

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

S. L. (No. 2)

v.

FAO

140th Session

Judgment No. 5006

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr R. F. S. L. against the Food and Agriculture Organization of the United Nations (FAO) on 14 March 2023, the FAO's reply of 5 June 2023, the complainant's rejoinder of 10 July 2023, the FAO's surrejoinder of 5 October 2023, the complainant's additional submissions of 6 March 2024 and the FAO's final comments thereon of 7 May 2024;

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 challenges the decision to summarily dismiss him, in particular for alleged sexual harassment and failure to act in compliance with internal rules concerning the use of electronic devices.

The complainant joined the FAO in 1992 and was promoted several times. Hence, in September 2015, he was assigned to the position of Deputy Director of the Office of Human Resources (OHR) at grade D-1 and, in April 2018, to the position of Director of OHR.

On 10 July 2019, the complainant was notified that the FAO Office of the Inspector General (OIG) was investigating allegations of unsatisfactory conduct on his part. The OIG had received information that he may have engaged in acts of sexual harassment by requesting a sexual favour from a former staff member and by forcibly kissing another former staff member. Additionally, the complainant was informed that, if true, these actions may constitute violations of the FAO's Policy on Sexual Harassment (Administrative Circular 2019/01 of 13 February 2019) and the Standards of Conduct for the International Civil Service. Shortly after, the complainant was interviewed by a senior investigator and a second investigator. Further investigatory measures were taken, in particular search of electronic data associated with the complainant's user account.

On 1 August 2019, the newly elected FAO Director-General took office. Shortly after, the complainant was placed on special leave with pay, and he was then suspended with pay pending investigation.

The investigation concerning the complainant's actions was suspended from 30 August 2019 to 20 November 2019 as he had filed a complaint of harassment against the senior investigator. That complaint was rejected internally and the final decision made on the matter was the subject of the complainant's first complaint, which the Tribunal examined in Judgment 4776. In this judgment, the Tribunal found that the decision to close the complaint of harassment was unlawful but considered that no purpose would be served in remitting the matter to the Organization.

In late November 2019, a supplemental notification of investigation was issued informing the complainant that the OIG had reviewed the activity logs on his electronic devices and observed actions that may constitute misuse of the electronic resources. Hence, the investigation regarding the allegations of sexual harassment against the complainant was extended to include that matter.

In its report of 20 April 2020, the OIG concluded that there was insufficient evidence to substantiate the allegation of sexual harassment with regard to one former staff member. However, it found that there was evidence that, in late 2015, the complainant told another former

staff member that he would assist with her colleagues' transfer in exchange for a sexual favour. The OIG noted that the fact that the complainant's intention could not be conclusively ascertained and the nature of the earlier relationship between the complainant and the former staff member were irrelevant because, in light of the complainant's senior position at the time, the grade differential between them together with the fact that they were colleagues in OHR, the complainant should reasonably have expected his statement to be offensive. His action violated applicable rules, as did his use of a FAO-assigned device to store and repeatedly access pornographic material. In addition, the report indicated that the complainant failed to abide by his obligation to cooperate with the investigation as he withheld and deleted information and provided misleading or false information. The OIG therefore recommended that disciplinary proceedings be initiated against him. A few days later, the complainant was provided with a copy of the investigation report and submitted his comments thereon shortly after.

By a memorandum of 29 May 2020, the Director, OHR, notified the complainant that disciplinary procedures were initiated against him because his conduct was deemed unsatisfactory. Consideration was given to the fact that, at the time of the alleged events, he held a position of authority and leadership in OHR and that his actions were likely to "gravely jeopardize" the FAO's reputation and its staff. Hence, in light of the gravity of the charges laid against him and the sufficient *prima facie* evidence, the complainant was suspended without pay as of the date of receipt of this memorandum until the completion of the disciplinary proceedings. The Director added that, if the disciplinary measure of summary dismissal was eventually imposed, the measure would be effective as from the date of the suspension without pay. The complainant provided his comments thereon.

On 21 June 2020, the complainant was notified that he was summarily dismissed for serious misconduct as it was established beyond a reasonable doubt that his actions towards one staff member constituted sexual harassment, that he had acted in breach of the rules prohibiting the access and storing of pornographic material, and that he had withheld and deleted information and provided misleading or false

information during the investigation process. The summary dismissal and ensuing separation formalities were made effective as of 29 May 2020.

In September 2020, the complainant filed an appeal with the Director-General contesting the decision of 21 June 2020. He alleged, in particular, that the investigation and disciplinary processes were flawed and that the FAO had breached its duty of care. His appeal was rejected as unfounded in that respect. In January 2021, the complainant lodged an appeal with the Appeals Committee against this decision.

In its report of 14 October 2022, the Appeals Committee recommended rejecting the appeal as irreceivable insofar as the complainant raised arguments that he had already made in an earlier appeal, namely his claims regarding the long duration of the investigation, the alleged conflict of interest on the part of the senior investigator, and the breach of confidentiality. Regarding the claim that his medical certificates were ignored when determining the date of his termination, the Committee noted that he did not submit that claim in the letter of appeal of 17 September 2020 and therefore had failed to exhaust the internal means of redress in that respect; he was also time-barred to do so then. The Appeals Committee further concluded that the appeal was otherwise unfounded. In particular, it recommended rejecting the allegations of breach of due process during the investigation, and the challenge that the complainant made against some of the investigation's findings on sexual harassment as he had not established a manifest error calling into question the OIG's final conclusion in that respect. The Committee also observed that the complainant had not provided evidence to reverse the OIG's findings that his actions and omissions during the investigation cast substantial doubts over the credibility of the information he had provided, and had not referred to any legal provisions to support his argument of breach of privacy regarding the charge of accessing and storing pornographic material. Lastly, the Appeals Committee found that the complainant had failed to abide by his obligation to cooperate fully with the investigation by withholding and deleting information. Consequently, the Committee considered that the sanction imposed was proportionate having regard, particularly to

the complainant's numerous violations of rules and policies and the position he held at the time.

By a letter of 15 December 2022, the Director-General notified the complainant that he concurred with the Appeals Committee's recommendation to dismiss his appeal. The Director-General added that, given the gravity of the complainant's actions and the managerial responsibilities he was entrusted with as Deputy-Director and Director, OHR, the disciplinary measure of summary dismissal was proportionate to his serious misconduct. This is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision, to reinstate him in his position as Director, OHR, or in another position suitable to his experience and qualifications, with retroactive effect from the date of separation. If he is not reinstated, he asks to be awarded material damages in an amount equivalent to the "salary and applicable allowances at the D2 step 2 level, for such time as could be expected for him to reach his mandatory age of separation, including medical insurance, reimbursement of any sums he may be required to pay as national tax on the amount awarded and including the loss in value of expected pension benefits". In addition, he seeks moral damages and costs in the amount of 10,000 euros. Lastly, the complainant requests the production of the report of the Audit Committee's session held on 18 and 19 July 2019 during which the statements concerning him were examined. In his rejoinder, he indicates that he maintains his claims for relief but subsidiarily asks, in the event the Tribunal rejects them, that it orders the FAO to rescind the summary dismissal decision and impose a "lesser sanction". In such a case, the complainant requested in his brief that compensation should be "paid in proportion to the reduced sanction".

The FAO asks the Tribunal to dismiss the complaint as irreceivable insofar as it concerns arguments that he had already made in his first complaint (leading to Judgment 4776). It also argues that the complainant has failed to exhaust internal means of redress regarding claims relating to the decision of 29 May 2020. The complaint is otherwise unfounded. Finally, the FAO objects to the complainant's

request for disclosure of documents on the ground that it is based on pure speculation and amounts to a fishing expedition.

CONSIDERATIONS

1. The complainant is a former member of staff of the FAO. He was summarily dismissed by a decision dated 21 June 2020, effective 29 May 2020. He then was the Director of OHR. The relevant background is mostly summarised earlier in this judgment.

2. The FAO applies for joinder of the present complaint with the complainant's first complaint. The Tribunal has already ruled on his first complaint, with Judgment 4776. As a consequence, the present request for joinder is moot (see Judgment 4487, consideration 6, and the case law cited therein).

3. It is convenient to focus, at the outset, on what was the impugned decision and the relevant decisions which preceded it. A decision was made on 21 June 2020 to summarily dismiss the complainant, following an investigation by the OIG which had resulted in a report (INV0720) dated 20 April 2020 (the Report). The complainant appealed from that dismissal decision. The appeal was addressed by the Appeals Committee in a report of 14 October 2022 which recommended the appeal be dismissed in its entirety. In a decision dated 15 December 2022, the Director-General acted on this recommendation and dismissed the appeal. This is the decision impugned in these proceedings.

4. In his brief, the complainant advances his arguments under ten headings. The first concerns receivability and "the arguments regarding flaws of the investigation are receivable". The second is "[t]he allegations [made against him] were time-barred" and the third is that "[t]he duration of the investigation was excessively long". The fourth is that "[d]ue process requirements were not respected" and the fifth is that "[t]he Senior Investigator acted in a conflict of interest". The sixth is that "[c]onfidentiality was breached". The seventh is "[a]rguments regarding the specific findings of the investigation

report”. This is divided into three subheadings, the first of which is itself divided into 18 further subheadings. It is unnecessary to set out, in detail, these subheadings. The eighth heading is “[t]he standard of proof intended to be applied is inadequate” and the ninth is that “[t]he disciplinary measure is out of proportion”. The tenth and last heading is that “[v]alidated medical certificates were ignored in determining the date of termination”.

5. It is convenient to consider the second argument that “[t]he allegations were time-barred”. Indeed, it is decisive.

6. The disciplinary proceedings against the complainant were initially based on, amongst other things, two allegations of sexual harassment. Those allegations were identified in a memorandum of 29 May 2020 (29 May memorandum) from the Director, OHR, which was effectively a letter of charges. One allegation of sexual harassment had been made by Ms C. However, the 29 May memorandum said this was not to be pursued because the OIG had assessed the available evidence was insufficient to substantiate the allegation.

7. The other allegation of sexual harassment had been made by Ms S., first raised when she was interviewed by the OIG on 12 June 2019. It concerned an incident in December 2015 and subsequent behaviour by the complainant in that month. At that time, the reporting of sexual harassment was governed by Administrative Circular 2015/03 (2015 Policy Circular). Under clause 29, the 2015 Policy Circular allegations of sexual harassment needed to be made within a year. The 2015 Policy Circular declared that “any complaint filed more than a year after the most recent alleged incident will be inadmissible”. Fairly unambiguously, this created a time limit restricting consideration of allegations of sexual harassment to those made concerning conduct within the year preceding the complaint. It can be inferred that this time limit was intended to ensure, amongst other things, that complaints of sexual harassment would be investigated and evidence taken when the events in question were comparatively fresh in the minds of those involved or allegedly involved. It also identified the legal status of a

complaint filed outside the specified time. It was “inadmissible” which must be taken to mean, in this context, would and could not be entertained by the FAO.

8. However, the allegation by Ms S. was, in the 29 May memorandum, considered by reference to the FAO’s “Policy on Prevention of Sexual Harassment” promulgated in Administrative Circular 2019/01 (2019 Policy Circular). Indeed, in the 29 May memorandum it was declared that “[y]our reference to a different timeline, foreseen in Administrative Circular 2015/03 – *Policy on The Prevention of Harassment, Sexual Harassment and Abuse of Authority* – is not relevant in the present case, which is governed by Administrative Circular 2019/01 – *Policy on Prevention of Sexual Harassment*”. But this statement is not correct.

9. The 2019 Policy Circular commenced, on the first page, with an explanation of its origins and aims. On this first page it declared that “[t]his policy takes effect immediately”. The 2019 Policy Circular was dated 13 February 2019. Thus, according to its terms, it took effect on 13 February 2019. However, it also declared that “[a]ll complaints of sexual harassment received prior to this date [would] continue to be dealt with under the provisions of [the 2015 Policy Circular]”. Quite clearly the 2019 Policy Circular was not intended to have retrospective operation. Having regard to this language it is unnecessary to draw upon the Tribunal’s case law, but it is to the effect that it is only in atypical and clear cases that normative legal documents are treated as having retrospective operation (see Judgments 4254, consideration 4, 3884, consideration 4, and 2315, considerations 22 and 23).

10. The allegation of sexual harassment raised by Ms S. in June 2019 should have been raised under the 2015 Policy Circular within a year of the events she identified. She should have raised under the policy the events of December 2015, by the end of 2016 at the latest. She did not raise them within the specified time limit, and, in consequence, they became “inadmissible”. The Tribunal’s case law is clear. Time limits should be respected and a failure to meet them has

legal consequences (see Judgments 3917, consideration 10, and 2170, consideration 14). In the present case, the Administration could not rely on the December 2015 incidents to pursue disciplinary proceedings against the complainant and ultimately dismiss him by reference, in part, to his conduct at that time. This alone warrants the setting aside of the initial decision of June 2020 to summarily dismiss the complainant and the impugned decision to dismiss his appeal.

11. It should be noted that the Tribunal has entertained the preceding argument in these proceedings given its statement in an earlier judgment concerning the complainant, Judgment 4776, consideration 12:

“The decision to dismiss him is presently the subject of another complaint before the Tribunal. The complainant has had the opportunity to ventilate, in those proceedings, any deficiencies in the investigation process, if they were relevant to the lawfulness of the decision to dismiss.”

12. Notwithstanding that the decisions referred to in consideration 10 will be set aside, no question could realistically arise about the Tribunal making an order reinstating the complainant or remitting the matter to the FAO. His relationship with the FAO has clearly broken down and reinstatement is inappropriate (see Judgment 4660, consideration 20). The misconduct alleged against him extended beyond the allegation of sexual harassment by Ms S. It included that the complainant had intentionally withheld and deleted information and provided misleading or false information during the investigation. This was characterised by the Organization in its submissions to the Appeals Committee as “a distinct head of serious misconduct”. It also included that the complainant accessed and stored pornographic material on a “FAO-assigned device”. In rejecting a multitude of submissions about these matters, it is clear the Appeals Committee was satisfied that these allegations were made out in a balanced and thoughtful opinion. It is well settled in the Tribunal’s case law as exemplified by Judgment 4850 that:

“The role, factual findings and conclusions of an appeal body can assume some significance in proceedings in the Tribunal, particularly in relation to findings of fact. This issue was discussed in Judgment 4488, consideration 7:

‘The Tribunal’s case law establishes in, for example, Judgment 4407, at consideration 3, that an internal appeal body’s report warrants considerable deference in circumstances where its report involves a balanced and thoughtful analysis of the issues raised in the internal appeal, as it does in this case, and on its analysis its conclusions and recommendations were justified and rational, as again they are in this case [...]’

It was also discussed in Judgment 3422, consideration 3:

‘At this point, it is appropriate to note the observations of the Tribunal in Judgment 2295, consideration 10, that it is not the role of the Tribunal to reweigh the evidence before an internal appeals board and the conclusions of the board are entitled to considerable deference. While the case leading to Judgment 2295 involved the evaluation of evidence from witnesses about allegations of unsatisfactory behaviour in the workplace, the evaluation by any internal appeal body of matters with which they are likely to be familiar, must be given significant weight as long as the Tribunal is satisfied the appeal body has undertaken a comprehensive and thoughtful consideration of the evidence and the applicable principles and its conclusions are rational and balanced.’”

13. At least the high probability, if not certainty, is that were the matter remitted to the FAO there would be further consideration of his misconduct, and a decision made to dismiss him.

14. Apart from seeking an order setting aside the decisions referred to in consideration 10 and an order for reinstatement, the complainant sought, in lieu of reinstatement, material damages in an amount equivalent to salary and applicable allowances at the relevant level for such time as he could be expected to reach his mandatory retiring age of separation. An order in these terms is not appropriate for the reasons discussed in the preceding consideration. However, some material damages should be awarded on the extremely unlikely basis that the complainant would not be dismissed. Those material damages are assessed in the sum of 5,000 United States dollars.

15. The complainant seeks moral damages. He does not identify, let alone discuss and prove, any moral injury he may have suffered as a result of the decision to dismiss him. Proof of moral injury is the foundation for awarding moral damages (see Judgment 4776, consideration 14). Accordingly, no moral damages should be awarded.

16. The complainant also seeks compensation for legal expenses incurred. He is not legally represented. As a self-represented complainant, he is entitled to some legal costs assessed in the sum of 1,500 United States dollars.

17. Given the outcome, the Tribunal considers it unnecessary to order the request for disclosure of documents.

DECISION

For the above reasons,

1. The decision of 21 June 2020 to summarily dismiss the complainant and the impugned decision of 15 December 2022 to dismiss his appeal are set aside.
2. The FAO shall pay the complainant 5,000 United States dollars material damages.
3. The FAO shall pay the complainant 1,500 United States dollars costs.
4. All other claims are dismissed.

In witness of this judgment, adopted on 9 May 2025, Mr Michael F. Moore, Vice-President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, René M. Vargas M., Registrar.

Delivered on 3 July 2025 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

HONGYU SHEN

RENÉ M. VARGAS M.