

The Administrative Tribunal,

Considering the second complaint filed by Ms G.M.P. against the Food and Agriculture Organization of the United Nations (FAO) on 1 March 2005 and corrected on 18 March, the Organization's reply of 11 July, the complainant's rejoinder of 12 August corrected on 20 August and the FAO's surrejoinder of 30 October 2005;

Considering the third complaint filed by the complainant against the FAO on 22 March 2005, the Organization's reply of 17 June, the complainant's rejoinder of 20 July and the FAO's surrejoinder of 30 September 2005;

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 cases and the pleadings may be summed up as follows:

A. Facts relevant to these complaints are to be found in Judgment 2356, delivered on 14 July 2004, concerning the complainant's first complaint. It may be recalled that the complainant, a British national, joined the FAO in 1970. At the material time she worked as a Clerk/Stenographer, at grade G-4, in the Forest Products Division (FOP) of the Forestry Department. She took early retirement on 31 August 2003.

On 9 January 2003 the complainant sent an e-mail to the Programme Coordinator of the Forestry Programme Coordination Unit about lack of promotion prospects; she copied her e-mail to several staff members. That same day the Director of FOP sent all staff in the division a reminder concerning the proper use of the internal e-mail system. On 14 January 2003, in response to a request by the Chief of the Forest Harvesting, Trade and Marketing Branch for her suggestions about staff development, the complainant sent an e-mail indicating, inter alia, that she considered staff development to be a "joke". This message was likewise copied to several staff members.

On 22 January 2003, after having discussed with the complainant what he viewed as her misuse of the FAO e-mail system, the Director of FOP sent her a memorandum forbidding her to use that system for anything other than official use and informing her that failure to comply would result in formal disciplinary action. By a letter of 2 April 2003 the complainant lodged an appeal with the Director-General seeking the withdrawal of the memorandum of 22 January 2003, its removal from her personnel file, a written apology and compensation for "ongoing harassment". She explained that the Director had not sent such instructions to other staff members who were likely to use the e-mail system for personal and informal communications, and that she had been denied the right to express her opinion. The Assistant Director-General in charge of the Administration and Finance Department dismissed the appeal as unfounded on 19 May 2003. On 18 June 2003 the complainant filed an appeal with the Appeals Committee.

In the meantime, on 28 April 2003 the Director of FOP had requested that the complainant and four other FOP staff members move to different offices with effect from 5 May 2003. The complainant perceived this relocation as an act of harassment, particularly because she would no longer be situated close to her supervisors. She sought the assistance of a staff representative, who informed the administration on 7 May 2003 that she had advised the complainant not to move until she had been given reasons for the Director's decision to relocate her. A meeting was held on 26 May 2003, at the request of the staff representative, with the Director of FOP and the Senior Staff Relations Officer from the Administration and Finance Department, to discuss the reasons warranting the complainant's relocation. She finally agreed to move on 27 May 2003. Nevertheless, on 19 June she appealed to the Director-General against the decision to relocate her, asking him to bring an end to "this continuing harassment". The Assistant Director-General in charge of the Administration and Finance Department dismissed her appeal as unfounded so the complainant lodged another appeal with the Appeals Committee on 29 August 2003.

On 27 July 2004 the Appeals Committee issued its reports on her two appeals. Regarding the complainant's allegation of harassment by the Director of her division in connection with his decision to relocate her, the

Committee expressed “serious doubts” as to “whether sufficient efforts had been made by the [complainant’s] Division Director to take into account the concerns of all his staff when reorganising the Division’s office space”. However, it stated that the appropriate remedy for the complainant would have been to invoke Administrative Circular 2003/17 of 26 June 2003, which sets out the “Policy on Prevention of Harassment”. Given that the applicable procedures had not been implemented, and in the absence of conclusive evidence, it held that compensation for harassment was not warranted and recommended that the appeal be rejected. The Director-General endorsed that recommendation by a decision of 22 December 2004, which the complainant impugns in her second complaint.

With regard to the complainant’s appeal against the memorandum of 22 January 2003 forbidding her to use the FAO e-mail system for anything other than official use, the Appeals Committee recommended that the memorandum be removed from her personnel file on the grounds that the Director’s response “tended in a direction of being excessive”. It nevertheless recommended rejecting the complainant’s claim for compensation for ongoing harassment that had caused damage to her health. By a letter of 20 January 2005, the Director-General informed her that he accepted the Committee’s recommendation to reject her claim for compensation, but not its recommendation concerning the removal of the memorandum from her personnel file. That is the decision impugned by the complainant in her third complaint.

B. The complainant alleges that the decisions to move her to an office away from her supervisors and colleagues (second complaint) and to restrict her use of the e-mail system (third complaint) demonstrate ongoing harassment by the Director of her division. She submits that the harassment she had experienced since June 2001 had a detrimental effect on her health and was an affront to her dignity. She provides medical certificates showing that she suffered depression in late 2001 and that her state of health had deteriorated in May/June 2003 after she had been relocated to an office in another building.

In her second complaint, she draws attention to the fact that putting an anxious, depressed person to work “in solitary confinement in a lonely dark room” away from her supervisors and colleagues made her believe that she was an “undesirable person”, which caused her even more feelings of anxiety. She submits that, in obliging her to move, the Organization discriminated against her. Much of her work was transferred to other secretaries located in the vicinity of the persons she was working for. In addition she states that her decision to resign and to take early retirement was not made freely but under “great stress”.

In her third complaint she argues that the fact that she was the only staff member forbidden to use the e-mail system except for official communications shows that the Director of her division was prejudiced against her. She submits that such discrimination, “which is a form of harassment”, was an affront to her dignity and damaged her health. She also points out that the Division Director threatened her with formal disciplinary action in the memorandum of 22 January 2003; in her view such behaviour amounted to “bullying”.

She asserts that her right to “freedom of speech and opinion” was denied. In support of that contention she points out that, according to the “Standards of Conduct in the International Civil Service”, supervisors shall allow the views of their junior officers to be heard, particularly when those views are opposed to their own. Referring to Administrative Circular No. 94/34 entitled “Electronic Mail – Policy and Practice”, she asserts that the e-mails she sent on 9 and 14 January 2003 constituted “informal communications, which may convey information of a general interest or individual comment nature”. She submits that, contrary to the stance adopted in the impugned decision, the nature and content of those e-mails were unlikely to harm the Organization’s reputation.

In her second complaint she claims material damages “for early retirement due to stress” as well as moral damages for “loss of dignity and harassment”. In her third complaint she requests the Tribunal to overrule the Organization’s decision not to remove the memorandum of 22 January 2003 from her personnel file and she seeks the quashing of the impugned decision, and damages for harassment, discrimination, “loss of dignity, moral injury and prejudice”. She claims costs in both complaints.

C. In its reply to the complainant’s second complaint, the FAO submits regarding the claim of harassment that the complainant did not initiate the appropriate procedures as set out in Administrative Circular No. 2003/17. Her failure to do so “represents a fatal flaw to her case” as her allegations have not been the subject of a careful procedure of verification by the Investigation Panel. Moreover, she has produced no evidence of harassment.

The Organization denies that the Director of FOP harassed the complainant. It submits that he decided to relocate

five staff members in his division owing to well-documented office space constraints. As part of his “discretionary responsibilities”, the Director decided to position staff members in light of the division’s priorities and workload so as to ensure the most efficient use of available resources. It asserts that the Director made a necessary and bona fide administrative decision, which was in line with his mandate as Division Director. It adds that the Director’s decision was all the more justified in view of the fact that the complainant used to smoke in her office, thus contravening the FAO’s non-smoking policy. Although this issue was not a “deciding factor” in her relocation, it was taken into account, particularly because many of her colleagues had complained about her smoking habit.

The Organization further points out that the complainant has failed to provide evidence of the injury (i.e. anxiety and depression) she allegedly suffered. Nor has she established any causal link between the alleged unlawful acts and that injury. Moreover, the complainant’s decision to retire was her own, and the Organization cannot be held responsible for her own deliberate act.

In its reply to the complainant’s third complaint, the FAO asserts that she was in breach of her duty, as a staff member, to “display loyalty” to the Organization and failed to adhere to standing policies regarding the use of the e-mail system. She also ignored her duty to exercise judgement and restraint in expressing her views, as laid down in the “Standards of Conduct for the International Civil Service”. It also points out that, according to Staff Regulation 301.1.4, “[s]taff members shall conduct themselves at all times in a manner befitting their status as international servants”. It asserts that by embroiling other staff members in her personal grievances, she had a “negative effect on the harmony of the working environment and on staff morale”. Her behaviour was incompatible with “the legitimate expectation that the Organization [...] had in respect of her conduct”, and the Director of FOP “had no choice but to act” against the “abusive and indiscrete [sic]” messages she sent.

The FAO denies that the complainant was discriminated against. It points out that she acted in breach of the applicable rules and was “confronted” accordingly. It also rejects the complainant’s allegation of harassment and notes that she has produced no evidence of harassment, bullying or discrimination. As in its reply to the complainant’s second complaint, it submits that she has failed to establish any link between any alleged wrongdoing on the part of the Organization and her alleged injury. In this regard it refers to Judgment 1534 according to which, for a claim to damages to succeed, “the claimant must provide evidence of (i) an unlawful act, (ii) actual injury and (iii) a causal link between act and injury”.

D. In the rejoinder relating to her second complaint, the complainant draws attention to the fact that the policy on harassment mentioned by the FAO is “still being amended” and that at the time she lodged her appeal there were no “fact-finding” procedures for the Investigation Panel. She also submits that the policy on harassment does not compel a staff member to go to the Investigation Panel prior to lodging an appeal. She was therefore “within [her] rights” to lodge the appeal. She denies having smoked in her office and indicates that had she done so she would have breached the Organization’s non-smoking policy and disciplinary measures would have been taken against her.

Regarding the injury suffered, she submits that she has already produced medical certificates stating that her health “deteriorated after” she had been relocated to another building. In support of her allegation of harassment she supplies a statement from an independent expert.

In the rejoinder relating to her third complaint the complainant presses her pleas. She argues that the Organization has misinterpreted her e-mails of 9 and 14 January 2003, which contained “helpful suggestions to encourage staff motivation and productivity”. In her opinion, she has proved that there is a “causal link between act and injury”. Referring to the subject matter of her first complaint to the Tribunal, she says it is clear that harassment over a long period of time led to the deterioration in her health.

E. In its surrejoinders relating to both complaints the Organization maintains its position.

CONSIDERATIONS

1. The second and third complaints filed by the complainant against the FAO are closely related in time and substance, and the Tribunal considers that the issues at hand will be better clarified if it deals with the two cases together. For those reasons, and in the light of Judgment 2356 on her first complaint, the Tribunal joins the complainant’s second and third complaints to form the subject of a single ruling. The case ruled on in Judgment

2356 arose from negative comments contained in a memorandum and she claimed damages for injury to her dignity and reputation, health and career prospects. The second complaint arose essentially because she was asked to change offices. The complainant sees that as proof of ongoing harassment that led soon afterwards to her early retirement for reasons of health. The third complaint arose from another negative comment in the form of a warning and decision that was subsequently placed on her personnel file, and the complainant alleges again that she suffered injury to her health as a result of that decision.

2. By Judgment 2356, the Tribunal awarded the complainant moral damages in the amount of 500 euros, arising from the fact that a negative memorandum had been wrongly included in her personnel file, costs in the amount of 100 euros, and dismissed all other claims.

Thus, her previous contentions that her health problems, which started in 2001, arose from humiliating treatment were not adequately backed up by evidence at the time the above-mentioned judgment was rendered, and consequently the Tribunal rejected her claim in that aspect.

3. In the second complaint the complainant puts forward claims relating to a change of offices, ongoing harassment, and her early retirement, on 31 August 2003, for reasons of health. On 29 August 2003 she had lodged an appeal with the Appeals Committee, contending that she had been moved to an office in a different building, far away from her supervisors, making it impossible for her to work efficiently as a secretary at a distance. She stated that the move had caused her depression and she believed the true reason for relocating her was to “harass” her out of the Organization. She asserts that such ongoing harassment had forced her to resign from the Organization and take early retirement on a reduced pension. The amount of her pension was thus less than she would have received if she had remained in employment until the age of 60. In other words, her formal complaint for ongoing harassment leading to her alleged involuntary early retirement for health reasons was made only two days before her retirement took effect. She nonetheless admits that the Organization “kindly arranged for a waiver of the three months notice period so that [she] could leave almost immediately”.

The Appeals Committee, although expressing “serious doubts” about the reorganisation of office space, nevertheless recommended rejecting her appeal. The Organization forcefully explains the objective situation of real lack of office space, pointing out that several people were affected by the move. It further gives a reasonable explanation as to why and how the move was necessary in the case of the complainant. The Tribunal cannot find fault with this reasoning and further, does not find that the move can be construed, in the present case, as part of ongoing harassment.

4. In the third complaint the complainant focuses on a memorandum, dated 22 January 2003, from the Director of FOP which contained a warning and also forbade her to use the Organization’s internal e-mail system for personal matters. It was couched in the following terms:

“As I explained to you today, staff [have] the right to express their opinion to fellow staff members in their own time, and by their own means, but not during staff time using the FAO email system.

I hereby forbid you to further use the FAO email system for other than official use. I also warn you against ridiculing and insulting FAO management.

Failure to comply will lead to formal disciplinary action.”

The e-mail from the complainant that provoked this warning and decision had stated:

“Staff Development is a joke! I did all the computer courses for secretaries [...], studying for and passing Level C French, but all this training got me nowhere. It might mean that the Department benefits from our learning new skills but the staff member sees no personal benefit with regard to career prospects whatsoever. Therefore I see no point in doing any more training as it would be a waste of time.”

She addressed her e-mail to two supervisors and copied it to four other staff members.

The Appeals Committee recommended removing the memorandum from the complainant’s personnel file; it also recommended dismissing her claim for compensation. The Director-General decided to reject her claim for compensation but did not agree to the removal of the memorandum from her personnel file. He explained that her disrespectful and unsubstantiated accusations against the Organization were made in connection with her personal

situation and that the e-mail system should not be used to involve other staff members in a personal attempt to denigrate the Organization.

While the comments made by the complainant were not at all acceptable and were copied to four other staff members, they did constitute a response to the work-related question put to her. Her answer was improper and ill-conceived to say the least; however, either it provided sufficient ground for starting disciplinary action against her, or it did not. The middle ground of warning the complainant would have been fully adequate; the warning needed to be firm but reasonable and commensurate. However, it was not.

The Appeals Committee opined that “though the [complainant] should have been more prudent in the choice of [...] language, the Director’s response [...] definitely tended in a direction of being excessive and could have been more graduated and flexible”.

The Tribunal shares that view and finds that if a staff member’s comments on work matters are not deemed sufficient cause to initiate disciplinary action, then no strong and explicit warning can be admitted onto that staff member’s personnel file without respecting the requirements of due process of law. The same applies to an individual directive – such as the one of 22 January 2003 sent to the complainant – specifying how the right to express an opinion may or may not be exercised: it would go frontally against the grain of free speech, no matter how unacceptable the views expressed by the staff member were, as they indeed were in the present case. Therefore, the impugned decision should be quashed and the memorandum of 22 January 2003 withdrawn from the complainant’s personnel file, not just for her sake, but rather because it went too far and thus may have a chilling effect on the freedom of speech of other staff members on work-related matters; or worse, it may be construed as a precedent as to how far free speech is admissible in international organisations, something which the Tribunal finds to be indeed beyond the Organization’s original intent at the time, but which requires clarification in that sense.

Besides which, e-mail communication, while it could potentially have the effect of generating excess publicity on any given matter, was not in fact used to such an extent by the complainant. Therefore, the comments made in the file about the limits of free speech in official e-mail communications simply do not apply here and need not be addressed, either, by the Tribunal.

Removal of the memorandum, for the reasons given above, is objectively justified. This entitles the complainant to a nominal award of moral damages, which the Tribunal evaluates at 500 euros. As she partially succeeds, she is also entitled to an amount of 100 euros in costs.

DECISION

For the above reasons,

1. The second complaint is dismissed.
2. The decision impugned in the third complaint is quashed and the Organization will expunge the memorandum of 22 January 2003 from the complainant’s personnel file.
3. The Organization shall pay the complainant 500 euros in moral damages and 100 euros in costs.
4. All other claims are dismissed.

In witness of this judgment, adopted on 11 May 2006, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Vice-President, and Mr Agustín Gordillo, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 12 July 2006.

Michel Gentot

James K. Hugessen

Agustín Gordillo

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 21 July 2006.