P. C.

v.

ILO

140th Session **Judgment No. 5008**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr P. L. P. C. against the International Labour Organization (ILO) on 17 July 2023 and corrected on 1 September 2023, the ILO's reply of 6 October 2023, the complainant's rejoinder of 5 January 2024 and the ILO's surrejoinder of 6 February 2024;

Considering Articles II, paragraph 1, 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 discharge him on disciplinary grounds.

The complainant was employed by the International Training Centre of the ILO (ITC-ILO or "the Centre"), located in Turin, Italy, under short-term contracts in 2003 and 2009. In 2013, he was granted a fixed-term appointment as Finance Clerk, at grade G-3, in the Budget Management and Financial Reporting Section of the Financial Services of the Centre.

By an email dated 13 October 2021, a representative of the Staff Union Committee (SUC) of the Centre informed the Chief of the Human Resources Services (HRS) about allegations of inappropriate

behaviour by two male staff towards junior female staff during an after-work event held at the Centre's premises on 1 October 2021. He indicated that seven female junior staff had met to discuss potential actions in this regard, however, they ultimately resolved not to proceed due to the "precarious positions" of some of them and the fact that one of the male staff involved held the position of Programme Manager. The representative requested a prompt reaction to the situation.

By emails dated 4 and 12 November 2021 addressed to the Chief of HRS, a female staff member reported incidents of sexual harassment concerning her and another female staff member. These incidents involved unsolicited comments of a sexual nature from the complainant which allegedly occurred during the after-work event on 1 October 2021. On 18 November 2021, the Chief of HRS referred these allegations to the Director of the Centre. He indicated that, in compliance with the Centre's "zero tolerance" policy of any form of harassment, as outlined in paragraph 1(c) of Circular No. 13/2009 of 27 March 2009 entitled "Policy and procedures for dealing with harassment", HRS urgently required an investigation by the "Internal Auditors" in respect to the allegations at issue. On the same day, the allegations of harassment were referred to the Office of Internal Audit and Oversight (IAO). Following internal discussions between the Centre and the ILO regarding the applicable procedure for conducting the investigation and the advice of the latter's Legal Adviser, the IAO of the ILO was finally entrusted in December 2021 with the task of investigating the allegations brought against the complainant.

On 3 October 2022, the complainant was informed that the IAO was conducting an investigation into allegations of harassment made against him. He was summoned to an interview scheduled for 6 October 2022, during which he denied all allegations.

The IAO investigators interviewed several witnesses during the course of the investigation and identified a third female staff member who alleged that the complainant had also made unsolicited comments of a sexual nature towards her during the after-work event of 1 October 2021. The IAO submitted its investigation report in March 2023,

concluding that the complainant had engaged in "undesired conduct of a sexual nature" towards three female colleagues on 1 October 2021.

By letters dated 14 and 17 March 2023, the Director ad interim of the Centre notified the complainant of the findings of the IAO investigation report. He informed the complainant that the violations outlined in the report constituted serious misconduct warranting the application of a severe disciplinary sanction. Consequently, the Director ad interim had decided to propose the sanction of discharge to the Joint Negotiating Committee (JNC) for its observations and report. The complainant was invited to submit his comments on the proposed sanction and was provided with a copy of the investigation report. On 20 March 2023, the complainant requested an extension of the deadline for submitting his observations and the transcripts of the interviews of the three alleged victims. The Director ad interim granted the extension on 21 March 2021 but informed the complainant that the requested transcripts could not be provided due to the confidentiality of the witness statements. On 3 April 2023, the complainant submitted his observations on the proposed sanction.

The JNC Sub-Committee on Human Resources Issues met on 19 April 2023 to consider the disciplinary sanction proposed by the Centre's Director ad interim. In the Sub-Committee report, dated 27 April 2023, the management representatives stated that the allegations of misconduct brought against the complainant had been substantiated by the investigation report and that the proposed sanction was proportionate given the Centre's zero tolerance policy towards any form of harassment. The SUC representatives, conversely, indicated that the Centre had been informed of inappropriate behaviour allegedly perpetrated by another male staff member during the same event, yet no investigation was conducted regarding this matter. Therefore, they considered that the complainant was treated unfairly. They also proposed that independent medical advice on the complainant's condition be obtained to find a fair solution, taking into account his health problems.

By a letter dated 12 May 2023, which constitutes the impugned decision, the Director ad interim of the Centre informed the complainant of his decision to impose the disciplinary sanction of discharge upon him as he was satisfied that it had been proven beyond reasonable doubt that he had engaged in serious misconduct. The Director ad interim emphasized that the JNC report did not dispute the facts underlying the proposed sanction or the qualification of such facts as serious misconduct.

On 30 May 2023, the Chief of HRS confirmed to the complainant, following his enquiry in this regard submitted on 27 May 2023, that the decision notified on 12 May 2023 to impose on him a disciplinary sanction was final and that he was authorized to challenge it before the Tribunal.

The complainant requests the Tribunal to quash the impugned decision. He also requests the Tribunal to order his reinstatement to his former position with retroactive effect to the date of his discharge, and to pay him all salaries, benefits and emoluments from the date of his discharge to the date of reinstatement, including interest of 8 per cent from due dates. Alternatively, he requests the Tribunal to order the Organization to pay him compensation for material damages equivalent to five years of all salaries, step increases, emoluments and benefits of any kind, including his lost pension benefits. The complainant requests the Tribunal to award him compensation for moral damages in the amount of 50,000 euros, "consequential" damages for "expected medical expenses", as well as costs in the amount of 20,000 euros, and any other relief the Tribunal deems fair and just. Lastly, he requests the Tribunal to order the Organization to remove and destroy any documents relating to the harassment investigation from any of its official files, and to remove and destroy any adverse material from his official personnel or status file.

The Organization requests the Tribunal to dismiss the complaint as devoid of merit.

CONSIDERATIONS

1. The complainant impugns the 12 May 2023 decision by which, referring to his previous letter of 17 March 2023, the Director ad interim of the ITC-ILO applied the disciplinary sanction of discharge as it was proven beyond reasonable doubt that the complainant had engaged in serious misconduct. In the 17 March 2023 letter, the Director ad interim, concluded, based on the findings of the investigation report from the IAO, that:

(i) during an after-work event organized at the Centre's premises on 1 October 2021, the complainant, while under the influence of alcohol, made several highly inappropriate and unwelcome comments and proposals of a sexual nature to certain female colleagues;

(ii) such behaviour, showing complete disregard for the dignity of the complainant's colleagues and of the complainant's "duties of conduct", was unacceptable and could not be tolerated at the Centre;

(iii) the complainant's conduct infringed: (i) the Standards of Conduct of the International Civil Service, in particular the guiding principles set forth in paragraphs 21 and 22, which provide that harassment in any shape or form is an affront to human dignity and international civil servants must not engage in any form of harassment; (ii) Article 4.2 of the Staff Regulations which provides that officials shall conduct themselves at all times in a manner befitting their status as international civil servants and that they shall at all times bear in mind the reserve and tact incumbent upon them by reason of their status; and (iii) the statement signed by the complainant on 3 February 2009 undertaking to observe the Standards of Conduct and to conduct himself at all times in a manner befitting his status as an international civil servant.

In a letter of 30 May 2023, the Chief of HRS confirmed that the 12 May 2023 decision was final and that it could be challenged directly before the Tribunal.

2. The complainant groups his arguments in eight pleas under the following headings:

(i) Breach of procedures/*ultra vires* investigation/breach of freedom of association;

(ii) Failure to give proper notice of allegations;

(iii) Failure to conduct procedure expeditiously;

(iv) Failure to investigate thoroughly/targeting solely the complainant;

(v) The complainant was not provided with material evidence;

(vi) No evidence beyond a reasonable doubt;

(vii) The behaviour at issue did not violate the harassment policy; and

(viii) The sanction was manifestly out of proportion.

3. In his first plea, the complainant contends that the ITC-ILO failed to observe the procedure set out in Circular No. 13/2009 of 27 March 2009 and that the IAO investigation was *ultra vires*. He contends that there was a complaint of harassment, filed by Ms K., and that, in consequence, the Organization should have established a three-member Commission of Inquiry to conduct the investigation, rather than committing the investigation to the IAO. The complainant also contends that the failure to establish a Commission of Inquiry amounted to an infringement of his right of freedom of association, as one of the members of the Commission must be a staff union member designated by the SUC. He asserts that he "was a member of the staff union and entitled to the participation of the staff union member in the processing of his case". In his rejoinder, he adds that the Organization also breached the principle *tu patere legem quam ipse fecisti*, as it was bound to follow the procedure outlined in the said Circular.

This plea is unfounded.

Circular No. 13/2009 enshrines the "Policy and procedures for dealing with harassment" at the ITC-ILO and provides for complaints filed by the alleged victims of harassment. In the present case, on 4 November 2021, a female staff member reported, by email, an incident of alleged harassment, which she confirmed in an email of

12 November 2021. She included in this second email the testimony of another female staff member, who was the alleged victim of a further harassment incident. A third victim of a third harassment incident, which took place the same day as the other two, was also identified. However, none of the three alleged victims lodged a complaint. The two emails expressly indicated their subject as limited to "reporting incident + seeking advice". Nothing more. They cannot be characterized as a complaint enlivening Circular No. 13/2009. In the absence of complaints of harassment within the meaning of the Circular, it was not applicable.

However, this does not mean that, when aware of misconduct amounting to harassment, the Organization cannot take action by its own motion in the absence of a complaint. It is well settled in the case law that an international organization has a duty to provide a safe and adequate working environment for its staff members and that given the serious nature of allegations of harassment, an organization has an obligation to investigate them (see Judgments 4663, considerations 9 and 11, 4378, consideration 4, 4344, consideration 3, 4253, consideration 3, and 4207, consideration 15). Moreover, the investigation must be initiated promptly, conducted thoroughly and the facts must be determined objectively and in their overall context (see Judgments 4837, consideration 4, 4808, consideration 11, and 4602, consideration 14).

4. Certainly, in the present case, the ITC-ILO's power to take disciplinary action on its own motion in cases of harassment, on the one hand, and the IAO's mandate to investigate misconduct, on the other hand, rest on the following provisions, namely:

(i) Article 14.10(a) and 14.10(c) of the Financial Rules of the Centre, according to which, respectively, "[t]he Chief Internal Auditor of the [ILO] shall be the Internal Auditor of the Centre" and "[t]he Internal Auditor is responsible for [...] investigation of [...] administrative misconduct [...]";

(ii) Paragraph 43 of Circular No. DIR 02/2015 concerning the Centre's accountability framework, according to which "[t]he ILO Office of [the IAO] is responsible for [...] investigation of

[...] administrative misconduct [...] It receives allegations of [...] misconduct from officials and others with the assurance that any information will be treated confidentially [...]";

(iii) Paragraph 6 of the Standard Operating Procedure (SOP) Investigations of the IAO, in the version of July 2018, according to which "[t]he IAO has the mandate to investigate all suspected matters of [...] misconduct by staff members, [...] as per the following: a. ILO Financial Regulations and Rules [...] c. Investigation Charter [...]"; and

(iv) Paragraph 2 of Circular No. 13/2009, according to which "[...] sexual, psychological or discrimination harassment at the workplace or in relation to work [...] will lead to disciplinary measures".

The complainant's objection is that investigations into harassment and sexual harassment do not fall within the IAO's mandate, as should allegedly be inferred from paragraph 9 of the SOP. This objection is misconceived.

Pursuant to paragraph 9 of the SOP, "[n]ormally, [an] IAO investigation does not extend to those areas for which separate provision has been made for review including harassment, sexual harassment [...]".

The Tribunal notes that this provision does not exclude the mandate of the IAO concerning investigation into harassment. It merely implies that, ordinarily, there would not be an IAO investigation when other procedures are applicable. Moreover, the use of the wording "normally" implies that the Organization has the power to commit a harassment investigation to the IAO, when it deems it necessary or appropriate. In the present case, as already noted above, the procedure provided for by Circular No. 13/2009 was not applicable, in the absence of complaints of harassment. Thus, it was appropriate to entrust the investigation to the IAO. In conclusion, the Tribunal is satisfied that the referral of the harassment allegations to the IAO for investigation was legally sound.

5. In his second plea, the complainant contends that he was not given proper notice of the allegations against him, in breach of paragraph 21 of Circular No. 13/2009, pursuant to which "[a] copy of the alleged victim's complaint is to be sent by the Chief of [HRS] to the alleged perpetrator[s] so that [they] may respond to the allegations with their own comments and give their version of the facts within a deadline set by the Chief of [HRS]." He further contends that he was notified of the investigation on 3 October 2022 and was summoned for an interview to be held on 6 October 2022. He was informed of the allegations against him only during the interview.

This plea is misconceived and unfounded. As already noted, the applicable procedure is not the one outlined in Circular No. 13/2009, and the complainant could not have been sent the complaints of the alleged victims, as no complaints were filed. The applicable rules are contained in paragraphs 66 and 102 of the SOP.

Pursuant to paragraph 66:

> "If the Chief Internal Auditor decides to commence a full investigation, the subject, or subjects will be notified in writing of the fact that they are under investigation, of the general nature of the allegations under investigation, and of their rights and obligations."

Pursuant to paragraph 102:

> "During the interview, the subject will be provided with details of the allegations and of the evidence in support thereof and he/she will be afforded the opportunity to respond and to provide countervailing evidence. The subject may identify witnesses, indicate where further records can be found, and submit any information or document."

In addition, according to the Tribunal's case law, it is sufficient that the accused staff member be informed of the allegations at the beginning of the interview (see Judgments 4770, consideration 4, 4237, consideration 10, 4130, consideration 6, 4106, consideration 9, and 3200, consideration 9).

There is evidence in the record that:

(i) following a conversation, the complainant received an email on 3 October 2022, informing him that he was the subject of an allegation of harassment and that further details would be given to him during the interview to be held on 6 October; he was also

offered the opportunity to have an observer present during the interview, if he wished;

(ii) the complainant's interview lasted more than two hours during which he was reminded of the purpose of the interview, was informed in detail of the three alleged incidents of sexual harassment of 1 October 2021 and was allowed to comment on them; and

(iii) following the interview, he was granted 28 days to provide countervailing evidence.

In light of the foregoing, the Tribunal is satisfied that the complainant was given proper notice of the allegations during his interview, in keeping with paragraphs 66 and 102 of the SOP and with the Tribunal's case law.

6. In his third plea, the complainant contends that the investigation proceedings were not carried out expeditiously, as the IAO took one and a half years to issue its report.

This plea is unfounded.

There is no specific deadline in the SOP for the preliminary investigation. However, the Tribunal has consistently stressed the need for international organisations to conduct investigations on allegations of harassment expeditiously and with particular diligence (see, for example, Judgments 4039, consideration 10, 4038, consideration 11, 3269, consideration 7(a), and 3233, consideration 15(b)). In relation to this obligation, the Tribunal has stated that international organisations have to ensure that an internal body responsible for investigating and reporting on the allegations is properly functioning (see Judgments 4039, consideration 10, 4038, consideration 11, 3660, consideration 7, and 3347, consideration 14). Therefore, the length of the investigation proceedings should be reasonable, taking into account all the circumstances of the case.

Pursuant to paragraph 71 of the SOP:

"***Timeliness of Investigative Process***

The Chief Internal Auditor will ensure that all investigative activities are completed in a timely manner taking into account circumstances, such as the complexity of the case, IAO workload and priorities, and/or other

> compelling reasons. Such circumstances will be documented in the relevant case file and the matter reviewed when appropriate."

In the present case, the Organization was informed of the allegations against the complainant on 4, 11, and 12 November 2021. The case was referred to the IAO on 18 November 2021, and, on 2 December 2021, the ILO's Legal Adviser made it clear that the case should be investigated *ex officio* by the IAO, even in the absence of complaints by the alleged victims. The preliminary investigation lasted until 3 October 2022, when the complainant was informed of the allegations and was summoned for an interview. Having regard to the circumstances of the case, and, in particular, to the considerable number of witnesses who were interviewed during that stage, and the difficulties in identifying them (as the facts took place during an after-work social event), the Tribunal is satisfied that the duration of the preliminary investigation was not unreasonably lengthy. After the complainant's interview on 6 October 2022, the proceedings went on expeditiously, as:

(i) on 14 and 17 March 2023, the complainant was notified of the outcome of the investigation and of the proposed sanction;

(ii) the complainant requested and was granted an extension of the time limit for his comments until 3 April 2023;

(iii) on 19 April 2023, the JNC met to consider the disciplinary sanction proposed by the Director ad interim, and, on 27 April 2023, it adopted its report expressing its advice on the sanction; and

(iv) on 12 May 2023, the disciplinary decision was issued.

In any event, in the absence of a specific deadline, the issue of whether the length of the proceedings should be characterized as excessive, might be relevant only to the question of whether the complainant is entitled to moral damages for undue delay. The complainant has not demonstrated that he suffered moral injury and, thus, he fails to establish the foundation for moral damages (see Judgments 4945, consideration 11, and 4422, consideration 19).

7. In his fourth plea, the complainant contends that the Organization failed to investigate thoroughly, in breach of due process. He adds that the Organization unlawfully decided to target only him, resulting in unequal treatment towards him. He further alleges that he was not given the opportunity to test evidence and to provide exculpatory evidence.

This plea is unfounded.

The Tribunal's case law has consistently held that "the principle of equal treatment cannot ordinarily be invoked to challenge a finding of misconduct" (see Judgments 4361, consideration 10, 4247, consideration 13, and 3575, consideration 5). Moreover, a decision not to initiate proceedings against other staff members has no bearing on the lawfulness of the measure applied to a staff member (see Judgment 4971, consideration 6). As already noted, the IAO interviewed the three victims of harassment and a considerable number of witnesses. The complainant was informed of the content of the interviews and he was granted 28 days to provide countervailing evidence. On 14 and 17 March 2023, he was informed of the outcome of the investigation, was provided with the IAO's report, and was granted a time extension until 3 April 2023 to comment and offer evidence. The Organization has provided the Tribunal with convincing reasons for the lack of investigation into other male staff members who were present at the social event on 1 October 2021 and who allegedly misbehaved. The reason is that no sufficient evidence could be gathered against them. The Tribunal finds no elements to question the credibility of this reason. Additionally, the Organization's failure to investigate the alleged misconduct by other staff does not neutralize nor excuse the complainant's misconduct and does not establish a legal flaw in the disciplinary proceedings against him.

8. In his fifth plea, the complainant submits that he was not provided with "material evidence". He contends that he was unlawfully denied the verbatim transcripts of the interviews of the alleged victims and witnesses on grounds of confidentiality. He argues that the Organization could have provided a redacted version of these transcripts.

This plea is unfounded.

It may be inferred from paragraphs 99 and 111 to 114 of the SOP that the audio records and the verbatim transcripts of the interviews are required only for the interviews of the subject of the investigation and not also for the interviews of the witnesses and of the alleged victims of misconduct. The Tribunal's precedents have it that staff members must, as a general rule, have access to all evidence on which the authority bases (or intends to base) its decision against them, and, under normal circumstances, such evidence cannot be withheld on grounds of confidentiality. However, where disciplinary proceedings are brought against officials who have been accused of harassment, testimonies and other materials which are deemed to be confidential pursuant to provisions aimed at protecting third parties need not be forwarded to the accused officials, but they must nevertheless be informed of the content of these documents in order to have all the information which they need to defend themselves fully in these proceedings. In order to respect the right of defence, it is sufficient for the officials to have been informed precisely of the allegations made against them and of the content of testimony taken in the course of the investigation, in order that they may effectively challenge the probative value thereof (see Judgments 4343, consideration 13, 3640, consideration 20, and 2771, consideration 18). In light of the Tribunal's case law, due process does not necessarily require that the accused staff be provided with the verbatim transcripts of the interviews of the witnesses (see, for example, Judgments 4615, consideration 20, and 4579, consideration 3). In conclusion, it was sufficient that the complainant was provided with an accurate written record of the interviews, and this was done. Moreover, the Organization has provided the Tribunal with the verbatim transcripts, for its examination *in camera*. After review *in camera*, the Tribunal is satisfied that the written records provided to the complainant adequately reflect the verbatim records. As a result, there was no breach of due process.

9. In his sixth plea, the complainant contends that the evidence failed to satisfy the requisite standard of proof, and that his alleged misconduct was not proven beyond reasonable doubt. He questions the

credibility of the three alleged victims, contending that they drank alcohol and might have been drunk, wrongly identifying the complainant as the author of the inappropriate comments, considering that at the social event on 1 October 2021 other male staff members also, in his view, made inappropriate comments. Moreover, he argues that the music was loud, and the alleged victims might have misunderstood his comments. He adds that there are inconsistencies in the witness statements.

First, the Tribunal notes that the allegation that the evidence before the IAO failed to satisfy the requisite standard of proof is misconceived. The role of the IAO is to conduct a fact-finding investigation, that is to gather evidence and to recollect the facts in light of the evidence available. It is not its role to reach a conclusion of whether misconduct occurred beyond reasonable doubt. This evaluation is reserved to the decision-making authority.

Second, it is appropriate to recall the scope of the Tribunal's review in disciplinary matters and the standard of evidence required for disciplinary convictions. The Tribunal shall not interfere with the findings of an investigative body in disciplinary proceedings unless there was a manifest error (see Judgments 4859, consideration 17, 4770, consideration 12, 4745, consideration 5, and 4579, consideration 4). In disciplinary matters, the Tribunal has consistently found that the burden of proof rests on an organization, which has to prove allegations of misconduct beyond reasonable doubt before a disciplinary sanction can be imposed (see Judgment 4749, consideration 5). The role of the Tribunal is not to assess the evidence itself and determine whether the charge of misconduct has been established beyond reasonable doubt but rather to review the evidence and to assess whether there was evidence available to the relevant decision-maker to reach that conclusion (see Judgment 4362, consideration 7; see also Judgments 4832, considerations 27 to 29 and 36, 4764, consideration 13, 4697, consideration 22, 4364, consideration 10, and 4047, consideration 6). 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).

The Tribunal has reviewed the evidence in the record and considers that there is no room to doubt the credibility of the three victims and of the witnesses, the occurrence of the facts as recollected by the impugned decision, and the identity of the perpetrator of the misconduct. In conclusion, the Tribunal is satisfied that it was open to the Director ad interim to reach the conclusion, in his decision dated 12 May 2023, that it had been proven, beyond reasonable doubt, that the complainant had engaged in serious misconduct.

10. In his seventh plea, the complainant contends that his conduct, even if it were proven, does not amount to harassment, as it does not meet the definition and the description of harassment enshrined in paragraphs 7 and 8 of the applicable Policy. He asserts that sexual harassment must create an intimidating, hostile and offensive working environment and amount to repeated advances. He alleges that in the present case none of the victims reported that they felt intimidated or offended and there was no repetition.

This plea is unfounded.

It is appropriate to quote the statutory definition and description of harassment applicable at the material time.

Pursuant to Circular No. 13/2009, paragraphs 2, 4, 7, and 8:

> "2. [...] sexual, psychological or discrimination harassment at the workplace or in relation to work constitutes unacceptable behaviour that will not be tolerated at the Centre. It is seen as contrary to the high standards of conduct required of all officials by article 4.2 of the Staff Regulations and will lead to disciplinary measures;
>
> [...]
>
> 4. Harassment is deemed to be any series of actions, usually repeated, whose aim or effect is deterioration in working conditions [...];
>
> [...]
>
> 7. Sexual harassment is a specific form of harassment. It consists of any undesired conduct of a sexual nature which, in the reasonable view of the victim, interferes with work, is made a condition for employment, promotion or any other job advantage, or creates an intimidating, hostile and offensive working environment.

> 8. Types of behaviour which, when undesired, may constitute sexual harassment include: repeated physical or verbal sexual advances; demands for sexual favours; repeated suggestions and allusions; inopportune remarks about an official's physical appearance; using obscene words; cracking obscene jokes; displaying documents of a sexual nature in the workplace; physical molesting; blackmail; or threats of repercussions on the victim's job conditions – after it has been clearly indicated that such behaviour is not welcome. A condition of sexual harassment is that the behaviour is undesired or disturbing, not shared, and imposed on the person who suffers it. When relationships are mutually desired and accepted, there is no harassment. However, officials who consent to such relationships must not allow them to affect their working environment."

The Tribunal notes that, in light of the statutory definition of sexual harassment:

(i) conduct can be characterized as harassment even when it does not occur at the workplace but it is in any event related to work, as it occurs during work-related trips, travel, training, events or social activities; thus, the phrase "at the workplace or in relation to work" includes additional venues like work retreats or after-work social events, and commuting;

(ii) repetition of the behaviour is not an indispensable requirement: the conduct is "usually repeated", but a single episode may also amount to harassment; the reference to "repeated physical or verbal sexual advance" is made by paragraph 8 of the Circular in the context of a non-exhaustive list of behaviours amounting to harassment;

(iii) repetition of the behaviour does not necessarily have to occur towards the same victim; harassment amounts to "repeated actions" even when there is a series of individual actions towards different victims; and

(iv) harassment is "any undesired conduct of a sexual nature" which creates "an intimidating, hostile and offensive working environment".

In the present case, there is evidence of three episodes in which the complainant, during the same after-work social event, which occurred at the Centre's premises, made comments of a sexual nature towards three different female staff members, and that his conduct was

undesired. Thus, it cannot be doubted that his conduct was (i) of a sexual nature, (ii) undesired, and (iii) reiterated. Moreover, his work position was higher than those of the three victims. Thus, his conduct was apt to create an offensive and intimidating working environment, and, even if the victims chose not to file complaints, they did testify to feeling uncomfortable.

11. In his last plea, the complainant contends that the disciplinary sanction of discharge was manifestly disproportionate. He submits that a number of mitigating factors should have been taken into account, namely:

(i) the comments were short and not repeated, as confirmed by each of the three victims;

(ii) the victims did not feel offended;

(iii) he was the only staff member punished though other staff members also misbehaved during the same social event;

(iv) the comments were not made at the workplace but during an after-work social event;

(v) at the time the events occurred, he was taking medication which interacted with the consumption of alcohol causing memory loss;

(vi) the fact that he did not express remorse and did not apologize cannot be considered an aggravating factor because he had a right to defend himself;

(vii) as noted also by the staff representatives on the JNC, the sanction of discharge may affect his health, aggravate his illness, and, thus, it breaches the duty of care owed by the Organization towards its staff; and

(viii) the alleged misconduct was a one-off occurrence, as the complainant had never misbehaved before.

This plea is unfounded.

The Tribunal's well-settled case law has it that the choice of the appropriate disciplinary measure falls within the discretion of an organization, provided that the discretion be exercised in observance of

the rule of law, particularly the principle of proportionality (see, for example, Judgments 4770, consideration 20, 4660, consideration 16, 4504, consideration 11, 4247, consideration 7, 3640, consideration 29, and 1984, consideration 7). In reviewing the proportionality of a sanction, the Tribunal does not substitute its evaluation for that of the disciplinary authority, and it limits itself to assessing whether the decision falls within the range of acceptability. Lack of proportionality is to be treated as an error of law warranting the setting aside of a disciplinary measure even though a decision in that regard is discretionary in nature. In determining whether disciplinary action is disproportionate to the offence, both objective and subjective features are to be taken into account (see Judgment 4504, consideration 11, and the case law cited therein). The evaluation of the weight, if any, of the extenuating circumstances falls within the discretion of the Organization.

In the present case, the exercise of such discretion was not affected by errors of fact or law or by disregard of essential facts. All the alleged mitigating factors were considered by the Organization, but they were deemed insufficient to counterbalance the gravity of the complainant's serious misconduct.

That the comments were short and not repeated with the same victims does not exclude that they were highly inappropriate, also considering the role of the complainant, that some of the victims were interns, and that the episodes occurred at the ITC-ILO, where more experienced staff, such as the complainant, are expected to set a good example and to be especially aware of the "zero tolerance" policy against harassment.

It is proven that the victims did feel offended, as can be inferred from their testimonies.

The circumstance that the facts occurred during a social event and not at the workplace is irrelevant as a mitigating factor since, as already noted, the statutory definition of harassment includes work-related venues and occasions in the term "work-place", and makes no difference for treatment based on the place where harassment occurs.

The Organization has taken into account the complainant's health status and the fact that he was taking medication at the relevant time, but it concluded that consuming alcohol whilst taking medication which is incompatible with it is not a mitigating factor. This conclusion is justified, considering the high standards of conduct required of an international civil servant.

Not apologizing or expressing regret might be, at most, a defence strategy. However, the Organization correctly took into account this failure as an aggravating factor when choosing the appropriate sanction.

The fact that other staff were not punished has been convincingly justified by the Organization and, in any event, it is not a mitigating factor.

The complainant's previous period of unblemished service is not necessarily a mitigating factor (see Judgments 4770, consideration 20, 4745, consideration 11, and 3083, consideration 20), even though in some cases it can be (see Judgment 4457, consideration 20).

All the alleged mitigating factors were considered by the Organization, but their impact was considerably lessened having regard to the seriousness of the complainant's misconduct. This assessment is neither legally flawed nor unreasonable.

12. In conclusion, since the complainant's pleas are unfounded, all his claims are rejected and the complaint will be dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 16 May 2025, 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, 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

ROSANNA DE NICTOLIS

RENÉ M. VARGAS M.