

The Administrative Tribunal,

Considering the second complaint filed by Mr I. M. K. E. against the International Atomic Energy Agency (IAEA) on 29 June 2002 and corrected on 31 October 2002, the IAEA's reply of 5 February 2003, the complainant's rejoinder of 27 May, corrected on 29 August, and the Agency's surrejoinder of 22 September 2003;

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. Some facts relevant to the complainant's career with the IAEA may be found in Judgment 1958 on his first complaint, delivered on 12 July 2000.

Following negative comments made in his Work Planning and Performance Review (WPPR) Report dated 13 June 2000, his supervisor recommended, on 14 November, that the complainant's contract be extended for only one year. This recommendation was reviewed on 24 November by the Joint Advisory Panel on General Services (GS) Staff; the Panel considered that the WPPR contained some serious allegations and therefore any decision on a contract extension should be deferred until an investigation of these allegations could be carried out. The investigation's final report was issued on 8 February 2001 and the Panel held an extraordinary session on 19 February to discuss the complainant's contract extension. It unanimously recommended that his contract be extended for three years. On 28 February 2001 the complainant was offered a three-year extension, effective from 1 March 2001; however, the Acting Director of the Division of Personnel explained in her covering letter that the recommendation to extend his contract took into consideration, among other things, the negative remarks on his WPPR and that the three-year period would serve as a basis for further extension. The complainant accepted the extension with reservation that same day and asked the Director of the Division of Personnel to reconsider the length of his contract extension and give him a five-year contract extension. The Director of Personnel refused to do so in a memorandum of 7 March 2001.

On 27 April 2001 the complainant wrote to the Director General, asking that the decision to give him only a three-year contract extension be reviewed. Having received no reply from the Director General within one month, the complainant lodged an appeal with the Joint Appeals Board on 1 June 2001. The Director General subsequently replied on 27 July that an award of a five-year contract extension is "by no means automatic" and that since the necessary criteria had not been met in the complainant's case he was upholding the decision regarding his contract extension.

In its report of 1 March 2002 the Joint Appeals Board recommended to the Director General that he uphold the decision to grant the complainant a three-year contract extension. The latter did so in a letter of 18 March which the complainant received on 2 April 2002, after returning from sick leave. That is the impugned decision.

On 31 March 2003 the complainant was offered a contract extension effective from 1 March 2004 until retirement age, that is to say 30 June 2006. The complainant received the extension of contract when he returned from sick leave on 28 May 2003.

B. The complainant submits that the Director General followed the Joint Appeals Board's recommendation without an adequate evaluation of the "alleged" arguments against giving him a five-year contract extension; the "charges and allegation" levelled against him do not justify the conclusion that he did not meet the criteria for a five-year extension. Furthermore, with the exception of his WPPR in 2000, his performance has always been rated at least

satisfactory.

He asserts that his supervisors breached the Agency's statutory provisions when they recommended in November 2000 that his contract be extended for only one year. He has suffered a loss of dignity due to unfair treatment. He says that the Agency breached its duty of care towards him. He alleges that the progression of his contracts as well as his yearly performance appraisals "show an unusual pattern".

He requests the Tribunal to rescind the challenged decision and to order the IAEA to give him a five-year contract extension as from 1 March 2001. He also claims an award of damages for moral injury, and costs.

C. In its reply the IAEA submits that throughout his career in the Agency the complainant has had difficulties in his relations with supervisors and subordinates. It points out that he has never proven his repeated allegations of unfair treatment and harassment. In addition, contrary to what he says, his work has not always been rated as "satisfactory". It denies that it has failed to protect his dignity or that it has breached its duty of care towards him.

The Agency recalls that under the Tribunal's case law a decision to renew a contract for a shorter term is a discretionary one, reviewable only under limited circumstances. It says that none of the grounds for review exists in this case. In any event, the decision to extend the complainant's contract for three years complied with the appropriate statutory provisions.

D. In his rejoinder the complainant presses his pleas and his claims; he specifies that he claims costs in the range of 10,000 euros. He says that the Director General's discretion to decide the duration of a contract extension is not only limited but is subject to review by the Tribunal. He alleges that the impugned decision is flawed by mistakes of fact and law.

E. In its surrejoinder the Agency submits that the complaint is moot, the complainant having recently been given a contract extension through to retirement age. The only remaining issue is his claim for moral damages and it argues that these cannot be entertained: there is no evidence of an actual injury nor of any causal link between an "unlawful act and the injury suffered", as required by the Tribunal's case law.

CONSIDERATIONS

1. The complainant, an Egyptian national born in 1946, has been employed by the Agency in the Arabic Translation Section in the Division of Languages since 1983. He has held a series of short-term and fixed-term contracts, the length of which varied between one month and three years.
2. The record shows a long history of bitterness, friction and conflict of personalities in the Arabic Section involving the interaction of the complainant with his supervisors and his subordinates. On 13 June 2000 the head of the Arabic Translation Section signed the complainant's WPPR Report, which contained a number of negative remarks and suggested that the complainant's behaviour was unsatisfactory. On 14 November the head of section recommended a one-year extension of the complainant's contract, upon the expiry of his three-year fixed-term contract on 28 February 2001. On 24 November the Joint Advisory Panel on GS Staff met and considered the proposal for a one-year extension of the complainant's contract. The Panel noted that the complainant's WPPR itemised a number of serious allegations that could not be disregarded. In the light of these allegations, the Panel recommended that any extension of contract be deferred pending a full investigation of these allegations. On 28 November 2000 the Director of the Division of Personnel requested the Director of the Office of Internal Audit to conduct this investigation on the complainant's case. On 8 February 2001, based on the WPPR as well as on additional comments provided by the complainant and the head of section, the Office of Internal Audit issued a report which, in summary, absolved the complainant of a number, but not all, of the negative comments against him and concluded that there was insufficient opportunity to evaluate the complainant's ability to relate normally to another member of staff. On 19 February the Joint Advisory Panel on GS Staff held an extraordinary meeting to discuss the complainant's extension of contract and unanimously recommended a three-year extension. On 28 February 2001 the Acting Director of the Division of Personnel wrote to the complainant informing him that he was offered a three-year extension of his contract. On the same day the complainant requested a reconsideration of this decision, and not having received satisfaction, in due course lodged an internal appeal.
3. The Joint Appeals Board held seven meetings between January and February 2002, in the course of which it

interviewed the complainant and several other staff members. On 1 March 2002 the Board issued its report in which it concluded that the award of a three-year extension of contract to the complainant in February 2001 was within the criteria established within the Agency on tenure of appointment of GS Staff. The Board considered that the Joint Advisory Panel on GS Staff acted fairly in its consideration of the issue and in the recommendation it made concerning the length of extension. Furthermore, the Board noted that, given that the recommendation of the head of section was for a one-year extension, the recommendation by the Panel that he be given a three-year extension was favourable to him. It concluded that the Panel had acted reasonably in recommending such an extension which gave the complainant some incentive for improvement on his part. The Board also concluded that he had not been treated unfairly. It recommended that the Director General uphold his decision to grant the complainant an extension of contract for three years only instead of five years as requested by the complainant. The Board's recommendation was accepted by the Director General on 18 March 2002. That is the impugned decision.

4. Following the filing of the complainant's written pleadings, the Agency has informed the Tribunal that the Joint Advisory Panel on GS Staff met on 17 February 2003. In the light of the facts, the Panel unanimously recommended an extension of the complainant's fixed-term contract until his retirement age, that is 30 June 2006, and this was duly done. Although these new facts should render the complaint devoid of cause of action, the complainant has not withdrawn his subsidiary claims for costs and damages, so the Tribunal must continue to deal with the matter on its merits.

5. The complainant argues that, with the expiry of his three-year fixed-term contract on 28 February 2001, he should have been offered a five-year contract extension "in line with the 'normal progression'", instead of a three-year contract. He asserts that the decision to grant him a three-year extension was based on an unfair appraisal of his performance. He also submits that for many years in his career with the IAEA, he has been subjected to harassment, mobbing and unfair treatment in his work. He states that this has seriously damaged his career, morale, health and social standing and he asks for compensation for this damage.

6. The following provisions in Part II, Section 3, of the IAEA Administrative Manual are relevant and support the Agency's position that the grant of the first five-year extension to a contract is not automatic:

"83. Appointments in the case of local recruitment are made for an initial period of up to six months. If this period is completed successfully [...] a fixed-term appointment of one year may be granted [...].

[...]

85. Staff members who have satisfactorily served for the periods specified in [para. 83] may be granted further extensions if this is in the best interest of the Agency. The period of each such extension will progressively increase from 1 to 2, 3 and 5 years.

[...]

87. Proposals for extension of contracts shall be forwarded by Division Directors through Department Heads to [the Director of the Division of Personnel] for action in accordance with established practice. Each request shall be accompanied by a justification as to why the extension is in the best interest of the Agency along with supporting evidence, such as the performance appraisal. Recommendations for deviation from normal contract progression must be accompanied with full documentation and supporting evidence for consideration by the Joint Advisory Panel on General Services Staff.

88. [The Director of the Division of Personnel] has been delegated the authority to extend contracts of staff in the GS category. In respect of proposals for the award of the first five-year contract and in cases where the normal progression of contractual periods as set out in para. 85 above is not followed, [the Director of the Division of Personnel] shall request the advice of the Joint Advisory Panel on General Services Staff before taking a decision."

7. Reference may also be made to the Agency's criteria on the award of the first five-year contract to General Services staff.

8. It is trite law that the decision to renew for a shorter term, like the decision to renew or not renew a contract, is a discretionary one. The Tribunal has emphasised on numerous occasions that such a decision may be set aside only if it is *ultra vires* or in breach of a formal or procedural rule, or if there is a mistake of fact or of law, or if some material fact is overlooked, or if a plainly mistaken conclusion has been drawn from the evidence, or if there is

misuse of authority (see, for example, Judgments 1617 and 2173).

9. Here, the decision to extend the complainant's contract for three years rather than five is one calling for the exercise of judgement and discretion, and there is no evidence of any factors which would warrant review by the Tribunal.

10. There is another rule which stands in the complainant's way: it is not the role of the Tribunal to reweigh the evidence before the Joint Appeals Board which, as the primary trier of fact has had the benefit of actually seeing and hearing many of the persons involved, and of assessing the reliability of what they have said. For that reason the Board is entitled to considerable deference. This is as true with regard to the Board's finding that the recommendation to renew for three years only was reasonable as it is for the finding that the complainant has not been treated unfairly or "mobbed". Where a body such as the Board has heard evidence and made findings of fact based on its appreciation thereof, the Tribunal will only interfere in the case of manifest error. This is not such a case.

11. Based on the evidence before it, it was not unreasonable for the Board to conclude that the criteria for a first five-year extension of contract were not met in the case of the complainant. Likewise, the Board's conclusion, which was based on numerous interviews conducted by it and after a thorough review and consideration of the documentary evidence, does not reveal any flaw meriting intervention.

12. The claims for costs and damages are accordingly without merit and the complaint must be dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 13 November 2003, 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 4 February 2004.

Michel Gentot

James K. Hugessen

Mary G. Gaudron

Catherine Comtet