

M. (No. 2)

v.

IAEA

137th Session

Judgment No. 4754

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr S. M. against the International Atomic Energy Agency (IAEA) on 16 March 2021 and corrected on 26 June, the IAEA's reply of 22 October 2021, the complainant's rejoinder of 29 November 2021 and the IAEA's surrejoinder of 25 February 2022;

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

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

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

The complainant impugns the decision to close his harassment complaint.

The complainant, a former IAEA staff member, joined the Agency in April 2018, as a Safeguards Technology Expert, at grade P.4, in the Safeguards Division of Information Management (SGIM).

In November and December 2019, staff members in SGIM complained to the Staff Relations Specialist, Division of Human Resources (MTHR), that the complainant's behaviour was intimidating and inappropriate. When informed of these allegations, the complainant responded that it was he who had been the victim of harassment and bullying. Although initially the two sides agreed to pursue an informal

resolution of their grievances, on 25 February 2020, several SGIM staff members advised the Staff Relations Specialist that they had decided to submit a formal report of misconduct against the complainant (group complaint), under Appendix G to the Staff Regulations and Staff Rules, entitled “Procedures to be Followed in the Event of Reported Misconduct”. The Staff Relations Specialist informed the complainant that same day that a group complaint had been submitted against him and advised that the matter would be escalated to the Office of Internal Oversight Services (OIOS).

On 9 March 2020, considering that the informal resolution efforts had failed, the complainant also submitted a report of misconduct (complaint), under Appendix G to the Staff Regulations and Staff Rules. In his complaint, the complainant firmly rejected the allegations raised against him in the group complaint and asserted, inter alia, that: (i) a decision to extend his contract for a period of six months instead of one year, which was communicated to him orally, was taken without due process and appeared to be the direct result of retaliation against him; (ii) one of his colleagues had deliberately retaliated against him by spreading rumours, making false allegations, and breaching the confidential nature of any harassment complaint, all of which constituted misconduct on several counts; (iii) he had witnessed three of his colleagues disclosing confidential IAEA information to the United States Mission to the International Organizations in Vienna and their conduct in this respect should be investigated.

By a memorandum of 11 March 2020, the Director, MTHR, referred the allegations of misconduct on the part of the complainant to the Director, OIOS, for review and, if appropriate, investigation. OIOS considered that the complainant’s counter-allegations against specific staff members had arisen in the context of the group complaint submitted against him, and therefore dealt with the allegations of both sides in the context of the same investigation.

On 31 March 2020, the complainant’s contract was extended for one year.

By a memorandum of 23 April 2020, the complainant was informed that he was the subject of an investigation into allegations of harassment and sexual harassment. On 5 May 2020, he was interviewed by OIOS and, on 12 May, he supplemented his 9 March 2020 complaint by a written statement, in which he rejected what he considered to be false and fabricated claims against him and provided details of the allegedly inappropriate and harassing behaviour towards him by several SGIM staff members.

Pending the OIOS investigation, to prevent an escalation of the dispute, the complainant was instructed to work from home. In early June 2020, during the gradual return of staff to the office following a period of mandatory teleworking due to the Coronavirus pandemic, the complainant was offered an office space on the 18th floor of the IAEA premises (away from SGIM office spaces which were located on the 11th floor). While initially he was allowed to work in that office space three days per week, he was subsequently instructed he should only work at the IAEA premises one day per week.

On 2 July 2020, the complainant resigned from the IAEA and, the next day, he asked the Administration to shorten the notice period for his resignation to one month instead of the statutory notice period of three months. By a letter of 8 July 2020, the Acting Director, MTHR, informed the complainant that, on behalf of the Director General, he accepted his resignation effective 3 August 2020.

On 9 July 2020, OIOS forwarded to the complainant the draft investigation report and invited him to provide his comments thereon, which the complainant did on 31 July 2020.

OIOS issued its Final Investigation Report on 4 August 2020. It concluded that the evidence gathered supported the finding that the allegation of long-term harassing behaviour by the complainant against several staff members was substantiated, and it also supported the finding that the complainant had sexually harassed two female colleagues. As regards the allegations that one of the complainant's colleagues had manipulated and orchestrated the group complaint against him; that confidential IAEA information was inappropriately disclosed to the United States Mission; and that the complainant had been subjected to

inappropriate behaviour, comments or actions by several SGIM staff members, OIOS concluded that the evidence gathered supported a finding that these allegations were unsubstantiated. As regards the allegations concerning the complainant's contract extension, OIOS concluded that the evidence gathered supported a finding that they should not be further investigated.

On 6 August 2020, the Acting Director, MTHR, provided the complainant with a copy of the Final Investigation Report and invited him to submit his comments thereon, which the complainant did on 1 September 2020.

The complainant was advised of the Administration's decision on his complaint against staff members in SGIM by a letter of 17 December 2020, by which he was also informed that the Deputy Director General had decided to close the case as a disciplinary matter pursuant to paragraph 4(c) of Appendix G to the Staff Regulations and Staff Rules. This is the decision the complainant impugns in the present complaint (his second).

The complainant asks the Tribunal to set aside the decision to dismiss his harassment complaint. He claims moral damages: 20,000 euros for the IAEA's "incapability" to manage the group complaint and the several breaches of confidentiality, despite his several warnings; 50,000 euros for the professional and reputational damage he suffered due to the fabricated allegations of harassment and sexual harassment; 20,000 euros for the fact that the IAEA used a double standard throughout the investigation process; 20,000 euros for the IAEA's failure to take into account his substantiated and duly reported allegations, including the retaliatory attempt to shorten his contract after he filed a harassment complaint. He claims 10,000 euros in costs, which corresponds to the costs he incurred in the internal process and in filing the present complaint.

The IAEA asks the Tribunal to dismiss the complaint in its entirety.

CONSIDERATIONS

1. The complainant was a staff member of the IAEA until he resigned on 2 July 2020, effective one month later. The relevant general background preceding and following his resignation is set out earlier in this judgment. Suffice it to note, at this point, that by letter dated 17 December 2020, the complainant was informed that the Office of Internal Oversight Services (OIOS) had investigated his allegations and had concluded that they were either unsubstantiated or should not be further investigated. He was also informed that, having carefully considered the OIOS conclusions, the Deputy Director General had decided to “close the case as a disciplinary matter” pursuant to paragraph 4(c) of Appendix G to the Staff Regulations and Staff Rules.

2. The complainant has filed two complaints, impugning two distinct decisions communicated to him in separate letters of 17 December 2020. The complainant filed his first complaint on 16 March 2021. He filed a second complaint on the same day, and did so after an earlier attempt to file one complaint comprehending the subject matter of what are now his first and second complaints. In Judgment 4753 concerning the complainant’s first complaint, also delivered in public this day, the Tribunal explains why the two complaints have not been joined. It is unnecessary to repeat that explanation in this judgment concerning his second complaint.

3. The focus of this complaint is the decision referred to in the letter of 17 December 2020 “to close the case as a disciplinary matter” under Appendix G to the Staff Regulations and Staff Rules. This can be taken to be a reference, as the complainant was entitled to assume, to the closure of the complaint he lodged on 9 March 2020.

4. His complaint as well as the group complaint against him were investigated by OIOS, which issued its Final Investigation Report on 4 August 2020. In that report, OIOS addressed the group complaint against the complainant. It also considered the complainant’s complaint under a heading “[the complainant’s] counter-allegations”. Insofar as

his complaint was concerned, the Final Investigation Report addressed the specific grievances of the complainant. While the language used in the consideration of each of them varied slightly, the import of the conclusion reached was that the allegation of harassment made by the complainant or his criticism of the conduct of others was not supported by the evidence. Under the heading “CONCLUSIONS”, the Final Investigation Report said, in relation to the complainant’s complaint, either that specific allegations should not be further investigated or, in the main, that they were unsubstantiated. Insofar as the complaint against the complainant was concerned, the Final Investigation Report said, under this heading, that the evidence gathered supported the allegations of the long-term harassing behaviour of the complainant and the two specific allegations against him of sexual harassment.

5. It should be observed, at the outset, that the Tribunal generally defers to the findings by internal investigative bodies. For example, in Judgment 4237, consideration 12 (recently cited in Judgment 4674, consideration 5), the Tribunal said:

“Moreover, where there is an investigation by an investigative body in disciplinary proceedings, ‘it is not the Tribunal’s role to reweigh the evidence collected by an investigative body the members of which, having directly met and heard the persons concerned or implicated, were able immediately to assess the reliability of their testimony. For that reason, reserve must be exercised before calling into question the findings of such a body and reviewing its assessment of the evidence. The Tribunal will interfere only in the case of manifest error (see Judgments 3682, under 8, and 3593, under 12)’ (see Judgment 3757, under 6).”

These observations are apt to apply also to the investigation of a harassment complaint as occurred in the present matter.

6. Indeed, in these proceedings, the complainant goes a little further and says explicitly in his brief, as he does in his brief in his first complaint, that he is not asking the Tribunal to reassess the OIOS’s findings. His reason for taking this position is that he believed this “would not be within the Tribunal’s scope”. It is unnecessary to analyse this reason. All that is presently relevant is that he is not asking the Tribunal to reassess the OIOS’s findings and, consistent with this

approach, the Tribunal does not do so. It is not open to the complainant to not invite scrutiny of the OIOS findings while, at the same time, relying on the comments (dated 31 July 2020) he made on the draft investigation report and the comments (dated 1 September 2020) he made on the Final Investigation Report. Neither commentary is persuasive proof of the facts asserted.

7. The complainant's criticism of the Final Investigation Report and the methodology of the OIOS is at a high level of generality and does not support a conclusion that the decision to "close the case as a disciplinary matter" was not warranted. Indeed, he does not argue that the provisions in Appendix G to the Staff Regulations and Staff Rules authorising closure of a complaint were either not enlivened or not applied correctly. They appear to have been.

8. There is no occasion to consider his claim for moral damages flowing or arising from the closure decision. Additionally, he has not demonstrated any legal error in the consideration of his complaint of harassment, and no occasion arises to consider his claim for moral damages in this regard either.

9. The complaint should be dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 7 November 2023, Mr Michael F. Moore, Vice-President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, Mirka Dreger, Registrar.

Delivered on 31 January 2024 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

HONGYU SHEN

MIRKA DREGER