

I. (No. 2)

v.

Global Fund to Fight AIDS, Tuberculosis and Malaria

133rd Session

Judgment No. 4448

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Ms G. I. against the Global Fund to Fight AIDS, Tuberculosis and Malaria (hereinafter “the Global Fund”) on 16 January 2019 and corrected on 6 March, the Global Fund’s reply of 26 August, the complainant’s rejoinder of 23 December 2019 and the Global Fund’s surrejoinder of 7 April 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 Global Fund’s alleged failure to take a final decision on her formal complaint of harassment.

Facts relevant to the present case are to be found in Judgments 3866 and 4338 resulting from the complainant’s first complaint to the Tribunal and her subsequent application for review of Judgment 3866, respectively.

Suffice it to recall that in her first complaint to the Tribunal the complainant impugned a decision of 20 December 2013, by which the Executive Director of the Global Fund dismissed her appeal against the termination of her appointment at the end of her probationary period. In Judgment 3866, delivered in public on 28 June 2017, the Tribunal set aside the impugned decision, ordered the Global Fund to remove all adverse material from the complainant’s personnel file and awarded her material and moral damages in the sum of 40,000 euros for the Global

Fund's disregard and breach of well-established principles regarding probation, as well as costs in the amount of 1,000 euros. While noting that the Global Fund had failed to treat the complainant with dignity and respect, the Tribunal dismissed the complainant's claims of retaliation and harassment, respectively because the actions complained of did not amount to retaliation and the record did not show a written report of harassment that would have necessitated an investigation by the Global Fund.

On 2 December 2017 the complainant filed an application for review of Judgment 3866 on the grounds of discovery of new facts having a bearing on the outcome of her case on which she was unable to rely in the earlier proceedings, a material error of fact and omission to rule on her claims. In Judgment 4338, delivered in public on 7 December 2020, the Tribunal dismissed the complainant's application for review of Judgment 3866 as it found that the complainant had not established an admissible ground for review.

On 18 June 2018, while the complainant's application for review of Judgment 3866 was pending before the Tribunal, the complainant filed a formal complaint of harassment (dated 16 June 2018) with the Executive Director of the Global Fund on the ground of discovery of a new fact. By a letter of 18 July 2018, the Global Fund responded that for reasons explained in that same letter, it would not be appropriate to initiate an investigation into her harassment complaint at that stage. On 31 August 2018 the complainant "request[ed] an appeal pursuant to the Global Fund's rules". Her complaint was referred to the Appeal Board which, on 18 October 2018, informed her that her request for appeal was irreceivable, because she was not entitled to file an appeal as a former employee, but that she could file a complaint directly with the Tribunal. On 4 January 2019 the complainant asked to be provided with a final decision dismissing her appeal but this request was rejected on 24 January 2019 on the ground that the Global Fund had already taken a decision in the matter on 18 July 2018 and therefore no further decision was required.

On 16 January 2019 the complainant filed the present complaint with the Tribunal indicating in the complaint form that she was impugning the Global Fund's failure to take an express decision on her harassment complaint of 16 June 2018.

The complainant asks the Tribunal to order the Global Fund to conduct a thorough investigation of the issues brought forward in the present complaint, to provide a “full account of disclosures made concerning whistle blowers and herself”, to correct any defamatory statements directed against her by any of its officials and to prevent all such statements in the future. She claims material damages in an amount equal to the salary and allowances she would have received in the two years following the termination of her appointment and an additional amount of 100,000 euros for the loss of professional opportunities due to the Global Fund’s defamatory statements against her. She also claims moral damages in the amounts of 100,000 euros for the mental suffering due to humiliation, fear and loss of career, and 50,000 euros for the Global Fund’s failure to deal seriously and expeditiously with her initial harassment complaint. She seeks 10,000 euros in costs.

Noting that the Tribunal has already adjudicated on the complainant’s claims of harassment in Judgment 3866 and that the complainant has filed with the Tribunal an application for review of that judgment, the Global Fund submits that the complaint is irreceivable by operation of the *res judicata* principle as well as the principle that a person may not submit the same matter for decision in more than one proceeding.

CONSIDERATIONS

1. The complainant purports to challenge the Global Fund’s failure to provide her with an express final decision upon her formal complaint of harassment dated 16 June 2018. The Global Fund’s decision, dated 18 July 2018, not to initiate an investigation into the complainant’s harassment complaint was communicated to her by an email of the same date. Further to her request, the matter was referred to the Appeal Board which, on 18 October 2018, informed the complainant that her appeal was irreceivable because, as a former staff member, she did not have access to the internal appeal procedure. Notwithstanding this, she was entitled to file a complaint directly with the Tribunal.

2. The complainant then requested a final decision on her harassment complaint. In a communication of 24 January 2019, the Head of HR stated that he also informed the complainant that, although the Global Fund had no obligation to do so, it agreed out of goodwill to transfer her request for an appeal to the Office of the Appeal Board, but

that he was careful to ensure that the complainant was aware of the Tribunal's case law in Judgment 3424, consideration 6(a), regarding the access of former staff members to the Global Fund's internal appeal procedure. The Tribunal therein reiterated, in effect, that as the Fund's applicable regulations provide that the internal means of redress are open to "employees" but there is no text that specifies that this term also refers to former employees, the Appeal Board's practice of considering appeals filed by former employees is no bar to the application of that case law. The Head of HR also stated that, in the 18 October 2018 communication, the complainant was provided with all relevant information and was invited to contact the Tribunal directly should she wish to pursue the matter. The Head of HR added "no further decision is required in the present dispute". This must be interpreted as proof that the complainant exhausted the internal means of redress available to her, as required under Article VII, paragraph 1, of the Tribunal's Statute.

3. The complainant joined the Office of the Inspector General (OIG) of the Global Fund on 1 November 2011 as a consultant. She was appointed to a staff position on 10 December 2012 under a two-year appointment subject to a six-month probationary period. The complainant challenged the decision to terminate her appointment with effect from 8 July 2013 for having not successfully completed her probationary period. That challenge eventually culminated in her first complaint to the Tribunal. In Judgment 3866, the Tribunal set aside the impugned decision which upheld the decision to terminate her employment. The Tribunal held, among other things, that the Global Fund had breached the principles regarding probation and awarded the complainant material and moral damages.

4. In her first complaint, the complainant claimed that the termination of her employment was unlawful, as the Global Fund had violated the performance evaluation provisions in the Employee Handbook. Further, that the termination of her employment was the culmination of a period of harassment/mobbing in violation of the Global Fund's harassment policy; that the termination of her employment was retaliation for her reporting of misconduct; that it amounted to unequal treatment and also to a disciplinary sanction; and that it was taken in violation of the principles governing a probationary period stated in the Tribunal's case law.

5. Regarding the claim of harassment, the Tribunal stated, in consideration 13 of Judgment 3866, as follows:

“Although the complainant claims that she both orally and in writing reported harassment and mobbing, a careful review of the record does not show a written report of harassment that would necessitate a prompt and thorough investigation of the allegations on the part of the Global Fund. While the record reflects that the Global Fund failed to treat the complainant with dignity and respect, it cannot be said that any of the actions complained of amount to retaliation, unequal treatment or the imposition of a disciplinary sanction.”

6. Subsequently, on 18 June 2018, the complainant submitted a formal complaint of harassment (dated 16 June 2018). She explained therein that she only filed it then because she had recently received information which showed that the harassing treatment she suffered was intended to prevent her from carrying out an investigation into alleged wrongdoing related to the Global Fund’s funding in a given country. She also stated that she learned that the Global Fund had recently shared confidential information regarding that investigation with the person who was the subject of the alleged wrongdoing, thereby exposing her to reprisal.

7. Substantively, the complainant alleged that as early as January 2013, she was subjected to harassment within the OIG for reporting the alleged wrongdoing and that she suffered retaliation and abusive treatment, including repeated physical intimidation, because she persisted with investigating the matter. She further alleged that the pattern of harassment against her continued and intensified until she was “fired solely on the basis of false statements and [was] denied due process in connection therewith” and that following her separation, the Global Fund engaged in further efforts to discredit her with future employers. She insisted that her formal complaint of harassment was submitted to give the Global Fund “the opportunity to investigate on the basis of the fullest evidence the harassment, retaliation and disclosure of confidential information – all of which h[ad] caused and continue[d] to cause serious harm to [her]”. She elaborated these claims, referencing specific incidents of alleged harassment and retaliation, in an addendum to her complaint of harassment. The allegations therein are mirrored in some measure in the present complaint to the Tribunal.

8. The Global Fund proffers various arguments to support its submission that the complaint is irreceivable. It argues that the complainant reiterates arguments already raised in previous proceedings and that she submits the same documents which violates the general principle that a person may not submit the same matter for decision in more than one proceeding. It also argues that the Tribunal has already adjudicated on the complainant's harassment claims in Judgment 3866 and rejected them as unfounded so that they are *res judicata*. The Tribunal agrees and, on this basis, the complainant's claim of harassment is irreceivable.

9. The complainant's claim for compensation for alleged defamation is based on an organisation's ongoing duty not to cause such injury to present as well as former staff members. This accords with the Tribunal's case law in consideration 46 of Judgment 3613 that international organisations are bound to refrain from any type of conduct that may harm the dignity or reputation of their staff members and that this duty, which flows from the general principles governing the international civil service, is also applicable as a matter of course to former staff members of an organisation (see also Judgment 2861). Whether the complainant can impugn, in proceedings before the Tribunal, an alleged defamation many years after separating from service is unnecessary to decide as the claim is clearly unfounded. The complainant bases it on allegations that since her separation from the organization the Global Fund has repeatedly covertly spread defamatory information about her, including to prospective employers and maintained accusations of lack of integrity against her. However, the documents which she provides do not support her allegations. Moreover, she provides no evidence, as against assertions and conjecture, that the Global Fund communicated defamatory information about her to anyone.

10. In the foregoing premises, the complaint will be dismissed. However, the Global Fund's counterclaim for costs is rejected as the complaint is not abusive or vexatious (see, for example, Judgments 4389, consideration 12, and 4143, consideration 7).

DECISION

For the above reasons,

The complaint is dismissed, as is the Global Fund's counterclaim for costs.

In witness of this judgment, adopted on 27 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