

The Administrative Tribunal,

Considering the second complaint filed by Mrs R. B.-M. against the World Health Organization (WHO) on 14 October 2004 and corrected on 20 January 2005, the WHO's reply of 25 April, the complainant's rejoinder of 27 June and the Organization's surrejoinder of 23 September 2005;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. Facts relevant to this case and information concerning the complainant's career at the WHO are given under A in Judgment 2180 delivered on 3 February 2003. At the material time the complainant worked as a technical officer at grade P.4 in the Quality Assurance and Safety: Medicines (QSM) Team, in the Department of Essential Drugs and Other Medicines (EDM) within the Health Technology and Pharmaceuticals Cluster. Amongst other duties she was in charge of the International Nonproprietary Names for Pharmaceutical Substances (INN) Programme, for which Dr K. had been responsible, prior to the latter's promotion to another post in the QSM Team. When the complainant assumed these duties on 2 April 2001, her first-level supervisor was Dr K. and her second-level supervisor was Dr R. Following a recommendation issued by the Ombudsman on 24 October 2001, the complainant was removed from Dr K.'s supervision as from January 2002.

On 10 January 2003 the complainant lodged a formal complaint with the Grievance Panel, which is responsible for dealing with allegations of harassment. In its report dated 18 December 2003, the Panel concluded that "in general the behaviour of Dr [K.] [could] be described as constituting harassment", but that Dr R.'s constituted "unfair management rather than harassment", and it recommended that the Director-General take appropriate action with respect to both staff members. One of the Co-chairs of the Panel, when submitting the report to the Director-General, indicated in a covering letter that the Panel recommended that letters be written, on the one hand, to the complainant, recognising that she had suffered harassment, and on the other hand to Drs K. and R. informing them that they had been found guilty of harassment and bad management, respectively. In a letter of 3 May 2004 the Director of the Office of the Director-General replied that three of the factual considerations contained in the report were open to challenge. He enclosed some annexes supporting this view and added that the Director-General would be grateful for the Panel's reaction to the letter before taking a final decision. The Co-chair replied on 27 May that the Panel had considered the arguments and documentation submitted but found no reason to change the substance of the report, pointing out that its conclusions were also based on the testimonies of 26 witnesses. He was surprised that the said documentation had not been produced by the parties, particularly the complainant's supervisors. Lastly, he drew the Director-General's attention to the definition of "harassment" given in Cluster Note 2001/9.

On 5 July 2004 the Director of Human Resources Services wrote separately to the complainant and to Drs K. and R. He informed the complainant that the Director-General had asked him to convey his "final decision" to her, which was that the grievance she had filed "ha[d] not been proven". He added that the Administration did not wish to underestimate the personal distress that had been experienced by her and others during the period in question. That is the impugned decision.

B. The complainant puts forward four pleas. Firstly, she accuses the Director-General of abuse of authority insofar as he attempted to introduce new "evidence" after the Grievance Panel had handed in its report, with the intention of influencing the Panel. She adds that not only was the impugned decision not adequately motivated but it relied solely on evidence which the Administration had withheld during the investigation. Secondly, she contends that the impugned decision was tainted by mistakes of fact and erroneous conclusions drawn from the file, on the grounds that the Director-General failed to make a finding of harassment despite the clear definition given in Cluster Note 2001/9 and the Grievance Panel's conclusions, that he relied on false information in denying any

delay in the announcement of her appointment, and that he failed to find undue delay in the execution of the Ombudsman's recommendation when there was obviously conflict and tension within the Department. She maintains, thirdly, that the Director-General tried to protect the harassers, displaying favouritism towards them and malice against herself, so that his decision was tainted with bias and bad faith. Lastly she submits that her supervisors failed in their obligation to treat her with the respect and dignity owed to international civil servants, exposing her to "inhumane treatment" which can only be construed as harassment.

The complainant asks the WHO to produce a large number of documents. She calls for the immediate implementation of all the Grievance Panel's recommendations and the award of 250,000 United States dollars in compensation for moral damages, as well as 15,000 dollars in costs, with accrued interest at 10 per cent per annum on both those sums starting from 18 December 2003.

C. In its reply the WHO contends that the complaint is irreceivable on the grounds that internal remedies have not been exhausted. Instead of filing a complaint with the Tribunal, the complainant should have appealed to the Board of Appeal against the decision of 5 July 2004, in accordance with the procedure set out in Section 12 of the Staff Rules, as indicated in Cluster Note 2001/13 of 26 April 2001.

Subsidiarily, the Organization submits that the Director-General acted correctly by drawing the Grievance Panel's attention to and seeking its views on certain documents before making his decision. It recalls that the Panel plays an advisory and not a decision-making role, and that the Director-General always has a duty to examine the Panel's report with care prior to taking a decision, especially in order to make sure that the recommendations put forward are not influenced by mistakes of fact. In that respect, he cannot confine himself to the material made available to him by the Panel. The Organization goes on to address the merits of the three factual considerations contained in the report, all of which it feels are open to question.

The defendant argues that the complainant has not proved her claim of harassment, although it is up to her to do so. While it acknowledges that there were tense relations, errors of judgement and management deficiencies, it submits that these do not constitute harassment. It adds that should the Tribunal consider not only that the complaint is receivable but also that the impugned decision should be quashed, then the appropriate remedy would be to return the case to the Organization for a new decision to be taken.

D. In her rejoinder the complainant points out, with regard to receivability, that the Board of Appeal in a previous case refused to consider an appeal against a decision taken upon completion of the Grievance Panel procedure on the grounds that, according to the Panel's rules of procedure, the Director-General's decisions are final. She calls on the WHO to abide by its own rules.

She accuses the Organization of attempting to "demonize" her and to create bias against her by painting her in a negative light. She does not deny that the Director-General is entitled to consider the available evidence but she contests the fact that he abandoned all procedure and failed to take account of the Grievance Panel's opinion, which in her view renders the Panel impotent. She notes that the Panel upheld its recommendations after considering the documents submitted by the Director of the Office of the Director-General. Since all five members of the Grievance Panel, whom she describes as impartial, found that there had been harassment, she submits that the fact that the Director-General could not concede one point of its findings smacks of bias. She reasserts that she suffered harassment and replies to the defendant regarding the three contested factual considerations.

In her view, it would not be appropriate to return the case to the Organization since the allegations of harassment have already been investigated by the Grievance Panel, the Director-General has already made his final decision and she feels it is unlikely that she will obtain a fair and neutral review of the decision already made.

E. In its surrejoinder the WHO maintains that the complaint is irreceivable. It points out that the opinion given by the Board of Appeal in a completely different case is binding neither for the Director-General nor for the Tribunal and that consultation of the Board is not only a statutory obligation but also an integral part of the advice needed by the Director-General to reach a decision. On the merits it reiterates its arguments subsidiarily.

CONSIDERATIONS

1. The complainant joined the WHO on 25 October 1992 as an Associate Professional Officer at grade P.2.

Her appointments have been renewed on a variety of occasions at increasingly higher grades. She currently works in the QSM Team as a technical officer responsible for the INN Programme at grade P.4, a position she assumed in April 2001. Initially, her first-level supervisor was Dr K. and her second-level supervisor was Dr R. Following a recommendation by the Ombudsman in October 2001, Dr K. ceased to have supervisory responsibilities for the complainant in January 2002.

2. Alleging harassment by these two supervisors, the complainant submitted a formal complaint against them, on 10 January 2003, to the Grievance Panel.

3. The Panel submitted its report on 18 December 2003. It concluded that Dr K.'s behaviour constituted harassment and that there was evidence of bad management (but not amounting to harassment) on the part of Dr R. While rejecting four of the complainant's nine allegations of harassment, the Panel found in particular:

- that the complainant's responsibilities were diminished, Dr K. having prevented her from having access to certain files and excluded her from official meetings, and having been unwilling to give her responsibilities;
- that there was evidence of clear reluctance by Dr R. to inform the staff of the complainant's appointment;
- that both supervisors were biased against her as they thought she lacked competence and should not have been appointed to her post;
- that there had been an unacceptable delay in implementing the recommendation by the Ombudsman.

4. All these findings necessarily related to the period prior to the implementation of the Ombudsman's recommendation of 24 October 2001 and more particularly to the periods prior to and immediately following the complainant's transition into her P.4 post in April 2001. There was no finding, and apparently no allegation, that the alleged harassment had adversely affected the complainant's career path or that it had had any professional consequences for her. Its source, the supervisory relationship between Dr K. and the complainant, had of course been removed before the Panel's inquiry had started in early 2003.

5. According to the Panel's report, the difficult situation existing between Dr K. and the complainant was systematically mismanaged by Dr R. and the Director of the Department, Dr Q. Avoidance, reluctance and delay were, it was said, the managerial instruments used to handle the case. Even the recommendation of the Ombudsman was substantially ignored and its implementation was unreasonably delayed.

6. The Director of the Office of the Director-General responded to the Panel's report on 3 May 2004, by a letter indicating that some factual considerations could be challenged, notably: (a) with regard to the Panel's finding that the complainant's transition into her post was met with reluctance by her supervisors, attached to the letter were copies of e-mails that had been sent announcing the complainant's appointment which appeared to contradict the finding; (b) regarding the decision to readvertise the post to which the complainant was ultimately appointed, even though she had ranked second in an earlier competition which had not resulted in the appointment of the successful candidate, the letter indicated that the decision to do so had been taken by the Executive Director of the Department concerned and thus could not be blamed on the latter's subordinates, Drs K. and R.; (c) the fact that it had taken less than three months to implement the Ombudsman's recommendation. The Panel was asked, before the Director-General took a final decision, to consider these points.

7. On 27 May 2004 the Grievance Panel replied to the letter from the Director-General's Office and pointed out that the additional evidence submitted had not been presented to the Panel by any of the parties and thus could not be taken into account. The Panel was surprised to receive copies of these communications at this stage. It had examined the new evidence and concluded, after a review of all documentation and testimony, that there was no reason to change the substance of its report although it accepted a change in the length of time taken to implement the Ombudsman's recommendation.

8. On 5 July 2004 a letter written to the complainant on behalf of the Director-General concluded that her grievance filed against her supervisors had not been proven and that consequently it should be dismissed. That is the impugned decision.

Receivability

9. The WHO argues that the impugned decision is not final and that the complaint is therefore irreceivable. It points to the rules set out in Cluster Note 2001/13 relating to allegations of harassment, which provide in paragraph 3.1 that Section 12 of the Staff Rules relating to appeals continues to apply to complaints of harassment. That being so, the Organization argues, the complainant should have appealed the impugned decision first to the Headquarters Board of Appeal (HBA), which would then have inquired into the matter and reported to the Director-General, who would only then have made a final decision. Such decision could be the subject of a complaint to the Tribunal.

10. The point is without merit. The same rules relied on by the WHO go on to deal in detail with the interrelationship between reports of grievance panels established to look into complaints of harassment and the HBA as follows:

“3.2 Referral of harassment cases to the Grievance Panel

(a) When the Headquarters Board of Appeal receives an appeal that includes an allegation of harassment, the Board shall refer this aspect of the appeal to the Grievance Panel. The Board shall hold the appeal in abeyance pending receipt of a report and the recommendation of the Grievance Panel. Holding such an appeal in abeyance may require an extension of the time-limit for the reporting of the Board’s findings under Staff Rule 1230.3.3.

(b) A Grievance Panel that receives such referral from the Headquarters Board of Appeal shall investigate the allegation of harassment in accordance with these procedures. The Grievance Panel shall submit a written report of its findings and recommendations in accordance with the procedure under paragraph 2 above, except that the report shall be submitted to the Board.

(c) Upon receipt of a report from the Grievance Panel, the Headquarters Board of Appeal shall recommence its proceedings in respect of the original appeal. The Board shall be guided by the report of the Grievance Panel on the aspect of the appeal that concerns harassment, and shall include the Grievance Panel’s report in its report to the Director-General under Staff Rule 1230.3.

(d) If a Grievance Panel has investigated and reported on an allegation of harassment, the investigation may not normally be reopened.”

11. Thus, where an allegation of harassment arises in the course of an appeal to the HBA, the latter is required to submit the matter to a Grievance Panel and be “guided” by the latter’s views. Clearly, the intention is that where there are allegations of harassment the Grievance Panel is the preferred vehicle for inquiring into the matter and reporting to the Director-General. Where, as happened in the present case, the allegation of harassment is free-standing and does not form part of another appeal, the Grievance Panel is the sole vehicle for inquiring and reporting and paragraph 3.2(d) prohibits the reopening of the investigation.

12. Indeed, any other conclusion would result in an extraordinarily cumbersome process. The ultimate decision-maker both for internal appeals and for allegations of harassment is the Director-General, who is assisted (but not bound) by the recommendations of the HBA in the former case and of the Grievance Panel in the latter case. To require that any decision reached after receipt and consideration of a recommendation from one such body should be followed by a duplicate inquiry and recommendation by the other would be wasteful of time and effort, and not in the interest of either the Organization or its staff members. Since the quoted text readily lends itself to a different interpretation, the Tribunal does not hesitate to adopt it and to hold that the complaint is receivable.

The merits

13. The complainant through her counsel takes four points:

(1) that the Director-General committed an error of law or an abuse of power in considering evidence which had not been submitted to the Grievance Panel;

(2) that the impugned decision was based on mistakes of fact, particularly in regard to the opposition of Drs K. and R. to the appointment of the complainant, to their delay in announcing such appointment, and to the unreasonable delay in the implementation of the Ombudsman’s recommendation;

(3) that the impugned decision was vitiated by bad faith, bias and prejudice on the part of the decision-maker; and

(4) that the complainant's dignity was not respected.

14. On the first point the complainant is clearly wrong. The role of the Grievance Panel as an inquiring and recommending body does not displace the ultimate responsibility of the Director-General to decide matters that come before him for final decision. While he owes great deference to impartial advisory bodies such as the Grievance Panel and must fully explain and justify any decision which departs from the latter's recommendations, he amply fulfilled that duty in the present case. The impugned decision is fully detailed and carefully explains every point on which it was found necessary to depart from the Panel's findings. The Director-General had the duty to consider all the available evidence and not merely that which the parties had placed before the Grievance Panel. That is particularly so where, as was the case here, proceedings before the Panel had taken the form of a purely adversarial contest between the complainant on the one hand and Drs K. and R. on the other, and seem to have been so regarded by the members of the Panel. The Director-General was not merely arbitrating a dispute between individual staff members but was called on to make a decision affecting the welfare of the Organization as a whole. There can be no doubt that the additional evidence relied on by the Director-General was relevant and admissible and his actions in calling it to the Panel's attention and inviting their comments were eminently correct. It is regrettable but perhaps understandable that the Panel's reaction was to retreat to a narrow view of the scope and nature of its inquiry and a defence of the conclusions already reached but that cannot affect the impugned decision itself.

15. The complainant's second point invites the Tribunal to find that the Panel was right and the Director-General wrong on the weight and significance of the matters which had been referred back to the Panel. The Tribunal has already indicated that the evidence was relevant. It was also contemporary and objective in nature. The evidence showed that, as found by the Panel, the complainant's appointment was publicly and correctly announced prior to the complainant's taking up the post and, on one wholly plausible view of the facts, even prior to her formal acceptance of it. The delay in the implementation of the Ombudsman's recommendation to remove Dr K. from her responsibilities as the complainant's immediate supervisor, which the Panel had originally put at four months, was in fact 86 days (less than three months) and it is impossible to find that this was unreasonable. There are a number of other respects in which the Panel's report is incoherent, notably its retaining of allegations against Dr R. while finding that he was not guilty of harassment; and, more significantly, its blaming of Dr K. for the delay in her removal from supervisory responsibility for the complainant, which, as the written record shows, she had herself actively requested, and which was manifestly not a matter for her to decide. While there were, as the impugned decision acknowledges, tensions in the department and, as the Panel found, weaknesses in administration, it was certainly not unreasonable for the Director-General to find that, in the end, the burden of proving harassment had not been discharged.

16. The complainant's third and fourth points may be summarily dealt with. The only evidence relied on to show bad faith and bias on the part of the Director-General and failure by the Organization to respect the complainant's dignity is the impugned decision itself. That is the ultimate in circularity of reasoning: the conclusions are assumed and form the basis of the argument advanced to support them. The Tribunal rejects it.

17. As he now appears to do as a matter of course, complainant's counsel makes a vast and sweeping demand for documents from the WHO. There is no showing that any of such documents exist or that there is any reason to think that any relevant material has not been produced. Counsel's assumption of bad faith on the part of the Organization is at variance with general principles of international civil service law and reflects badly on him. The request is denied as is the request for an oral hearing.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 28 October 2005, 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 1 February 2006.

Michel Gentot

James K. Hugessen

Mary G. Gaudron

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 15 February 2006.