

C.
v.
PAHO

133rd Session

Judgment No. 4450

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs M. P. C. against the Pan American Health Organization (PAHO) (World Health Organization) on 2 August 2019, corrected on 12 September and 18 October 2019, PAHO's reply of 7 January 2020, the complainant's rejoinder of 23 May and PAHO's surrejoinder of 30 September 2020;

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 to terminate her appointment at the end of her probationary period for unsatisfactory performance.

On 1 October 2017 the complainant joined PAHO under a two-year regular contract subject to a one-year probationary period. During her first three months in service, the complainant worked under the supervision of Ms C. Following a reorganisation that took place in January 2018, the complainant was assigned a new first-level supervisor, Ms R. On 20 June 2018, the complainant submitted her mid-year self-assessment. While Ms C. noted during the first three months that the complainant was skilful at applying her expertise to the work of the unit, in June 2018, Ms R. indicated on the complainant's probationary mid-year review that the latter should improve in the performance of her objectives in particular with regard to her integration to the work of

the team. In August 2018, the complainant sought support from the Human Resources Management (HRM), the Staff Association and the Ethics Office, as she was concerned that Ms R.'s evaluation lacked objectivity.

In her probationary year-end review covering the period from 2 October 2017 to 1 October 2018, the complainant received the overall rating "below expectations". By a letter of 21 September 2018 the complainant was informed that her probationary period would be extended from 1 October 2018 to 31 January 2019 in order to provide her with a reasonable opportunity to progress in the areas identified as requiring improvement. It was further indicated to the complainant that she would now report to her former supervisor, Ms C. for administrative purposes, and to Mr D. for all technical aspects of her work.

Upon the end of her extended probationary period, the complainant was informed by a letter of 30 January 2019 that her fixed-term appointment would be terminated, effective 31 January 2019, due to unsatisfactory performance. The letter specified that she would receive the payment of one month's salary in lieu of the notice period. The complainant challenged that decision on 14 February. By a letter of 7 May 2019 the Director confirmed her decision to terminate the complainant's appointment due to unsatisfactory performance. That is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision of 7 May 2019 and to find that her technical performance was not unsatisfactory. She asks that any reference to the reasons for the termination of her appointment, which she considers prejudicial, be removed from her employment record. The complainant seeks an award of material damages for the remaining contractual period corresponding to 4.75 months of salary, in addition of the benefits, pension and interest. She also seeks material damages for the loss of career opportunities equivalent to a minimum of two years of gross salary, including benefits, pension contributions and interest. The complainant requests moral damages in the amount of 50,000 euros as well as costs in the amount of 10,000 euros.

PAHO asks the Tribunal to dismiss the complaint in its entirety.

CONSIDERATIONS

1. In her first plea the complainant alleges multiple violations of the Staff Rules, namely of Staff Rules 520, 530 and 540, which can be summed up as follows:

- (a) following an organizational restructuring, she was assigned to a new supervisor, Ms R.; despite a change in the job description, the complainant allegedly never received the updated job description; since then, she was progressively isolated and was without any training, guidelines or work plan defined by the first level supervisor, in violation of Staff Rules 520, 530.1.1, 530.1.2 and 530.1.3;
- (b) the mid-year review was delayed by three months;
- (c) the positive evaluation by her supervisor for the first three months (Ms C.) was “suddenly overturned” by the more negative one conducted by her supervisor for the subsequent period (Ms R.); not only does the evaluation seem to have changed “rather surprising[ly]” over a period of only a few months, but Ms R.’s evaluation also reveals internal contradictions;
- (d) contrary to Staff Rule 530.2 there was no normal work review and discussion;
- (e) Staff Rule 530.4 was violated;
- (f) following the restructuring, her new supervisor (Ms R.) failed to observe the previously established performance objectives, did not share her interpretation of them with the complainant, and did not explain her approach to the goals to be reached;
- (g) Ms R. lacked objectivity and expertise;
- (h) the complainant was not given a reasonable opportunity to progress in the areas identified as requiring improvement; and
- (i) the extended probationary period was useless, given the reliance of the two new supervisors (Ms R. and Mr D.) on a biased evaluation of her performance.

2. It is convenient to reproduce the relevant Staff Rules.

Under Staff Rule 420.7: “Any fixed-term appointment of one year or more shall be subject to a period of probation. After the first year of probation, the appointment may be confirmed or the probationary period may be extended up to two years when necessary for adequate

evaluation of the staff member's performance, conduct and suitability for international service. In exceptional circumstances, the appointment of a staff member on probation may be terminated for poor performance or unsuitability for international service after the first six months of the probationary period following appointment."

Under Staff Rule 540 "END OF PROBATION":

- “540.1 A performance evaluation report (see Rule 530.2) shall be made before the end of the normal probationary period (see Rule 420.7). On the basis of this report, a decision shall be taken and notified to the staff member, that the:
 - 540.1.1 appointment is confirmed;
 - 540.1.2 probationary period is extended for a specified period;
 - 540.1.3 appointment is not confirmed and is to be terminated.
- 540.2 In the case of either 540.1.2 or 540.1.3, the staff member shall be notified of the reasons. If the probationary period is extended, a further report and decision are required before the expiry of this additional period.”

Under Staff Rule 520 (“TRAINING”) and Staff Rule 530 (“PERFORMANCE PLANNING AND EVALUATION”):

- “520. TRAINING
Staff members may be given suitable training as determined necessary by the Bureau to improve their effectiveness in their current assignments and to prepare them for broader usefulness to the Bureau.
- 530. PERFORMANCE PLANNING AND EVALUATION
 - 530.1 Supervisors shall be responsible for:
 - 530.1.1 facilitating the adjustment of the staff they supervise to their work;
 - 530.1.2 establishing, in consultation with each staff member, a work plan;
 - 530.1.3 guiding staff under their supervision.
 - 530.2 For staff at the D.2 level and below, in addition to the normal work review and discussion with a staff member, supervisors shall periodically make a formal evaluation of the performance, conduct and development potential of all staff members under their supervision. This evaluation shall be made at such intervals as the work situation or the individual's performance requires, but in no case less frequently than once a year. Supervisors shall discuss their conclusions with the staff member and make specific

suggestions for improvement in performance as necessary.
[...]

- 530.3 The performance and conduct of staff members during the preceding year shall be evaluated according to procedures established by the Director. The form shall be signed by the supervisors and the staff members concerned; the latter may, if they so wish, attach a statement concerning any part of the report with which they disagree and this shall become a part of their performance report file.
- 530.4 The evaluation of performance and conduct as reflected in these reports shall be the basis for assisting the staff member to make his most effective contribution to the work of the Bureau and for decisions concerning the staff member's status and retention in the Bureau."

3. According to the Tribunal's case law, international organizations have wide discretion in taking decisions concerning staff performance appraisals. Therefore, such decisions are subject to only limited review by the Tribunal, which will intervene only if a decision was taken in breach of applicable rules on competence, form or procedure, if it was based on a mistake of fact or of law, if an essential fact was overlooked, if a clearly mistaken conclusion was drawn from the facts, or if there was abuse of authority (see Judgments 4010, consideration 5, 4062, consideration 6, 4170, consideration 9, and 4276, consideration 7). With specific regard to probationary periods, the Tribunal has said that the purpose of probation is to permit an organization to assess the probationer's suitability for a position, and, accordingly, a high degree of deference ought to be accorded to an organization's exercise of its discretion regarding decisions concerned with probationary matters. In the course of making this assessment, an organization must establish clear objectives, provide the necessary guidance for the performance of the duties, identify the unsatisfactory aspects of the performance in a timely manner, so that remedial steps may be taken, and give a specific warning where continued employment is in jeopardy. Moreover, a probationer is entitled to have objectives set in advance (see Judgment 4282, considerations 2 and 3).

4. The Tribunal is satisfied that the allegations listed in consideration 1 above are unfounded. The alleged procedural flaws are unsubstantiated and the Organization acted in conformity with its Staff Rules and the Tribunal's case law. The documentary evidence submitted

shows that the complainant was given a clear job description, which detailed a description of the objectives of the office, the organizational context, and the duties of the probationer. Her work objectives were coordinated through the Performance Management Information System (hereinafter PMIS), and approved by her supervisor Ms C. Contrary to the complainant's allegations, her job description and objectives did not change following the restructuring process. The Organization submits, and the complainant has not contested, that she received 80 hours of training. In fact, the sole objective assessed as "fully achieved" was objective No. 6, regarding training.

5. As to the mid-year review, the alleged three-month delay was due to the complainant's failure to complete her self-evaluation before 20 June 2018. There is no evidence that Staff Rule 530 was not complied with, and that the different evaluation between the first three months and the subsequent ones is the outcome of errors of fact or law or of abuse of authority. The allegation that Ms R. lacked competence and expertise is unsubstantiated. It is also established that regularly-scheduled meetings took place between the complainant and her supervisor, Ms R. The alleged inconsistencies are not manifest. The full text does not reveal any contradictions or errors that would warrant intervention by the Tribunal.

6. The complainant was given ample opportunity to improve her performance, in the period following her mid-year evaluation, and in the extended probationary period. Both the mid-year and the year-end reviews undertaken clearly indicate the concerns of the supervisor and the unsatisfactory aspects of the probationer's performance. To address the concerns expressed by the complainant regarding the objectivity of Ms R., she was assigned to two further supervisors, Mr D. and Ms C., the latter being her original supervisor for the first three months.

A review undertaken following the extended probationary period affirms that:

- joint supervision was intended to establish an adequate working environment for the complainant;
- formal work meetings were developed and documented in order to provide supervision and a forum for the complainant to express concerns and present her ideas;

- in the perspective above, twelve technical performance monitoring meetings were conducted;
- additionally, there were *ad hoc* meetings when the complainant requested to speak to her supervisors; and
- the Organization provided tools, guidelines and advice to facilitate the complainant's work.

On the material before the Tribunal, these statements are correct.

Such activities by the supervisors complied with Staff Rules 520, 530.1, 530.2, 530.3 and 530.4.

The Tribunal is satisfied that the Organization met its general duties regarding the probationary period. Namely it: (i) established clear objectives; (ii) provided the necessary guidance for the performance of the duties; and (iii) identified the unsatisfactory aspects of the performance in a timely manner, so that remedial steps might be taken.

7. In her second plea, the complainant challenges the overall final evaluation regarding both technical and interpersonal performance, reiterating that:

- (a) work objectives were not clearly stated; products and additional tasks were erratically requested to the complainant, beyond the agreed objectives;
- (b) the probationary year-end report is subjective, partial, incomplete, inaccurate, wrongful and unfair;
- (c) the complainant fully complied with the development of the products indicated, agreed to, and uploaded in the PMIS;
- (d) the final evaluation report added remarks never discussed before;
- (e) with regard to the fifth objective, the conclusion that the product was partially achieved is incorrect;
- (f) the theoretical character of a conceptual model, criticized as negative by the supervisors, indeed is not a negative element;
- (g) the evaluations of objectives 2, 3 and 4 are incorrect;
- (h) during the extended probationary period all issues addressed and developed in technical cooperation with Ecuador were approved by her technical supervisor, Mr D.; and

- (i) the evaluation regarding her “unsatisfactory integration with the team” is not detailed, is false, and was not raised by her supervisors in any of the meetings.

8. The foregoing allegations are unfounded. In the mid-year evaluation, unsatisfactory aspects concern both her technical knowledge and her general behaviour and are clearly listed therein. The first probationary year-end review (2 October 2017 to 1 October 2018) also details an evaluation of “below expectations”, substantially confirming the outcome of the mid-year evaluation. The complainant was given multiple opportunities to improve her performance:

- she was mentored by Ms M., HRM, in how to handle the performance appraisal process and how to improve her interpersonal skills;
- she was given the opportunity to discuss the outcome of the mid-year evaluation with her supervisor, Ms R.;
- she was given the opportunity to discuss the outcome of the year-end evaluation with her supervisor, Ms R.;
- she was informed of the unsatisfactory aspects of her performance in a timely manner;
- her probationary period was extended for four months;
- to address her concerns as to Ms R., she was assigned to two other supervisors; and
- numerous formal and *ad hoc* meetings with the new supervisors took place.

9. The final evaluation report (2 October 2018 to 31 January 2019) gives three reasons for the decision to terminate the complainant’s appointment, confirming the assessment of “below expectations”:

- her technical performance was deemed to be unsatisfactory;
- her soft skills were deemed to be unsatisfactory; and
- she failed to comply with the Organization’s protocols regarding technical cooperation with Ecuador.

This final assessment is grounded on detailed reasons given by the technical supervisor separately for each of the six objectives assigned to the complainant. Five out of the six objectives were deemed to be partly achieved, while only objective No. 6 (training) was deemed to be

fully achieved. The evaluations of such objectives appear logical, reasonable, and do not reveal errors of fact or law. The complainant contends that the objectives were fully achieved, but this is her personal opinion and it cannot substitute the one expressed by her supervisors, who are expressly qualified to make such assessments. Nor shall the Tribunal substitute its own opinion to a discretionary decision, unless it reveals flaws in fact or law that in the present case are not demonstrated. In addition, in the present case, the evaluation of unsatisfactory performance is based not only on the partial achievement of the assigned objectives, but also on a more general assessment of unsuitability of the employee for the purposes of the Organization. The personality and general conduct of the complainant have been deemed to be unsatisfactory as to her aptitude to work in and to share her knowledge with a team.

10. In her third plea, the complainant focuses on the “Ecuador issue” and contests her “lack of compliance with the Organization’s protocols regarding technical co[ope]ration with Ecuador”. She argues that:

- after she had been informed, on 6 December 2018, that PAHO’s Representative in Ecuador complained about her direct interactions with government officials, without the involvement of the Representative’s office, she followed the instructions of her technical supervisor and always consulted him;
- she was not informed, during the feedback sessions, that there was a serious grievance regarding Ecuador;
- she was never provided with written protocols or guidelines documenting PAHO’s processes for technical cooperation with Ecuador; and
- the evaluation of “partially achieved” regarding objectives 1, 2 and 3, as pivoting on the “Ecuador issue”, is incorrect.

11. The foregoing allegations are unfounded. The matter was discussed on multiple occasions, namely in the meetings of 6 December 2018, and 8 and 10 January 2019. As to the plea that she was never provided with written protocols or guidelines documenting PAHO’s processes for technical cooperation with Ecuador, the Tribunal notes that, in signing her contract and agreeing to the job description, the complainant specifically committed to inter alia “[...] follow[ing] the guidelines [...], policy orientations [...], manuals, strategies and other

directives regarding technical cooperation”. If she was not provided copies of those documents at that time, she could have requested them, having expressly undertaken to abide by those regulatory documents. Moreover, in the “Summary of Responsibilities” of her job description, direct contact with government Agencies is not provided for. In any case, the complainant has not proven that the “Ecuador issue” was the pivotal factor in the decision to terminate her appointment, which is indeed based on three grounds, each of them *ex se* sufficient to substantiate the negative evaluation.

12. In her fourth plea, the complainant reiterates, in a summary form, the submissions contained in her second and third pleas, which have already been dismissed as unfounded.

13. As the complaint fails on the merits, it will be dismissed in its entirety.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 27 October 2021, Mr Michael F. Moore, President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Rosanna De Nictolis, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 27 January 2022 by video recording posted on the Tribunal’s Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

ROSANNA DE NICTOLIS

DRAŽEN PETROVIĆ