

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

S. R.

v.

**International Federation of Red Cross
and Red Crescent Societies**

133rd Session

Judgment No. 4446

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs J. S. S. R. against the International Federation of Red Cross and Red Crescent Societies (hereinafter “the Federation”) on 18 June 2019 and corrected on 17 August, the Federation’s reply of 30 December 2019, corrected on 9 January 2020, the complainant’s rejoinder of 25 February and the Federation’s surrejoinder of 25 June 2020;

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 may be summed up as follows:

The complainant impugns the Human Resources (HR) Department’s decision to close her complaint reporting “[c]oncerns leading to [her] decision to not renew [her] contract” and bullying.

The complainant joined the Federation in 2000 as Staff-on-Loan from the Jamaican Red Cross Society. In 2002 she became a staff member of the Federation and from that moment onward she served intermittently in various positions. Effective 19 October 2016 she was appointed Head of Country Cluster Support Team, Trinidad and Tobago (Caribbean CCST), in Port of Spain, Trinidad and Tobago, under a two-year contract.

On 30 July 2018 she was offered a one-year extension of her contract, i.e. until 19 October 2019. On 11 August 2018 she wrote to the Americas HR Manager to protest against the decision not to offer her a two-year contract extension and to inform him of her decision not to accept the one-year offer of extension, and to separate from the Federation upon the expiry of her contract. By a letter of 31 August 2018, the Director, Human Resources Department, confirmed that the complainant's contract would not be extended beyond 18 October 2018.

On 6 September 2018 the Americas Regional Director wrote to the complainant to express his discontent that she had unilaterally informed the Presidents of the National Red Cross Societies of the English-Speaking Caribbean Country Cluster of her decision to separate from the Federation upon the expiry of her contract and informed her that he had decided to appoint the Americas HR Manager as Officer in Charge to ensure a smooth transition for her position until it was filled.

On 13 September 2018 the complainant wrote an email to the Senior Health Officer. In this email, which was entitled "Concerns leading to my decision to not renew my contract", the complainant stated that she was experiencing health problems which, in her view, were due to the lack of leadership and support by the Americas Regional Director, and the bullying she had suffered by team members. On 17 September 2018 the complainant forwarded a copy of this email to the Office of Internal Audit and Investigations for its "attention and guidance".

On 19 September the matter was referred to the HR Department which, on 2 October 2018, advised the complainant that it was looking into the matter. Email exchanges between the complainant and the HR Department ensued regarding the identification of individuals who had witnessed the alleged actions reported by the complainant. By an email of 22 March 2019, the Senior Advisor, HR Operations, informed the complainant that, following a review of the available documentation and numerous unsuccessful attempts to contact witnesses the complainant had identified, the HR Department had concluded that the matter should be closed. The complainant wrote back that same day expressing her disappointment and noting that she would seek advice regarding the "next steps" to be taken. On 18 June 2019 she filed the present complaint with the Tribunal impugning the 22 March 2019 decision.

The complainant asks the Tribunal to award her compensation for moral and reputational damage, negligence, endangerment, abandonment and loss of income.

The Federation asks the Tribunal to “summarily dismiss” the complaint as irreceivable for failure to exhaust internal remedies.

CONSIDERATIONS

1. The complainant requests oral proceedings. Pursuant to Article V of the Statute of the Tribunal, “[t]he Tribunal, at its discretion, may decide or decline to hold oral proceedings, including upon request of a party”. In this case, the Tribunal finds the written submissions to be sufficient to reach a reasoned decision, thus there is no need for oral hearings.

2. The complainant impugns the 22 March 2019 decision of the Federation. The decision consists of an email by which the Senior Advisor, HR Operations, informed the complainant that the matter raised by her in the email dated 13 September 2018 (“Concerns leading to my decision to not renew my contract”) should be closed. This was the conclusion of the HR Department, following “a review of the available documentation and numerous unsuccessful attempts to contact the witnesses [the complainant had] mentioned”.

3. The Federation requests that the complaint be summarily dismissed as irreceivable for failure to exhaust internal remedies. The Federation argues that “[w]hile the [c]omplainant appears to have raised certain concerns over management and administration informally, she did not raise these matters in accordance with the formal grievance process outlined in Chapter XII of the [Federation]’s Staff Regulations. Notably, the [c]omplainant did not bring a formal written complaint for administrative review pursuant to [Section] 12.3.0 during her time at the Federation. [...] Furthermore, the [c]omplainant did not file an internal appeal pursuant to [Section] 12.4.0. Such an appeal could have been filed even after she left the Federation’s employment”.

4. The complainant submits that she “was not advised to present written statements in accordance with cited provisions of the Staff Regulations ([Sections] 12.3.0 and 12.4.0)”. She adds that “at no point during the time that [she] filed the Safe Call entry was [she] advised [or] requested to submit any such statement”. She appears to submit that

the Federation's alleged "lack of accountability" should allow her to bring the matter directly to the Tribunal.

5. The Federation contests both of the complainant's allegations, highlighting that:

- (i) the 22 March 2019 decision should have been challenged internally before bringing the matter to the Tribunal (pursuant to the Staff Regulations even a former staff member is allowed to file an internal appeal within ninety days from the date of notification of the contested decision); and
- (ii) there is no "lack of accountability" that would justify skipping the internal appeal procedure.

6. The Tribunal concludes the complaint is irreceivable. Pursuant to Article VII, paragraph 1, of the Statute of the Tribunal, "[a] complaint shall not be receivable unless the decision impugned is a final decision and the person concerned has exhausted such other means of redress as are open to her or him under the applicable Staff Regulations". The Tribunal has to establish whether the 22 March 2019 decision is a final decision within the meaning of this provision. For this purpose, it is convenient to examine the internal remedies for Federation employees (or former employees) provided for in the Staff Regulations. In accordance with Chapter XII (Appeals) of the Staff Regulations, a grievance raised by an employee can be resolved through either an "informal process of grievance" (outlined in Section 12.2.0) or a "formal grievance process (administrative review)" (outlined in Section 12.3.0). In the informal process of grievance the employee should raise a grievance in the first instance either directly with her/his line manager or, under certain circumstances, with the second-level line manager (Staff Regulations 12.2.1 to 12.2.3). "If the grievance has not been resolved to the [e]mployee's satisfaction through informal means, he/she may bring a formal written complaint" using the provided "Grievance Record form" (Annex 4 to the Staff Regulations) "directly to the attention of the Head of [HR] who shall start the administrative review of the matter" (Staff Regulation 12.3.1). The employee, if not satisfied with the administrative decision "taken or confirmed after completion of the grievance process", may appeal to the Appeals Commission (Staff Regulation 12.4.1). Both employees and former employees, the latter "in regards to their service for the Federation",

are entitled to lodge an appeal with the Appeals Commission (Staff Regulation 12.4.2b)).

7. In light of the above-cited rules, the Tribunal finds that the 22 March 2019 decision is not a final decision within the meaning of Article VII, paragraph 1, of the Statute of the Tribunal. Indeed, it is the outcome of an informal process of grievance (within the meaning of Section 12.2.0 of the Staff Regulations), because there is no trace of a “formal written complaint” filed by means of the “Grievance Record form” (Staff Regulation 12.3.1). The steps of this informal process of grievance, in the present case, can be summed up as follows. The process was started by the complainant’s email of 13 September 2018 to the Senior Health Officer. On the latter’s advice, she forwarded that email to the Office of Internal Audit and Investigations on 17 September 2018. Then, with her consent, the matter was referred to the HR Department on 19 September 2018. The HR Department attempted to investigate the alleged concerns through numerous emails exchanged with the complainant, to no avail. By the 22 March 2019 email (the impugned decision) the Senior Advisor, HR Operations, informed her that “[a]fter having spoken with [her], undertaken a review of the available documentation and numerous unsuccessful attempts to contact the witnesses [she had] mentioned, the HR Department ha[d] concluded that the matter should be closed”. Although this decision did not meet her expectations, the complainant failed to take the further steps required by Staff Regulation 12.3.1 (cited above), as she did not submit a formal written complaint to the Head of HR. Therefore, there is no final decision within the meaning of Article VII, paragraph 1, of the Statute of the Tribunal. For this reason, the complaint is irreceivable and must be dismissed (see, for example, Judgment 4443, consideration 11, and the case law cited therein).

8. The complainant’s further allegations that there was a “lack of accountability” and that she was not advised of the proper procedure, are unfounded. She had been provided with a copy of the Staff Regulations, which detail the proper procedures to be followed. Thus, as an employee of the Federation from 2000 to 2018, she must be deemed to have been familiar with the Staff Regulations and the remedies provided for therein (see, for example, Judgment 4032, consideration 6, and the case law cited therein).

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 20 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