

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

**G. (No. 2)**

**v.**

**WHO**

**139th Session**

**Judgment No. 4999**

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Ms A. G. against the World Health Organization (WHO) on 22 October 2021 and corrected on 26 November 2021, WHO's reply of 9 March 2022, the complainant's rejoinder of 8 June 2022 and WHO's surrejoinder of 6 September 2022;

Considering the information provided by WHO on 29 August 2024, at the Tribunal's request;

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 close her harassment complaint.

Facts relevant to this case may be found in Judgment 4449, concerning the complainant's first complaint.

The complainant joined WHO in September 2012 as Senior Human Resources Officer (the title later changed to Regional Human Resources Manager) in the Human Resources Services (HRS), at grade P-5, under a fixed-term appointment, stationed in the WHO

Regional Office for the Eastern Mediterranean (EMRO) in Cairo, Egypt. Following completion of her probationary period in September 2013 and the performance rating of “meets all expectations”, her appointment was converted into a continuing appointment.

In March 2014, Mr L. was appointed as Director, Administration and Finance (DAF) and became the complainant’s direct supervisor. On 20 and 22 May 2014, Mr L. held performance evaluation meetings with the complainant, in which areas requiring improvement were discussed. On 26 May, Mr L. sent a Note for the Record (NFR) to the complainant, “detailing the deliverables expected during the upcoming month”. In the NFR, Mr L. tied the complainant’s Within-Grade Increase (WIGI) to “concrete improvement actions”. On 3 June 2014, the complainant provided her comments about the NFR, in which she stated, among other things, that the approval of her WIGI should be based on her 2013 performance. On 23 July 2014, Mr L. approved the complainant’s WIGI.

Meanwhile, on 5 June 2014, Mr L. sent an email to the complainant, copying two of her subordinates, requesting that she be more thorough with respect to a task for which an error had been identified.

On 25 July 2014, Ms N., Director, Human Resources Department (HRD), sent an email to the Regional Director and recommended extending the complainant’s contract – which was due to expire in September 2014 – for a period of one year, to give the complainant “the time that she require[d] to address her performance weaknesses and to improve”. Ms N. indicated in her email that “[a]nother option [would be] to consider [...] an amicable separation agreement”.

Following a request from the complainant to be considered for reassignment or transfer, Ms N. and the complainant had a meeting on 31 August 2014.

In September 2014, the complainant’s contract was extended for one year.

In November 2014, Mr L. and the complainant discussed objectives and deliverables for the complainant which were reflected in an “Objectives Memo” and a “dashboard” of performance indicators.

On 19 December 2014, Mr L. wrote to the Regional Director and complained about harassment by the complainant.

In early 2015, a consultant conducted a review of HRS and concluded that the complainant “[did] not seem to have the capacity and the skills to lead and manage [HRS]”.

Between February and May 2015, the complainant received coaching sessions from an external management coach. In his report dated 1 June 2015, the coach stated that the complainant’s management and strategic skills, communication skills, and interpersonal skills needed improvement.

On 30 March 2015, Mr L. sent an email to the complainant, informing her that Ms N. would attend their performance meeting scheduled on 7 April 2015 as a witness. On 2 April 2015, the complainant asked Mr L. whether he was considering putting her on a Performance Improvement Plan (PIP). On 6 April, Mr L. responded that he did not intend to discuss a PIP at the 7 April 2015 meeting.

On 7 April, a meeting took place between the complainant, Mr L., Ms N. and a staff association representative, in which Mr L. informed the complainant that he was considering a performance rating between “fails to meet expectations” and “meets most expectations” and discussed establishing a PIP for her.

On 11 June 2015, Ms N. met with the complainant to discuss the latter’s future with the Organization. Ms N. suggested three options: (i) a performance rating of “falls below expectations” followed by a three-month PIP and, in case of non-improvement, a three-month notice of separation, (ii) a neutral performance rating accompanied by a new position in Pakistan, a one-year contract extension and a letter of recommendation provided by Ms N., or (iii) putting the complainant on special leave with full pay for six months to allow her to look for another position, with the help of a recommendation letter from Ms N.

In July 2015, the complainant accepted an offer from another United Nations organization for a position at the P-4 level. She submitted her resignation on 18 August 2015 and separated from WHO on 3 October 2015.

On 30 September 2015, the complainant filed with the Office of Internal Oversight Services (IOS) a formal complaint of harassment against Mr L. and Ms N., alleging, among other things, that the harassment endured forced her to resign from WHO.

In July 2017, IOS completed Investigation Report 17/1115 regarding the complainant's allegations of harassment against Ms N. in which it concluded that there was no evidence to support the complainant's allegations that Ms N. engaged "either alone or in concert with Mr [L.]" in conduct violating the Policy on the Prevention of Harassment at WHO. Pursuant to paragraph 7.16 of the Policy on the Prevention of Harassment at WHO, IOS recommended to the Director- General that the case be closed.

In August 2017, IOS completed Investigation Report 17/1109 regarding the complainant's allegations of harassment against Mr L. in which it found that (i) there was sufficient evidence to support that Mr L. violated the Standards of Conduct for the International Civil Service when he informed the complainant on 6 April 2015 that he did not intend to discuss a PIP at their 7 April 2015 performance discussion, (ii) there was insufficient evidence to support the complainant's allegation that Mr L. engaged in conduct violating the Policy on the Prevention of Harassment at WHO, and (iii) there was insufficient evidence to support that Mr L. violated the Global Policy on Health and Safety at Work. Pursuant to paragraph 7.16 of the Policy on the Prevention of Harassment at WHO, IOS recommended that the Regional Director review the investigation report with a view of taking appropriate action.

According to paragraph 7.17 of the Policy on the Prevention of Harassment at WHO, the IOS investigation reports 17/1115 and 17/1109 were forwarded to two different panels of the Global Advisory Committee (GAC) on future actions in harassment complaints.

In July 2019, the first panel of the GAC issued its report 2019-16 related to the complainant's allegations of harassment against Ms N. In its report, the GAC acknowledged that "there was no overwhelming evidence that there had been any intention to intimidate, harass or victimize the Complainant". The GAC also made a series of general recommendations on the conduct of performance appraisals.

In May 2020, the second panel of the GAC completed its report No. 17 related to the complainant's allegations of harassment against Mr L. The GAC agreed with IOS' conclusion that there was insufficient evidence that Mr L. engaged in conduct violating the Policy on the Prevention of Harassment at WHO. It nevertheless noted that "some emails from Mr [L.] to [the complainant] could have been written in a more courteous manner". With respect to the IOS finding involving the PIP, the GAC found that there was no deliberate attempt to intimidate the complainant or misrepresent the facts, but that Mr L. should have informed her that he was considering a PIP. Regarding the IOS finding that there was insufficient evidence that Mr L. violated the Global Policy on Health and Safety at Work, it found that "the impact on [the complainant's] health and difficulty to perform at work does not seem to be directly related to any particular event or succession of events that could be qualified as harassment". The second panel however noted "some 'borderline' situations when Mr [L.] sent emails to [the complainant], then on sick leave, instructing her to do some work". It further observed that "Mr [L.] was giving a lot of work to his supervisees and was expecting them to work long hours". It recommended that the case be closed and that the following points be communicated to Mr L.: "Mr [L.] should use adequate tools with adequate communication to address performance issues in an open and transparent manner" and "[a]s a Manager, even if highly demanding of himself and putting in a lot of working hours, Mr [L.] should not expect the same from all his Colleagues and Supervisees" and should not "send emails to staff on sick leave since they are not supposed to work during that time".

By letter dated 8 September 2020, the Director-General, following his review of the IOS investigation reports 17/1115 and 17/1109 and the GAC reports 2019-16 and No. 17, wrote to the complainant that he “agree[d] with the assessment of IOS that [the complainant’s] allegations against Ms [N.] and [Mr L.] were unsubstantiated and/or consistent with the usual performance of their respective functions and duties”. The Director-General indicated that, regarding the complainant’s allegations of harassment against Ms N., he had decided, pursuant to paragraph 7.19(i) of the Policy on the Prevention of Harassment at WHO, to close the case with no further action. With respect to the complainant’s allegations of harassment against Mr L., the Director-General stated that he had decided, pursuant to paragraph 7.19(ii) of the same Policy, to close the case with managerial action, adding that he had asked the “Director, [ad interim, Human Resources and Talent Management (HRT)] to contact [Mr L.] in order to discuss additional support to be provided” in the “context of the [performance management] process, and when staff members are on sick leave”.

On 23 December 2020, the complainant lodged an appeal with the Global Board of Appeal (GBA), directed against the 8 September 2020 decision.

In its report dated 21 July 2021, the GBA concluded, regarding the complainant’s allegations of harassment against Mr L., that “IOS appropriately found that the [complainant] was not subject to harassment, that the GAC appropriately recommended closing the case with managerial action, and that the Director-General appropriately accepted that recommendation”. With respect to the complainant’s allegations against Ms N., the GBA “found no basis to question IOS’s conclusions”. The GBA further found that “[t]he GAC panel did not err in concluding that there was insufficient evidence to support the allegation that [Mr L.] violated the Harassment Policy”. It also observed that “[w]hile the GAC panel for the [complaint of harassment against Ms N.] commented that the evidence did not show ‘any intention to intimidate, harass or victimize the [complainant]’, this comment was made as part of a series of observations at the end of its report, not as part of an analysis on whether harassment had been

established, and does not change the panel's conclusion. The reference to 'overwhelming evidence' of intention does not show a failure to apply the correct standard of proof to the [complainant]'s allegations, but a reflection of the GAC's assessment of potential disciplinary proceedings as part of its role." Moreover, the GBA rejected the complainant's allegations of constructive dismissal, taking note that she "voluntarily resigned". The GBA nevertheless noted that the delay in dealing with the complainant's harassment complaint constituted a breach of duty of care. The GBA further observed the following:

"[T]he circumstances underlying this appeal are also a result of WHO's failure to meet its duty of care. The evidence shows that EMRO was a challenging setting to perform in, leading to a poor working environment with lasting consequences for staff members in the region. On the one hand, the [complainant] had a responsibility to accept reasonable criticism of her work and endeavour to meet expectations. On the other hand, WHO had a responsibility to facilitate, to the extent possible, the [complainant]'s success in her position as well as the resolution of conflict with her colleagues. This responsibility belonged to EMRO management as much as [Headquarters]. While some steps were taken, such as providing feedback on her work and external coaching, the Panel had trouble understanding, in light of the consensus among management that she lacked the skills necessary for her position, how she had been appointed to that position, why her appointment was confirmed, and why the issues with her performance were not fully documented and addressed earlier on. With respect to resolution of conflict, the Panel noted that the relationship between the [complainant] and [Mr L.] broke down early on and was never repaired. There is no evidence of a response to [Mr L.]'s email of complaint to the [Regional Director] about the [complainant]'s harassing behaviour. If any steps were taken, this is not apparent in the record before the Panel. Allegations of harassment, whether formal or informal, grounded or groundless, are serious matters that should be addressed. WHO failed in its duty of care by permitting such a situation to continue in an already stressful working environment, and this had lasting negative consequences for staff as well as for the Organization."

The GBA recommended to the Director-General to allow the appeal in part and award the complainant 5,000 euros in moral damages for the delay and the failure to meet the duty of care, and up to 1,000 euros in legal fees subject to the provision of invoices and proof of payment.

On 27 August 2021, the Director-General accepted the recommendations of the GBA. That is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision, to award her 200,000 United States dollars in moral damages, 410,353.96 United States dollars in material damages and an additional 30,000 euros for the delay in dealing with her harassment complaint. She also claims costs in the amount of 30,000 euros.

WHO asks the Tribunal to dismiss the complaint in its entirety and submits that one of the complainant's claims is irreceivable.

#### CONSIDERATIONS

1. The complainant was a WHO staff member between September 2012 and 3 October 2015. She had worked as Senior then Regional Human Resources Manager in the Human Resources Services based in Cairo, Egypt. Her separation from service was the result of her having tendered her resignation on 18 August 2015. This matter concerns a complaint of harassment filed by the complainant on 30 September 2015. This was three days before her resignation took effect and approximately six weeks after she tendered her resignation. The complainant resigned to take up a P-4 position with another United Nations organization which she had been offered in July 2015.

2. In her brief, the complainant identifies the relief she seeks. Firstly, she seeks that the impugned decision be set aside, that is to say the decision of the Director-General of 27 August 2021 accepting the recommendations of the Global Board of Appeal (GBA). It had recommended the appeal be allowed in part, namely, to pay the complainant damages for delay, but otherwise did not recommend that the appeal be allowed insofar as it was against the Director-General's decision to close the case of harassment alleged by the complainant. Secondly, she seeks material damages in the sum of 410,353.96 United States dollars on the basis she was treating her employment as having been constructively terminated by WHO notwithstanding she resigned (see Judgment 4383, consideration 15, for the definition of constructive

dismissal). She also seeks moral damages of up to 200,000 United States dollars, 30,000 euros for delay, and another 30,000 euros for costs. It should be immediately noted that the complainant has already received additional moral damages from the Tribunal for the delay in the investigation of her complaint and subsequent internal appeal proceedings (see Judgment 4449, consideration 9). The final impugned decision of the Director-General was made a month after the report of the GBA, an unexceptionable period of time which does not warrant the awarding of further moral damages for delay.

3. The focus of the complainant's harassment complaint concerned the conduct of Mr L., who took up the position of Director, Administration and Finance (DAF) at the Regional Office for the Eastern Mediterranean in March 2014, and Ms N. who was Director of the Human Resources Department (HRD) at WHO Headquarters. The consideration of the complaint went through several phases. The first entailed separate investigations by the Office of Internal Oversight Services (IOS) into the conduct of Mr L. on one hand, and Ms N. on the other. The IOS report concerning Mr L. was issued in August 2017 and the IOS report concerning Ms N. was issued in July 2017. Each report was subsequently considered, separately, by the Global Advisory Committee (GAC) on harassment constituted by three members which issued a report in relation to Mr L. in May 2020 and by the Committee constituted by three different members which issued a report in relation to Ms N. in July 2019.

4. On 8 September 2020, the Director-General decided to close the complainant's harassment complaint against her two former colleagues. This led to an internal appeal by the complainant considered by the GBA, constituted by three members which issued its report and recommendations on 21 July 2021. As noted earlier, its recommendations were accepted by the Director-General who, on 27 August 2021, dismissed the appeal.

5. This brief account of the consideration of the complainant's harassment complaint illustrates that it was considered and assessed by a number of people in a variety of contexts and the initial decision of the Director-General under paragraph 7.19(ii) for Mr L. and (i) for Ms N. of the Policy on the Prevention of Harassment at WHO, to close the complaint, was found generally to have been justified.

6. At the forefront of the complainant's pleas in these proceedings, is an invitation to the Tribunal to review and assess the evidence and make its own findings and reach its own conclusions about whether harassment had taken place. However, it is well established in the Tribunal's case law, it is not the Tribunal's role to re-evaluate the evidence in a case such as the present and in the face of findings by an investigative body (see, for example, Judgment 4884, consideration 5), at least in the absence of demonstrated manifest error. Also, an internal appeals body's report warrants considerable deference in circumstances, which exists in the present case, where the report involves a balanced and thoughtful analysis of the issues raised in the internal appeal and its conclusions and recommendations were justified and rational (see, for example, Judgment 4848, consideration 10).

7. The question which immediately arises is whether the complainant, in her pleas, has established a vitiating error on the part of IOS in its investigations and reports, on the part of the GAC in its deliberations and reports, the GBA in its deliberations and report or on the part of the Director-General in the exercise of his discretionary power to close the case. The short answer is that she has not. Two possible points of substance are raised by her. They both concern the proof required to establish the alleged harassing conduct.

8. Firstly, the complainant focuses on observations of the GAC in its report in relation to Ms N. in which the Committee used the expression "no overwhelming evidence" to describe the absence of sufficiently probative evidence to establish an intention to intimidate, harass or victimize. Desirably, the word "overwhelming" would not have been used. But it cannot be treated as signifying the application of

an inappropriate standard of proof particularly given that it related to a fact which was ultimately, at best, of limited relevance, namely whether Ms N. intended to harass or victimise the complainant. Harassment can occur even if not intended (see Judgment 4167, consideration 7). Moreover, the definition of harassment in the Policy on the Prevention of Harassment at WHO covers situations where the alleged harasser “knows or reasonably ought to know” that their conduct would offend, humiliate or intimidate the alleged victim. The GAC was alive to this distinction between “knows” and “reasonably ought to [have] know[n]” as it earlier quoted, in its report concerning Ms N., the definition from the Policy emphasizing, by underlining, the words “reasonably ought to know would offend, humiliate or intimidate”. The GAC was not treating the evidence or the quality of the evidence concerning intention as decisive.

9. The second issue concerning a standard of proof involved a contention that IOS and the GBA applied an inappropriate evidentiary standard, namely beyond reasonable doubt. But the foundation for this argument is not what either body said was the standard they were applying, but its *ex post facto* characterisation in the pleas of WHO in these proceedings. That is an insufficient basis to conclude there was a vitiating legal error on the part of either body.

10. The complainant has failed to establish any legal error warranting the relief claimed. Accordingly, the complaint should be dismissed.

#### DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 6 November 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