The Administrative Tribunal,

Considering the complaint filed by Mrs N. O. against the International Federation of Red Cross and Red Crescent Societies (hereinafter "the Federation") on 3 October 2005 and corrected on 14 November 2005, the Federation's reply of 20 February 2006, the complainant's rejoinder of 5 April and the Federation's surrejoinder of 10 May 2006;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and disallowed the complainant's application for hearings;

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

A. The complainant, who holds both Swiss and Syrian nationalities, was born in 1942. She joined the Federation's Secretariat on 1 December 1993 as a Typist in the Document Production Department under a one-year contract. At the material time she held the post of "Assistant to Arabic Translator" in the Language Unit. She was separated from service on 31 July 2004.

In a meeting that took place on 5 November 2002 the Head of the Administration Department informed the complainant that there was to be a change in the way that performance evaluations would be carried out in the Language Unit, adding that in the future hers would be done by her direct supervisor, the Arabic Translator. On 28 November 2002 the complainant sent an e-mail to the Head of Administration expressing "deep concern" about the new procedure because of problems that existed between herself and the Arabic Translator. The Head of Administration replied the same day that he was confident that the process would be fair. The process of evaluating the complainant's performance for 2002 began in March 2003 with a first draft of her performance evaluation report. The complainant objected to certain comments and ratings contained in the report; one of the comments she challenged was that she had lost a document that had been given directly to her by the Arabic Translator. Even though her evaluation report was revised twice the complainant was still in disagreement with certain aspects of it. On 2 December 2003 she informed the Head of the Human Resources Department of her intention to appeal against her performance evaluation report for 2002.

On 19 January 2004 the complainant received a letter signed by both the Head of Administration and the Head of Human Resources informing her that due to a mandatory reduction in the Federation's budget her post was to be reduced to 50 per cent. It was explained that the rationale for the decision was "linked to an evolution in the work of translator's assistant" and that it was "not in any way a reflection on [her] skills or value to the Federation". She was offered the "reduced" post and was told that if she accepted it she would continue to work on a 100 per cent basis until 31 July 2004 and thereafter would be working at 50 per cent. In the event that she declined the offer, her contract would be terminated for redundancy and their letter was to be considered as the required six months' notice. In a letter to the complainant, dated 30 January 2004, the Head of Human Resources took note that the complainant had advised the Federation that she was not willing to fill the reduced post and that she had accepted the offer of total redundancy and also wished to take early retirement. She added that the letter was official confirmation of the agreement to terminate the complainant's contract for redundancy. The complainant confirmed receipt of that letter the same day.

On 30 April a vacancy notice was issued for the reduced post. On 17 May the complainant wrote to the Head of Human Resources pursuant to Annex 2 to the Staff Regulations, concerning the Grievance Procedure, expressing her surprise that the job description attached to the vacancy notice for the reduced post included tasks that had been removed from her because they were considered as "non-essential" owing to the "evolution of the work". She concluded that the reduction was "illusory" and that her post had been reduced to 50 per cent with the intention of taking her job away from her. She wanted a meeting to be convened as soon as possible with herself, Human Resources and her supervisors. She added that she wished to lodge a grievance against the moral harassment she had suffered over the last four years and against the lack of action by the head of her department to address the

situation. The Head of Human Resources replied on 6 July, taking note of the complainant's "grievance regarding […] a 50 % cut to [her] post" and asking her if her grievance in any way changed her decision not to accept the 50 per cent post. In the same letter the complainant was informed that a conciliatory meeting had been scheduled for 12 July. The complainant replied on 7 July that she was unable to accept the post at 50 per cent. The meeting of 12 July was unsuccessful.

On 18 September 2004 the complainant sent an e-mail to a Staff Association representative who had been assisting her, asking for an update on her "case"; she mentioned that it had not yet been decided whether she would get Swiss unemployment benefit. Replying on 20 September, the Staff Association representative told the complainant that according to another official she would "obtain what she was entitled to through the Swiss unemployment benefit scheme and she had no ground to worry". On 8 November 2004 the complainant received a decision from the competent Swiss unemployment insurance section stating that she was not eligible to receive unemployment benefit because she had taken early retirement.

On 29 April 2005 the Joint Appeals Commission reported on an internal appeal filed by the complainant. The Commission found that there was no evidence of psychological harassment or mobbing, nor was there any evidence that the complainant had been given incorrect information or had been wrongly advised about her entitlement to social security benefits. It expressed its "unease" as to why an "uninvestigated accusation of losing or misplacing a document" remained in her performance evaluation report and recommended to the Secretary General that her evaluation be revised in light of those findings. It also recommended that she be sent a letter of apology for any distress caused due to the weaknesses in the performance evaluation system.

In a letter of 5 July 2005 the Secretary General informed the complainant that he had reviewed the Commission's findings and recommendations carefully and that in the absence of any evidence of psychological harassment or mobbing, as well as the fact that there was no evidence that she was given any incorrect information about her benefits, the Federation would be unable to provide her with the compensation and damages she had sought in her appeal. However, he agreed that the accusation that she had lost a document should be removed from her performance evaluation report since there was no evidence to substantiate it. He also expressed his regret that the situation could not be "resolved more satisfactorily". That is the impugned decision.

B. The complainant puts forward four legal arguments. Firstly, she argues that she was "constructively dismissed" as a consequence of the mobbing she was subjected to and the Administration's failure to remedy it. She contends that she relied on – to her detriment – misrepresentations made by the Federation regarding her entitlement to Swiss social security benefits and that she accepted a redundancy package when she was not in a strong enough psychological state to evaluate sensibly the advice she was given. She considers the reduction of her post to 50 per cent to be "a classic sign" of constructive dismissal. The Federation failed to offer her an alternative post away from her "harassing supervisor" or to offer her an additional post at 50 per cent to complement the first. The offer of the half-time post was a violation of her fundamental right to be treated with dignity.

Secondly, she contends that the Federation breached its duty of care towards her. She submits that Staff Rule 6.1 requires the Federation to establish a social security system for staff members in conformity with the standards of the social security system in force in Switzerland. The Federation thus has an obligation to ensure its staff "receive their entitlements to social security". The complainant argues that the Federation gave her wrongful advice regarding the benefits she would receive. She understood that she would enjoy full entitlement to Swiss social security benefits if she accepted redundancy and she provides an exchange of e-mails with a Staff Association representative as proof of what she had been told. She alleges that the real reason for her dismissal was "the organisation's decision to rid itself of a good employee, rather than fulfilling its duty to respect its rules and the rights of its staff", and considers that the impugned decision is consequently tainted with procedural irregularities.

Thirdly, the complainant submits that it was not appropriate to have the Joint Appeals Commission decide whether mobbing had occurred because that body is made up of "respondent employees" without expert advice. Such a commission, she says, "does not satisfy legal requirements as an impartial, independent fact-finding quasi-judicial body". She believes that following an examination of the facts the Tribunal will conclude that mobbing did occur.

Lastly, the complainant argues that the Joint Appeals Commission's review of her case was procedurally flawed. She argues, inter alia, that the Commission failed to produce "a reasoned judgment" and it failed to demonstrate a clear understanding of the concept of harassment. The Commission was of the view that an "intent" to harass must be shown but she cites the Tribunal's case law which says intent is not needed to prove harassment. Furthermore,

there was no “equality of arms” during the proceedings. She points out that neither she nor her legal counsel were given the opportunity to hear or contest the evidence considered during the Commission’s investigation and that the Commission failed to take into account written statements provided by third parties in support of her allegations of harassment.

The complainant seeks the following relief. (1) Compensation in redress for psychological harassment. Under this head she claims moral damages in an amount of 50,000 Swiss francs due to the “degrading and insulting treatment suffered”, as well as compensation for all related medical expenses incurred while she was employed by the Federation. (2) Compensation for actions on the part of the Federation that amounted to dismissal and resulted in lost earnings. In this connection she claims damages as compensation for the “severe financial hardship sustained due to the decision to dismiss her without recognising harassment, rather than correcting the problem of harassment when it began”. She seeks further compensation as she was given careless advice causing her to lose out in social security entitlements. (3) “Any other relief the Tribunal deems appropriate”. (4) Costs.

C. In its reply the Federation objects to some of the complainant’s claims because it considers them to be vague.

It denies that the complainant was constructively dismissed. She was offered a half-time post in the Arabic Translation Unit on two different occasions but she refused that solution. The Federation finds it difficult to believe that on both occasions she was unable to evaluate the situation sensibly and “make a considered decision”. In addition, she was encouraged to apply for any post she felt matched her qualifications, but she did not want to change unit. It stresses that in cases of redundancy the organisation is “only under a duty to look for and offer a post suitable to the capabilities of the person whose post is to be suppressed” and only insofar as the person does not prefer termination of employment.

Regarding the complainant’s allegations of harassment, the Federation points out that it has not falsely or abusively used the procedure of reduction through redundancy to get rid of the complainant and reiterates that it tried twice to keep her on the staff by offering her the half-time post. It considers that the case law cited by the complainant does not support her case.

It submits that the complainant had difficulties accepting that the evolution of technology had led to changed working methods in her unit. When she was first appointed, the work of translation and the editing of documents was done on paper and the job of the typist was to type the corrected and revised documents and “to shape their final version”. Over the years, the job of the typist had essentially become one of managing electronic documents and concentrating on document layout. The fact that her job changed along with changing technologies cannot be considered as harassment or mobbing.

The Federation questions whether, even in the absence of any harassment or mobbing, it should have “intervened more actively” to resolve the working-relation difficulties in the Arabic Translation Unit. It recalls that there was no specific procedure in the Staff Regulations and Rules to deal with cases of alleged harassment and that after a formal complaint was made by the complainant in July 2001, meetings were held with the relevant supervisors. As the complainant raised no issue in her performance evaluation of 2002 the Federation considered that it had no reason to take any further steps regarding the complainant’s relationship with her supervisor. It states that the Administration has done “whatever it could to help the situation and still does not see what else could have been done”.

The defendant denies that the Joint Appeals Commission falls short of being an impartial and independent body. The Commission is made up of two management representatives and two Staff Association representatives and the appealing staff member has the right to object to up to two of its members. It notes that the complainant did not make use of that right, adding that she cannot now object to the members of the Commission. It submits that she has supplied no evidence to support any “alleged absence of ‘equality of arms’” and points out that her legal counsel praised the Commission’s work in two different pleadings. It notes that the Commission was provided with copies of the statements made by third parties. It adds that the complainant was also given the opportunity to make her views known in writing.

The Federation concludes by noting that the complainant felt that she was not being given sufficient work, that she was dissatisfied with some of the remarks made in her performance evaluation report and that she thinks that she made a wrong choice when she accepted that her appointment be terminated for redundancy. However, she was not misled regarding her entitlement to Swiss unemployment benefit and she has not demonstrated that she was subject

to harassment or mobbing. It attaches a statement by a Pension Fund Officer attesting to the fact that he did not ever tell the complainant that she could receive Swiss unemployment benefit as he did not know what criteria or conditions applied. It sees no reason for granting her compensation.

D. In her rejoinder the complainant maintains that the Joint Appeals Commission erred by finding that in order to prove harassment, it has to be shown that there was an intent to harass. Furthermore, although the Commission indicated that it conducted wide-ranging interviews with witnesses, she submits that she was never given a chance to comment on them. Moreover, the Commission only provided conclusions without providing a summary of its fact-finding; nor did it give any supporting evidence. The complainant alleges that the witnesses that were called by the Commission were staff having an "interest" in appearing administration-friendly and that the Commission did not take into account all relevant facts. She maintains that she suffered moral injury due to the Federation's treatment of her, its negligence and its breach of its duty of care towards her.

E. In its surrejoinder the Federation asserts that the complainant has not added any new material to support her allegations of harassment and it maintains its position. It contends that it has never argued that an "intent to harass" is a mandatory element of harassment. The Joint Appeals Commission had concluded that "there was no evidence of psychological harassment or mobbing"; it did not seek to determine what her supervisor's intentions were.

CONSIDERATIONS

1. The complainant was appointed by the Federation on 1 December 1993 as an Arabic Typist in the Document Production Department. After an extension to 30 November 1995, her fixed-term contract was converted into an open-ended contract, with effect from 1 December 1995. From the time the complainant was first appointed she worked closely with the Arabic translator, her direct supervisor andonly co-worker in the Arabic Translation Unit. The title of the complainant's post was changed to Word Processing Operator, Translation Service, in June 1997.

2. The complainant states that some of the tasks she had been performing went beyond those defined in her job description, and that from October 2000, when she raised the issue of the quality of her work with her direct supervisor, she experienced a series of workplace incidents. Those incidents, according to her, constituted psychological harassment, culminating in a psychological breakdown. She adds that she was compelled to retire (constructive dismissal) because her post was to be reduced to 50 per cent, and she would have had the same supervisor which constituted a difficult workplace situation. She was also falsely told by the Pension Fund Officer that, if she accepted redundancy, she would receive unemployment benefit, which she needed in order to support her family.

3. The complainant underlines that from October 2000, she began requesting the intervention of her superiors to help her to improve her working relationship with her direct supervisor. In 2001 she continued to ask for help, and finally, on 15 July 2001, lodged a formal complaint with the Head of Administration. The complainant remained unsatisfied with the outcome. In November 2002 it was announced that the performance evaluations for 2002 would be done by the Translators and the complainant voiced her dismay. After receiving what she considered to be a negative evaluation report for the year 2002 she requested a meeting to contest it. The report was revised twice – in July and November 2003. Not having reached an acceptable compromise during the meetings that took place with various administrators and Human Resources officials, in December 2003 she indicated that she intended to appeal against the report. A panel of the Joint Appeals Commission was convened in 2005 to consider an appeal that the complainant had submitted to the Secretary General of the Federation. The Commission communicated its findings to the Secretary General in a report of 29 April 2005.

4. The Secretary General's decision on the complainant's appeal was notified to her by letter of 5 July 2005. In accordance with the final report of the Commission, the Secretary General found that the incidents set out in the complainant's appeal did not constitute psychological harassment, and that there was no evidence that the complainant was given incorrect information regarding her entitlement to social security benefits. He added that the Federation was unable to provide the compensation and damages sought by the complainant. He agreed that the accusation that the complainant had lost or misplaced a document should be excluded from her performance evaluation report. He expressed, on behalf of the Secretariat, his regret that the situation "could not be resolved more satisfactorily", adding that it was "especially unfortunate that matters could not be resolved despite the months of genuine and well-intentioned efforts of many people".

5. The complainant challenges the decision of 5 July 2005. Her claims to the Tribunal are set out under B, above.

6. The Federation objects to the receivability of the complainant's claims insofar as they concern: (i) her reduced employment conditions, because this matter had never been part of her internal appeal; and (ii) her claim, set out under B above, for "[a]ny other relief the Tribunal deems appropriate", because it is too vaguely formulated. The Federation concludes that there are no grounds for granting the complainant's requests of: compensation for psychological harassment, other than the accusation that has already been corrected; compensation for false information supplied to the complainant regarding her entitlement to Swiss social security benefits; and legal fees.

7. The Tribunal states that the complaint has to be dismissed on the substance and therefore the questions raised on receivability can be disregarded.

8. The first question to be examined concerns the complainant's criticism of the composition of the Joint Appeals Commission, the procedure followed by the Commission, and its report. The complainant asked that the harassment be acknowledged and consequent damages be paid for that, and for the constructive dismissal. The Commission's report is formally and substantially contested to obtain a different assessment by the Tribunal of the facts and their legal value (whereas if the Tribunal had decided to consider the Commission's report the matter would have been referred back to the Commission, without implying that the complainant's internal appeal was founded (see Judgment 1892, under 4)). The Tribunal considers the report's conclusions correct, while also agreeing with the complainant in not considering that intent, or malice, is a requisite element of harassment. The Tribunal is of the opinion that harassment and mobbing do not require malice or intent, but that behaviour cannot be considered as harassment or mobbing if there is a reasonable explanation for it (see Judgment 2524, under 25) and that in the case at bar there is no evidence of harassment or mobbing.

Regarding the complainant's other allegations it can be observed, firstly, that the belief that the panel of the Joint Appeals Commission was improperly constituted because it was composed of staff members working for the defendant organisation, who had no expertise in law or in harassment cases, is an unacceptable proposal because it is too all-encompassing. According to that proposal no internal panels or juries would be considered as satisfying legal standards. This proposal is also not persuasive in principle. Harassment is a legal concept which takes its meaning from the current social norms, and therefore it can be said that people who work in bureaucracy have a working knowledge of the concept of harassment based on their daily involvement in social situations at work. It can be added that the panel of the Joint Appeals Commission was, according to the internal rules, composed of two members from management and two from the Staff Association and that the complainant did not avail herself of the right to object to some members (she could object to no more than two members). Secondly, regarding the allegation of lack of equality of arms in the judicial procedure, the Tribunal states that there was no breach of the principle of equality of arms, considering the nature of the administrative procedure and the fact that the complainant was represented by her counsel who was present during her interview and who was given the opportunity to submit pleas and documents to the panel. Thirdly, the belief concerning the absence of legal reasoning cannot be agreed with, in regard to the body's nature and to the fact that the panel clearly listed the facts and the questions to be investigated, and that after the "intensive interviews" and the inspection of documents (some of them evidently judged irrelevant) it clearly indicated its findings and conclusions.

9. The complainant puts forward a general allegation that her relations with her direct supervisor were bad due to the latter's actions and refers to three specific incidents to prove she had been harassed. The first incident regards the "false accusation" of losing a document in May 2001. In the Joint Appeals Commission's report it is written: "There is serious unease among panel members as to why an uninvestigated accusation of losing or misplacing a document should have been included in the appellant's [performance evaluation]." The Secretary General excluded this accusation from the complainant's 2002 evaluation. Since this accusation of losing a document was not investigated and the complainant did not give evidence of the falsity of it, it cannot be proven to be false (nor can the accusation be considered true) and therefore it is considered irrelevant to the issue of harassment. Regarding the second alleged incident, which occurred in November 2001, it can be considered that the delay in the passing over of a long document was due to poor time management, and it can be added, as the defendant organisation notes, that the complainant's claim of having stayed all night without going home is not reflected in the overtime hours. As regards incident three (the complainant was rudely chased out of the monthly meeting by the Head of Administration), which occurred in October 2002, it has to be noticed that Assistants were not invited to that meeting and that the remark "not you, not you, you're not needed" appears neutral without evidence that proves it was said in an aggressive or harassing tone.

10. The complainant considered her work situation untenable based on the occurrence of the three incidents, combined with the stress suffered due to her supervisor's refusal to give her more formal responsibilities regarding translation work (and that changing technology had further reduced her involvement) and the fact that she and her supervisors were unable to arrive at an acceptable compromise in regard to the workplace conflicts.

The Tribunal, having examined all the facts together, concludes that the complainant has failed to establish that harassment has occurred. The working relations were tense but not due to misconduct or abnormal behaviour by the complainant's superiors. It should be noted that the situation could have been avoided if management had been more sensitive to the complainant's personal needs and history when dealing with her requests and formulating their replies. However, the Tribunal recognises that it is not always possible to cater to the needs of each individual employee, as the product or result of the work being done is often justifiably considered a higher priority over the individual's personal interests, and therefore it cannot declare that any breach of care has occurred. Regarding the appraisal of facts, the Tribunal considers the testimonies of Mr A. and Ms J. to be irrelevant as they are based on opinions and not on actual facts or specific events. Additionally, Mr A. attests that he was aware of the harassment that the complainant had been the victim of from the end of 2000, adding that he underwent the same treatment in 1998 and 1999. Ms J.'s testimony attests that the supervisor showed little consideration for and did not cooperate well with the complainant, and treated her "very badly". It can also be noted that Mr A. stopped working for the Federation in 1999 and his testimony is for a period of "harassment" that dates from the end of 2000, which implies that his testimony is not based on what he had personally witnessed of the situation. As regards his statement that he underwent the same treatment while working for the Federation, the latter undisputedly reports that it had not received any complaint from him about such treatment.

11. Regarding the argument of "constructive dismissal", the complainant bases her reasoning on harassment suffered and the reduction of her post without any other compensatory offering (for example, she considers that she could have been offered another post at 50 per cent to arrive at full-time employment). Since the Tribunal has already declared above that no harassment has occurred, this aspect of her complaint must be dismissed. The complainant's job was reduced during an organisation-wide reduction of appointments and the statement by the defendant that "39 out of approximately 250 persons were terminated for redundancy during this period" is uncontested by the complainant. The Tribunal considers unsound the complainant's assertion that she chose redundancy because she was wrongly advised (by the Pension Fund Officer) that she would be eligible for full unemployment benefits through the Swiss social security system. The complainant does not show any proof that she was officially advised on all the particulars of her unemployment benefits, she only states that she was "reassured" that she would be eligible. It is unreasonable to accept such important information without checking with an official capable of detailing the particulars of her unemployment benefit eligibility. In addition, the person supposed to have wrongly advised the complainant, denies having so advised her stating that it was neither his area nor his responsibility.

12. All other particulars not specifically mentioned in the above considerations were either irrelevant or absorbed under a larger topic.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 3 November 2006, Mr Michel Gentot, President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Ms Dolores M. Hansen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 7 February 2007.

Michel Gentot

Giuseppe Barbagallo

Dolores M. Hansen

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 15 February 2007.