

**M.**  
**v.**  
**FAO**

**139th Session**

**Judgment No. 4942**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr I. M. against the Food and Agriculture Organization of the United Nations (FAO) on 2 October 2021 and corrected on 23 February 2022, the FAO's reply of 18 July 2022, and the email of 27 August 2022 by which the complainant informed the Registry that he did not wish to file a rejoinder;

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 contests the decision to dismiss him for misconduct.

The complainant joined the World Food Programme (WFP) – an autonomous joint subsidiary programme of the United Nations and the FAO – in 2009. At the material time, he was working as a Logistics Business Support Assistant at a border point between Rwanda and Uganda in the WFP Rwanda Country Office.

In June 2017, the WFP Rwanda Country Office reported to the Office of Inspections and Investigations (OIGI) allegations of fraudulent conduct and conflict of interest against the complainant. Following a preliminary review, OIGI opened an investigation in July

2017. The complainant was informed that he was the subject of investigation in November 2017.

In its investigation report of 20 February 2018, OIGI reported that alongside his WFP duties as a Logistic Business Support Assistant, the complainant had established a private customs clearance activity as a conduit for transporters to clear with the Customs Authorities WFP cargo from Rwanda to Uganda and that this activity was never disclosed or authorized, that it allowed the complainant to gain a financial advantage, and that it represented a direct conflict of interest with the role entrusted to him by the WFP. OIGI specifically found that (a) the complainant had taken advantage of his position as a WFP staff member to undertake, without the WFP's knowledge, outside activities by using his knowledge and contacts, gained through WFP employment, to direct companies under contract with WFP to work with a private customs clearance business and by being actively involved in the work and management of that private business while misrepresenting his role; (b) these outside activities presented a serious conflict of interest with his role as a WFP Logistics Business Support Assistant at the border point; and (c) he had abused his position by engaging with companies under contract with WFP and requesting payments for private services rendered. OIGI also uncovered evidence, in the course of the investigation, that the complainant had accessed pornographic material using his WFP computer. OIGI concluded that the complainant had engaged in fraudulent practices and conflict of interest by establishing an outside activity alongside his WFP role and, in the process, had exposed the WFP to significant reputational and legal risks. OIGI also concluded that the complainant had violated the WFP Corporate Information and Information Technology (IT) Security Policy by accessing pornographic material using his WFP-provided IT equipment. OIGI recommended that appropriate administrative and/or disciplinary actions be taken against the complainant.

On 6 March 2018, the complainant was informed of the decision to suspend him from duty with pay pending the Administration's review of the allegations against him. By a memorandum of 20 August 2018, the Director of the Human Resources Division (HRD) communicated

to the complainant the findings of the investigation and the charges against him. The Director of HRD informed the complainant that the charges were sufficiently serious to warrant the initiation of disciplinary proceedings and to support a disciplinary measure up to and including dismissal, if confirmed, and afforded the complainant ten days to provide a written response to the charges. In his response of 10 September 2018, the complainant denied the charges.

By a memorandum of 11 January 2019, the Director of HRD informed the complainant of the decision to consider that his misconduct had been proven beyond a reasonable doubt and to impose upon him the disciplinary measure of dismissal with compensation in lieu of notice and without termination indemnity, pursuant to FAO/WFP Staff Rule 303.0.1 and the WFP Human Resources Manual Section VIII.1.5.1(a) and (e).

On 5 April 2019, the complainant filed an appeal to the WFP Executive Director requesting a review of the decision to dismiss him for misconduct. Following the rejection of this appeal on 3 June 2019, the complainant filed an appeal with the FAO Appeals Committee on 1 August 2019. The Appeals Committee issued its report on 10 December 2020 recommending that the appeal be rejected as unfounded.

By a letter dated 14 June 2021, which was sent to the complainant by an email of the same date but which the complainant claims to have received on 5 July 2021, the FAO Director-General informed the complainant that he had decided to accept the recommendation of the Appeals Committee to reject his appeal. This is the impugned decision.

The complainant asks the Tribunal to order his reinstatement. He claims the following amounts in material damages: (i) an amount equal to the salaries he would have received had he remained in the service of the WFP paid retroactively as of 24 January 2019; and (ii) 90,000 United States dollars corresponding to the value of the house he lost due to his inability, after his dismissal, to pay the monthly instalments of the mortgage he had taken out to purchase the house. He also claims moral damages in the amount of 20,000 United States

dollars for the abrupt and unexpected end to his career, and for not being able to finance the studies of his three children.

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

### CONSIDERATIONS

1. By his complaint of 2 October 2021, the complainant impugns before the Tribunal the decision of the Director-General of the FAO rendered on 14 June 2021. In that decision, the Director-General accepted the findings of the FAO Appeals Committee, contained in its report of 10 December 2020, which rejected as unfounded the claims that the complainant had made against the 3 June 2019 decision of the Executive Director of the World Food Programme (WFP) to reject his appeal against the earlier decision of the Director of the Human Resources Division (HRD), dated 11 January 2019, dismissing him for misconduct.

2. In the impugned decision, the Director-General recalled that the report of the Appeals Committee had followed an investigation report of 20 February 2018 of the Office of Inspections and Investigations (OIGI), which had found that the complainant had engaged in unauthorized outside activities, thus placing himself in a serious conflict of interest, and that he had misused the WFP's property and resources in notably accessing pornographic material on his computer. The Director-General explained in detail why he had decided to reject the contentions raised by the complainant against the findings of these reports and emphasized that there was extensive evidence demonstrating his involvement in unauthorized outside activities resulting in an actual and perceived conflict of interest, as well as a clear misuse of the WFP's resources. It was also noted that the decision to dismiss the complainant for misconduct had been taken in accordance with the applicable rules and procedures, and particularly, that he had been afforded due process.

3. Before the Tribunal, the complainant raises three main arguments. First, he reiterates his allegation that his due process rights were not respected. Second, he claims that there was insufficient evidence in support of the findings that he had been involved in unauthorized outside activities, that he had placed himself in an untenable position in terms of conflict of interest, and that he had wilfully misused his work computer. He adds that, moreover, the disciplinary sanction imposed upon him lacked proportionality. He furthermore points to alleged discrimination, prejudice and bias against him. Third, he contends that there were unreasonable and undue delays in the internal appeal process.

4. The FAO strongly contests these various claims. It also objects to the receivability of the complaint on the basis that it is time-barred, given that it was filed with the Tribunal on 2 October 2021, more than 90 days after the date on which the impugned decision was rendered. On this issue, the complainant states that he received the impugned decision only on 5 July 2021, and that he filed his complaint within the applicable time limit.

5. On its role in matters pertaining to disciplinary measures and sanctions, it is convenient to recall the Tribunal's statement in Judgment 4362, consideration 7, reiterated in Judgment 4749, consideration 5, to the effect that:

“The role of the Tribunal in a case such as the present is not to assess the evidence itself and determine whether the charge of misconduct has been established beyond reasonable doubt but rather to assess whether there was evidence available to the relevant decision-maker to reach that conclusion (see, for example, Judgment 3863, consideration 11). Part of the Tribunal's role is to assess whether the decision-maker properly applied the standard when evaluating the evidence (see Judgment 3863, consideration 8).”

In addition, in Judgment 4579, consideration 4, the Tribunal emphasized that “[it] shall not interfere with the findings of an investigative body in disciplinary proceedings unless there was a manifest error (see Judgments 4444, consideration 5, and 4065,

consideration 5)” (see also Judgments 4770, consideration 12, and 4745, consideration 5).

6. The Tribunal also observes that, with respect to the burden of proof applicable in disciplinary proceedings, also in Judgment 4749, consideration 5, it recalled that “the burden [...] rests on an organisation to prove the allegations of misconduct beyond reasonable doubt before a disciplinary sanction can be imposed”. And, again in Judgment 4362, considerations 8 and 10, it relevantly stated the following:

“8. The standard of proof of beyond reasonable doubt does not exist to create an insuperable barrier for organisations to successfully prosecute disciplinary proceedings against staff members. Indeed it should not have that effect. What is required is discussed in many judgments of the Tribunal. Rather the standard involves the recognition that often disciplinary proceedings can have severe consequences for the affected staff member, including dismissal and potentially serious adverse consequences on the reputation of the staff member and her or his career as an international civil servant, and in these circumstances it is appropriate to require a high level of satisfaction on the part of the organisation that the disciplinary measure is justified because the misconduct has been proved. The likelihood of misconduct having occurred is insufficient and does not afford appropriate protection to international civil servants. It is fundamentally unproductive to say, critically, this standard is the ‘criminal’ standard in some domestic legal systems and a more appropriate standard is the ‘civil’ standard in the same systems involving the assessment of evidence and proof on the balance of probabilities. The standard of beyond reasonable doubt derived from the Tribunal’s case law as it has evolved over the decades, serves a purpose peculiar to the law of the international civil service.

[...]

10. [...] The standard of beyond reasonable doubt concerns both the finding of specific facts and the overall level of satisfaction that the case against the staff member has been made out. In relation to the proof of any essential relevant fact, the person or body charged with the task of assessing the evidence and making a decision in the context of determining disciplinary proceedings must be satisfied beyond reasonable doubt that a particular fact exists.”

7. In his first argument pertaining to procedural grounds and the alleged violation of his right to due process, the complainant raises grievances of a general nature pertaining to the denial of his right to a

fair hearing, the denial of his right to counsel and the intentional exclusion of witnesses potentially giving exculpatory testimonies. However, the Tribunal observes that these general grievances, which are, in fact, vehemently denied by the Organization, are simply not supported by the record.

The evidence found in the record, and relied upon by the FAO to contest this argument, rather shows that, in accordance with the requirements of the Tribunal's consistent case law (see, for example, Judgments 4697, consideration 11, and 4106, consideration 9), the complainant was afforded – even on more than one occasion – the opportunity to comment on all relevant issues during the OIGI investigation. The evidence also confirms that the complainant was informed of the allegations of misconduct at the outset of the investigation, that he was given the opportunity to weigh the evidence presented and to respond to the allegations, and that he was invited to provide evidence or name witnesses in his defence. He was also given the opportunity to submit additional evidence or information in his defence prior to the conclusion of the investigation.

The evidence in the record also supports the conclusion that he was given ample opportunity to test the evidence and to answer the charges against him at every step of the process, namely prior to the dismissal decision of 11 January 2019, during the review process conducted afterwards and which led to the refusal to overturn the measure on 3 June 2019, and during the appeal process before the Appeals Committee that culminated with the latter's report of 10 December 2020.

Finally, the evidence in the record indicates that, although the complainant was informed of the possibility to designate another staff member to act as counsel during the internal proceedings, as provided for in Staff Rule 303.1.36, he did not avail himself of this opportunity.

Accordingly, the complainant's first argument pertaining to an alleged violation of his due process rights has not been established.

8. Turning to the substantive grounds of alleged illegality, namely the complainant's second argument, the complainant first asserts, concerning the alleged insufficiency of the evidence, that his involvement with the two other entities identified in the OIGI investigation report, and which formed the main basis of the impugned decision, was strictly limited to counselling, guiding, mentorship and facilitation where needed. However, the Tribunal notes that, besides the fact that the extent of his involvement was the subject of extensive documentary evidence and statements of persons outside the organization that showed a different picture than the one proposed by the complainant, it remained uncontested that he had, at the very least, failed to disclose the situation and to seek the proper authorizations to be involved with these two entities.

As to his second assertion, to the effect that no conflict of interest existed as there was no financial interest, gift or reward, whatsoever, received by him in a context where he was allegedly merely responding to requests with benevolent and volunteering spirit to support others in need, the Tribunal notes that this was again contradicted by extensive evidence, including documentary evidence, that the organization could correctly assess as convincing and as having been established beyond a reasonable doubt.

Finally, the Tribunal notes that the complainant's last assertion concerning his misconduct with respect to the misuse of the WFP's property by accessing pornography through his professional computer, and therefore exposing the organization to serious reputational harm, is anything but convincing. It is sufficient to recall in this respect that, while the complainant initially argued that the folders at issue were personal and not related to the WFP's activities, thereby clearly showing a misunderstanding of the issue involved and of its seriousness, he subsequently argued, albeit with no evidentiary support, that they had resulted from spams or other unavoidable pop-ups due to the connection with unsecured public networks.

9. Regarding this second argument focusing on the alleged insufficiency of the evidence relied upon by the Organization, the Tribunal indeed finds that the complainant plainly misunderstands the nature of the review with which it is tasked. It is not for the Tribunal, whose role is not to supplant the Administration of an international organisation, to conduct a reassessment of the evidence. On the contrary, in a case such as the present, in accordance with the aforementioned principles of the Tribunal's settled case law, it is sufficient for the Tribunal to establish that the evidence available to the decision-makers could rightly lead them to reach the conclusion they did. Here, a summary review of the evidence clearly shows that the Director-General of the FAO, in the impugned decision, as well as the Executive Director of the WFP, and the Director of HRD of the WFP, in their respective decisions that preceded the impugned decision, could have easily concluded, beyond a reasonable doubt, that the complainant had committed the misconduct of which he was accused, allowing then a disciplinary sanction to be imposed (see, for example, Judgments 4859, consideration 27, and 4227, consideration 6). It is worth adding that both the detailed report of OIGI and the subsequent report of the Appeals Committee had reached similar conclusions.

10. Turning to the question of proportionality of the disciplinary sanction imposed, the Tribunal recalls its statement in Judgment 4749, consideration 10, referring to Judgment 4478, considerations 11 and 12, that "[t]he case law confirms that the decision on the type of disciplinary action taken remains in the discretion of the disciplinary authority, as long as the measure is not disproportionate" (see also Judgment 3640, consideration 29), and that "the Tribunal cannot substitute its evaluation for that of the disciplinary authority, [as] the Tribunal limits itself to assessing whether the decision falls within the range of acceptability" (see also, on this point, Judgment 3971, consideration 17). Moreover, in Judgment 2699, consideration 15, the Tribunal emphasized that it will accord a high degree of deference to decisions concerning sanctions where the misconduct relates to issues of dishonesty, misrepresentation and a lack of integrity (see also, on this point, Judgment 4308, consideration 18). In the present case, the

Tribunal considers that the disciplinary sanction of dismissal surely fell within the range of acceptability.

11. As regards the substantive grounds of alleged illegality raised in his complaint, the complainant furthermore argues, again through very general and unsubstantiated assertions, that the decision to dismiss him was based on discrimination, prejudice and bias against him. But on this kind of allegations, it is sufficient to recall that in Judgment 4745, consideration 12, for example, the Tribunal noted the following:

“According to the Tribunal’s well-settled case law, complainants bear the burden of proof with regard to allegations of bias (see, for example, Judgment 4010, consideration 9). Although evidence of personal prejudice is often concealed and such prejudice must be inferred from surrounding circumstances, that does not relieve complainants, who bear the burden of proving their allegations, from introducing evidence of sufficient quality and weight to persuade the Tribunal. Mere suspicion and unsupported allegations are clearly not enough, the less so where, as here, the actions of the Organization, which are alleged to have been tainted by personal prejudice, are shown to have a verifiable objective justification (see Judgment 4608, consideration 7, and the case law cited therein).”

The unsupported allegations of discrimination, prejudice and bias must simply be discarded in the present matter.

This second argument of the complainant is consequently unfounded on all the grounds submitted.

12. Finally, in the third argument he raises regarding the time that elapsed between the filing of his appeal to the Appeals Committee on 1 August 2019 and the notification of the impugned decision of 14 June 2021, the complainant contends that the delay was long, undue and inordinate, as well as in violation of the applicable rules.

It is true that the Tribunal has regularly recalled that international civil servants are entitled to expect their cases to be examined by the internal appeal bodies within a reasonable time and that failure to deal with them expeditiously may justify an award of compensation (see, for example, Judgments 3510, consideration 24, and 2116, consideration 11). However, the Tribunal has also emphasised that, in this regard, the amount of compensation liable to be granted depends on two essential

considerations, namely the length of the delay and the effect of the delay on the employee concerned (see, for example, Judgments 4727, consideration 14, 4635, consideration 8, 4178, consideration 15, 4100, consideration 7, and 3160, consideration 17).

But, while the length of the delay of the internal appeal process likely appears to be objectively unreasonable in the present situation considering the subject matter of the appeal, namely the dismissal of the complainant, the moral damages of 20,000 United States dollars that he claims in these proceedings do not relate at all to this delay.

As a result, his third and final argument must also be rejected.

13. It follows from the above that all the complainant's arguments are unfounded. Given this, his related claims for reinstatement and for material and moral damages must be rejected as well. In any event, the Tribunal recalls that, according to its consistent case law, any complainant seeking compensation for material or moral damages bears the burden of providing clear evidence of the injury suffered, of the alleged unlawful act, and of the causal link between the injury and the unlawful act (see, for instance, Judgments 4637, consideration 19, 4158, consideration 4, 3778, consideration 4, 2471, consideration 5, 1942, consideration 6, and 732, consideration 3). The Tribunal considers that in his submissions the complainant does not substantiate the amounts of material and moral damages that he is claiming, let alone the existence of any unlawful act.

14. In the result, the complaint is unfounded in its entirety and should be dismissed. Under the circumstances, it is unnecessary to consider the FAO's objection to the receivability of the complaint.

#### DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 12 November 2024, Mr Patrick Frydman, President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Mirka Dreger, Registrar.

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

PATRICK FRYDMAN

JACQUES JAUMOTTE

CLÉMENT GASCON

MIRKA DREGER