renew the complainant’s contract on the fourth criterion. In light of this, the Tribunal concludes that the claims regarding violation of Staff Rules 3.03.1(F)(2) and 3.06.4 are unfounded.

5. In support of his claim of breach of the right to due process in the internal appeals proceedings, the complainant asserts that he was not provided with copies of the OIOS reports and witness statements upon which the JAB based its findings regarding his temperament and approach towards his colleagues. The Tribunal finds that the JAB did

not err in referring to the complainant's multiple unfounded allegations of harassment and misconduct, filed against several staff members, as illustrative of the complainant's temperament and approach in his interactions with colleagues. The JAB did not base its recommendations on the contents or the outcome of the OIOS reports. It merely referred to them and to the outcome of the complainant's previous eleven internal appeals as fitting a pattern that lent support to the Deputy Director General's recommendation that the complainant's contract should not be renewed "[i]n the interests of the Agency to promote a harmonious work environment and the smooth functioning of the Division in which all staff [could] feel comfortable performing their daily tasks". Therefore, there was no need for the IAEA to provide copies of the OIOS reports as the JAB's recommendation and the Director General's decision were not based on them; it was enough that the JAB specifically quoted the relevant part of the OIOS report which the JAB used as an illustration of its perception of the complainant's temperament.

6. The complainant asserts that "while the Agency has not expressly stated that [he] committed misconduct by deliberately making false allegations of misconduct against other staff members, the circumstances demonstrate that the Agency did consider [his] allegations to be false and that he had thus committed misconduct" (original emphasis). He cites the comments from his supervisor in the P-Panel report that stated, inter alia, that the complainant "demonstrated unacceptable behaviour, such as insubordination, lack of cooperation and respect for his colleagues and supervisors, as well as false accusations of harassment and mobbing" (original emphasis). The Tribunal notes that Staff Rule 11.01.1, which addresses misconduct, lists "deliberately false allegations of misconduct against another staff member" as one type of misconduct. However, the evidence provided does not show that the Agency believed his false allegations to have been made deliberately. In fact, it is clear from the submissions that the IAEA recognised that the complainant believed his allegations were well founded but that does not negate the findings by the OIOS that none of his allegations were substantiated.

7. The claim of breach of good faith and mutual trust is unfounded. The IAEA acted with transparency, informed the complainant of the non-renewal of his appointment nearly a year prior to its expiration, and

explained the basis on which the decision was taken. The complainant was informed that, based on the interests of the Agency, in light of the difficulties involving his temperament and approach which negatively affected the atmosphere of the working environment, his appointment would not be renewed beyond its expiry date. The IAEA treated him with due respect and fulfilled its duty of care towards him. The Tribunal finds no flaw in the IAEA's actions.

In light of the above considerations, the complaint is unfounded in its entirety and must be dismissed.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 22 October 2020, Ms Dolores M. Hansen, Vice-President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 7 December 2020 by video recording posted on the Tribunal's Internet page.

DOLORES M. HANSEN

GIUSEPPE BARBAGALLO

HUGH A. RAWLINS

DRAŽEN PETROVIĆ