

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

A.
v.
FAO

139th Session

Judgment No. 4941

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms N. A. against the Food and Agriculture Organization of the United Nations (FAO) on 17 January 2022, the FAO's reply of 28 July 2022, the complainant's rejoinder of 2 September 2022 and the FAO's surrejoinder of 19 December 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 validity of a settlement agreement and the decision to deny her request to be provided with copies of investigations reports concerning her complaint for harassment as well as the complaint for harassment filed against her.

The complainant joined the World Food Programme (WFP) – an autonomous joint subsidiary programme of the United Nations and the FAO – in January 2016 as an Investigations Officer at grade P-2 in the Office of Inspections and Investigations (OIGI) at WFP Headquarters, under a two-year fixed-term appointment subject to a twelve-month probationary period. The complainant was separated from service on 10 August 2017, on the basis of a settlement agreement concluded with WFP.

In July 2016, Mr A., Director, OIGI – the complainant’s then first-level supervisor – made allegations of fraud against the complainant before the Director, Human Resources Division (HR) concerning requests for a Daily Subsistence Allowance (DSA) that she was allegedly not entitled to claim. The complainant was subsequently informed, by memorandum dated 22 July 2016 of the decision to suspend her with pay, until 30 September 2016, pending investigation of allegations brought against her. In light of the complainant’s position as an Investigations Officer at OIGI, the Office of Audit and Investigations of the United Nations Development Programme (UNDP-OAI) was appointed to conduct an investigation.

On 7 September 2016, the complainant lodged an appeal before the Executive Director against the decision to suspend her with pay, alleging that it was flawed, unjustified and motivated by harassment.

The complainant returned to the office in October 2016 and, by email dated 15 November 2016, she was informed that her probationary period was extended until 15 February 2017.

In December 2016, the complainant submitted a formal complaint of harassment and abuse of authority against Mr A., Director, OIGI. The Office of the Inspector General of FAO (FAO-OIG) was engaged to review the matter due to the positions of the complainant and the Director, OIGI.

On 9 February 2017, the complainant was informed that UNDP-OAI had issued its investigation report concerning the allegations of fraud brought against her and had concluded that there was insufficient evidence to conclude that the complainant committed misconduct.

The complainant was informed, by email dated 8 March 2017, of the Executive Director’s decision to dismiss her appeal against her suspension as without merit. The complainant lodged, on 22 March 2017, an appeal before the FAO Appeals Committee against this decision.

In March 2017, the complainant's supervisors completed her final Probatory Performance Appraisal Report. Her first-level supervisor – who was no longer the Director, OIGI, due to a reorganization within the unit – noted concerns with the complainant's performance relating to technical gaps and behavioural competencies vis-à-vis her colleagues. He rated the complainant's performance as "Not satisfactory" and recommended the termination of her fixed-term appointment. This recommendation was endorsed by the complainant's second-level supervisor on 11 April 2017.

The complainant, who had been on leave until 8 March 2017 and was placed on sick leave from 10 to 13 March 2017, was placed on certified sick leave once again on 22 March 2017.

By email dated 28 April 2017, the complainant was informed that WFP had received a complaint of harassment submitted against her – by an OIGI colleague, Mr B. – and that the Executive Director had decided that a preliminary review and, if necessary, a full investigation, would be conducted by external investigators. WFP assigned the case to the FAO-OIG, which conducted an investigation and issued its investigation report on 2 November 2017.

In November 2017, WFP and the complainant started discussing the possibility of a settlement agreement including a mutual agreement for her separation from service.

On 10 November 2017, the Director, HR, sent the complainant a formal settlement offer providing, inter alia, that her appointment would be extended until 9 August 2018 and that she would be placed on special leave with full pay until that date; that she would be separated from service on the basis of a mutually agreed termination and that she would receive a termination indemnity as well as other compensation; and that a verbal announcement would be made to the staff members of OIGI that the allegations of misconduct made against her were not substantiated. The offer also specified that the complainant would "be barred from initiating or pursuing any administrative or legal action against WFP concerning [her] employment with WFP" and that she "agree[d] to withdraw [her] appeal pending before the FAO Appeals Committee".

On 13 November 2017, the complainant responded with a counter-offer and, on 18 November, the Director, HR, sent her a revised offer incorporating part of her requests. The complainant replied on the same day, requesting further adjustments and clarifications, which were accepted and reflected in a further revised offer communicated to her on 21 November. The complainant signed the settlement agreement on that day. On 22 December 2017, the complainant withdrew her appeal against the decision to suspend her and she was effectively separated from service, pursuant to the agreement, on 10 August 2018.

By email dated 28 February 2018, the complainant was informed that the investigation conducted by the FAO-OIG concerning the allegations brought against her had concluded that the harassment complaint was not founded and that no further action would be taken by WFP.

By email dated 31 May 2018, WFP informed the complainant that the FAO-OIG investigators had completed their review of her harassment complaint against the Director, OIGI, and concluded that there was insufficient evidence to support her allegations. The complainant was also informed that the matter was considered closed by the Organization.

By a letter dated 7 July 2018, the complainant requested the Executive Director, WFP, to give her unrestricted access to the investigation reports concerning her complaint against the Director, OIGI, and concerning the complaint submitted against her. Moreover, the complainant requested that the settlement agreement be reviewed alleging that she was under duress when she signed it. WFP's Chief of Staff responded to the complainant's request by email dated 9 August 2018. He recalled that, pursuant to the settlement agreement, the complainant was barred from initiating or pursuing any administrative or legal action against WFP and that this included any dispute that she may have in respect of the outcome of her complaint.

By email dated 30 September 2018, the complainant requested the Executive Director a "formal response" to her communication dated 7 July 2018. On 13 December 2018, she lodged an appeal with the Appeals Committee challenging WFP's refusal to provide her with a

copy of the investigation reports and to consider the settlement agreement as null and void.

The Appeals Committee adopted its report on 13 January 2021. The Committee found that the decision impugned by the complainant was not the settlement agreement but WFP's refusal to entertain her claims regarding the agreement and the investigation reports. It also found that WFP had exercised unlawful pressure on the complainant "to leave" and that she was under duress when she signed the settlement agreement, which invalidated the agreement. It recommended that the Organization provide copies of the investigation reports issued by FAO-OIG to the complainant, to annul the settlement agreement and to conclude an alternative agreement.

By letter of 9 November 2021, the FAO Director-General informed the complainant of his decision to reject the Appeals Committee's recommendations and to reject her appeal in its entirety. That is the impugned decision.

The complainant requests the Tribunal to quash the decision of 9 November 2021 dismissing her internal appeal, to consider the separation agreement of 21 November 2017 as null and void, since she signed it under duress, and "to recognize such agreement to constitute illegal constructive dismissal". The complainant also requests the Tribunal to order the payment of salary and allowances that would have been payable to her for a period of two years at the grade she held as well as compensation for "any further material damage, moral damage and damage to her career" in the amount of 50,000 euros, and costs for the internal proceedings and the present proceedings in the amount of 10,000 euros. Lastly, she requests the Tribunal to order the disclosure of the full investigation reports prepared by FAO-OIG following her own complaint and the complaint submitted against her.

The Organization requests the Tribunal to dismiss the complaint as irreceivable in its entirety. It notes that the complainant's claims are time-barred as she lodged her appeal challenging the settlement agreement more than ten months after she entered into it. The Organization submits that the complaint is also irreceivable under the terms of the settlement agreement, which explicitly state that she is

barred from initiating or pursuing any administrative or legal action against the Organization concerning her employment with WFP. Without prejudice to the irreceivability of the complaint, the Organization submits that it is also unfounded on the merits.

CONSIDERATIONS

1. The complainant had been a member of staff of the World Food Programme (WFP) until her separation from service, effective 10 August 2018. The general background is set out earlier in this judgment and need not be repeated. Her separation had been preceded by the negotiation and signing of an agreement on 21 November 2017 facilitating her separation and the terms on which it would occur (the separation agreement). Of critical importance in these proceedings is whether one of the terms of that agreement operated to preclude the complainant from pursuing these or similar proceedings. It would not if the agreement had no legal effect because it had been entered by the complainant under duress. It is convenient to consider this issue at the outset.

2. It should be noted that the Appeals Committee concluded that the separation agreement had been entered into by the complainant under duress and it did not prevent the complainant from subsequently pursuing her grievance, including before the Committee. It explained why in its opinion of 13 January 2021. This conclusion was rejected by the FAO Director-General who concluded, in his impugned decision of 9 November 2021, that the separation agreement had not been entered into under duress and it created a legally effective barrier to the pursuit of her grievance.

3. The Tribunal's case law recognises that a valid agreement between, ordinarily, a staff member and the organisation employing them and often at the time of separation, can deny the staff member the otherwise extant right to pursue a grievance in this Tribunal about, in this example, the separation by rendering the complaint irreceivable (see, for example, Judgments 4161, consideration 11, and 3902,

consideration 12). The separation agreement in the present case contained such a clause providing that “[the complainant] will be barred from initiating or pursuing any administrative or legal action against WFP concerning [her] employment with WFP”.

4. Duress involves the application of illegitimate pressure to induce a person to act and, in the typical case where duress is successfully raised as a defence, that pressure caused that person to act in the way sought. If the conduct was the execution of an agreement, then the agreement would have no legal effect if it had been entered into by the application of illegitimate pressure. It has been described in various ways in the Tribunal’s case law including the application of pressure which is unlawful (see Judgment 3680, citing Judgment 1075). But, importantly in the present case, it is pressure operating on the person at the time they act. Thus, it would have been pressure operating on the complainant at the time she signed the separation agreement on 21 November 2017. That is to say, pressure which caused her to sign the agreement.

5. The complainant’s pleas on duress are substantially based on the reasoning and conclusions of the Appeals Committee. The complainant lists five sources of pressure which constituted unlawful pressure. First, was pressure resulting from the suspension measure, secondly, pressure resulting from an inadequate performance evaluation, thirdly, pressure resulting from an inappropriate handling of the complaint submitted against her, fourthly, pressure resulting from an inappropriate handling of the complainant’s complaint and fifthly, the Organization’s violations of its duty of care and good faith.

6. The Appeals Committee made the following observation in its report concerning the 21 November 2017 agreement:

“As outlined above, there were a series of unique events which occurred after [the complainant’s] signature of the agreed termination, which together operated to give strength to and crystallise the [complainant]’s allegations of duress and constructive dismissal in July-August 2018. The [complainant] was not in a position to put such allegations forth at the time of signing the agreed termination, or within the prescribed time-limits, because the events

that gave rise to those claims occurred only afterwards and operated to shed a different light on the agreed termination itself and the facts that preceded it.”

7. These comments are a little delphic particularly the reference to “crystallis[ation]” of the allegations of duress. However, it is comparatively clear reading the pleas of both the complainant and the Organization that there is a common understanding, at least at a general level, of what were the material events which underpinned these comments. That is to say, a common understanding of what were the events following the execution of the separation agreement which were being relied on by the Appeals Committee to justify a conclusion there had been duress experienced by the complainant.

8. The “crystallis[ation]” was the revelation to the complainant in February 2018 of the outcome of the complaint by Mr B. against her and, in May 2018, the revelation of the outcome of her complaint against Mr A. While no finding was made by the Appeals Committee on this precise factual point, it is apparent from an email of 10 November 2017 that the Administration had received the report on the complaint by Mr B. against the complainant before then. Thus, the complainant did not know, when signing the separation agreement, that the complaint of Mr B. against her had been found to be unsubstantiated but the Administration did. But it is difficult to understand how these revelations after the separation agreement was signed in November 2017, have any bearing on whether or not the complainant was subjected, at that time, to illegitimate or unlawful pressure.

9. In a letter of 7 July 2018 to the Executive Director, the complainant first alleged she had been subjected to duress. She explained:

“Accordingly, I demand for the separation agreement concluded in November 2017 to be amended for cause of duress. Indeed, this agreement was done during my extended certified sick leave – which was directly related to the toxic work environment - and was deliberately delayed to a point that I had no income for few months. I was therefore particularly vulnerable to the risk of entering into an unequal agreement. I was also in a particularly delicate psychological situation as I had been announced that I could be seriously ill (with cancer). I therefore acted under the undue

influence of my illness and of financial problems and did not enter freely into the agreement. As stated above, the [Executive Management] deliberately withheld exculpatory elements that could have further guided my consent. It was also done in a context where I have highlighted the imbalance of power in the negotiation room both before and during that meeting [a reference to the meeting of 3 November 2017]. I was also led to subscribe to the agreement without any earlier consultation or much less dialogue.”

10. All but the “withheld exculpatory elements” (which have been discussed in consideration 8 above), were matters known to the complainant at the time she signed the separation agreement. And it is of some significance that on 27 April 2018 the complainant sent an email to WFP’s General Counsel as part of an email chain (the essential purpose of which was for her to obtain the results of the investigation of her complaint against Mr A.). She referred to her obligations under the separation agreement and the concomitant obligations of WFP. Indeed, she said:

“Thus, signing the agreement simply doesn’t mean that I have relinquished my rights as a complainant to know the truth.”

and later:

“And whilst I intend (unlike you- see further) to respect the above-mentioned agreement, its terms are certainly not precluding me from obtaining justice beyond the administrative and legal realms.”

This approach to the separation agreement is antithetical to one which would have been adopted by someone who then genuinely believed she had earlier been pressured, by illegitimate or unlawful conduct, to sign the agreement. It raises real doubts about the assertion made a little over two months later that she had been subjected to duress.

11. One further matter of detail should be mentioned. Shortly before the execution of the separation agreement, the complainant sent, on 13 November 2017, a detailed email to the Director, Human Resources Division (HR). This and other correspondence were viewed by the Appeals Committee as illustrating that the complainant was not well and needed help and support, indeed that she was in a fragile

mental state. Plainly, the Committee had considerable sympathy for the position of the complainant. However, the email of 13 November 2017 also evidenced an entirely rational and focused approach by the complainant to the negotiation of the settlement agreement including on the question of the complainant withdrawing an appeal then on foot and agreeing not to instigate any further proceedings. As to the former, she agreed conditionally to do so and as to the latter expressed understanding that WFP might not wish to grant her a right to “pursue any administrative process against [...] [WFP]”. In the email, the complainant sought the confirmation of certain elements of the settlement proposal and identified “crucial points that need[ed] to be addressed before [she could] sign it”. Insofar as the terms of the proposed agreement were concerned, the tone and content of the complainant’s observations and requests were not the manifestation of a person who was being subjected to illegitimate or unlawful pressure.

12. The Tribunal is not persuaded that the complainant was subject of duress when she executed the separation agreement. She is bound by its terms. Accordingly, she is precluded by the terms of that agreement from maintaining these proceedings in the Tribunal, including from requesting being provided with copies of the investigation reports pertaining to the complaint for harassment she filed, and the one filed against her. In the result, this complaint is irreceivable and should be dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 22 October 2024, Mr Michael F. Moore, Vice-President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Rosanna De Nictolis, Judge, sign below, as do I, Mirka Dreger, Registrar.

Delivered on 6 February 2025 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

ROSANNA DE NICTOLIS

MIRKA DREGER