

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

**L. R.**

**v.**

**GCF**

**140th Session**

**Judgment No. 5011**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr R. L. R. against the Green Climate Fund (GCF) on 25 September 2021, the GCF's reply of 28 February 2022, the complainant's rejoinder of 1 April 2022 and the GCF's surrejoinder of 27 July 2022;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

Considering that the facts of the case may be summed up as follows:

The complainant contests the GCF's decision to extend his probationary period.

The complainant joined the GCF on 1 May 2018 as an Evaluation Adviser, Corporate and Thematic Evaluations Work Stream, Independent Evaluation Unit (IEU). He was granted a three-year fixed-term appointment, with a probationary period of one year. Ms P., Head of the IEU, was his first-level supervisor.

On 3 October 2018, the IEU communicated to the Human Resources Department four global objectives for IEU staff which would be reflected in the Performance Management and Development System (PMDS) and to which IEU staff would then add "individual objectives".

In December 2018, the complainant inserted his objectives for 2018-2019 in the PMDS system for Ms P.'s approval. Following in-person meetings and several email exchanges with Ms P., the complainant revised his objectives, as per Ms P.'s feedback, while Ms P. provided him with a "mid-probationary period form that ha[d] been customised a bit" as a basis for him to lay out the performance improvement plan they had discussed. The complainant submitted a performance improvement plan, which was also revised as per Ms P.'s feedback, along with a Request for Approval of a Staff Development Initiative to enable him to undergo coaching.

On 8 May 2019, Ms P. forwarded to the complainant a Performance Enhancement Action Plan, informing him that she had prepared notes specifically identifying the areas in which it would be important for him to show enhanced performance over the next six months. She added that, while she had not attached specific measurable outputs with the Performance Enhancement Action Plan, she had alluded to them in the text, and she offered him the possibility to discuss "these specific verifiable outputs" should he wish to do so. The complainant responded on 23 May 2019 that he did not share Ms P.'s views, that her notes were unfair or incorrect, and that her assessment did not take account of his achievements.

Following further email exchanges in which Ms P. criticised the complainant's performance and behaviour, on 29 May 2019, she informed him that she would request an extension of his probationary period by six months to ensure the attainment of the objectives expected of him. The complainant responded on 15 June 2019 requesting that Ms P. reconsider the decision to extend his probationary period. On 12 July 2019, the complainant received an automated email informing him that his probationary period had been extended to 31 October 2019. Prior to that, on 23 July 2019 and while he was on sick leave, Ms P. forwarded to him a revised Performance Enhancement Action Plan and invited him to arrange a meeting to discuss his work objectives for the following months.

On 30 July 2019, the complainant wrote to the Executive Director requesting clarifications on the Administrative Review and Appeals Procedure, in particular to whom a staff member should direct a grievance review request when the decision-maker and immediate (first-level) supervisor was the Head of an Independent Unit, namely a Board-appointed official (such as the Head of the IEU), and there was no next-in-line (second-level) supervisor. On 2 August 2019, the Executive Director replied that, in such cases, an appeal could be filed directly with the Appeals Committee and the formal grievance review would be deemed to have been exhausted for the staff member concerned.

On 10 August 2019, the complainant filed an appeal with the Appeals Committee (registered as appeal AC/003/2019) contesting (i) Ms P.'s decision to extend his probationary period, notified to him on 12 July 2019; and (ii) the Executive Director's 2 August 2019 decision "denying a category of staff the right to access the normal administrative review process [...] and compelling them to file directly with the Appeals Committee, thus creating an arbitrary and discriminatory disparity in the level and quality of their access to justice".

On 1 November 2019, Ms P. informed the complainant in writing of her decision not to confirm him in his position, to terminate his appointment with immediate effect, and to pay him compensation in lieu of notice. On 1 December 2019, the complainant filed a second appeal with the Appeals Committee (registered as appeal AC/005/2019), contesting (i) Ms P.'s 1 November 2019 decision not to confirm him in his post; and (ii) Ms P.'s decision of the same date to terminate his appointment with immediate effect.

On 3 December 2019, in response to the complainant's request for interim relief and protection from retaliation pending the resolution of his appeals, Ms P. informed him that his separation date had been postponed to 1 February 2020, as per the Independent Integrity Unit's request, and that he would be placed on administrative leave with pay during this period.

On 14 July 2020, the Office of the General Counsel provided a legal opinion, according to which the Administrative Instruction on the “Performance Management Development System” was not applicable to the staff of the Independent Units, including the IEU, while the Administrative Instruction on “Administrative Review and Appeals Procedure” was applicable to the staff of those units.

By a memorandum of 30 April 2021, the Appeals Committee submitted to the Executive Director its report on appeal AC/003/2019, concluding unanimously that the appeal was unfounded on the merits and recommending that it be rejected in its entirety.

On 28 May 2021, the General Counsel wrote a letter to the members of the Appeals Committee in connection with appeal AC/003/2019, providing the Office’s position on the findings of the Appeals Committee.

By a letter of 2 July 2021, the ad interim Head of the IEU (being the title ascribed to this office within the GCF) informed the complainant that he had decided to depart, to a limited extent, from the Appeals Committee’s recommendation and to allow the appeal in part. Specifically, contrary to the finding of the Appeals Committee, the ad interim Head affirmed his authority to make the final decision on the complainant’s appeal on the basis that matters relating to probation were inextricably linked to the power to appoint, which the Board had delegated to the Head of the IEU. He concurred with the Appeals Committee’s finding that the complainant was not prejudiced in the exercise of his right of appeal and access to internal remedies by the fact that he did not have a next-in-line supervisor (second-level supervisor). On the merits, while agreeing with the Appeals Committee’s findings that the complainant was able to provide his comments before the extension of his probationary period and his performance was reviewed in accordance with Section C.I(11) of the Administrative Guidelines on Human Resources (HR Guidelines), the only relevant legal framework for the performance evaluation of probationers, the ad interim Head acknowledged that the complainant was not provided with a workplan within the meaning of Section C.I(11.2) of the HR Guidelines. He further considered that,

although Ms P. had provided the complainant with appropriate and continuous feedback enabling him to improve his performance, the lack of a workplan had affected the lawfulness of the 12 July 2019 decision to extend his probationary period. This was a flaw in the probation process, for which the ad interim Head decided to award the complainant moral damages in the amount of 2,000 United States dollars. He also decided that the complainant's performance evaluations conducted during his probationary period would be sealed from reference checks and would remain accessible within the GCF only to the Head of Human Resources. This is the impugned decision.

The complainant asks the Tribunal to set aside the decision to extend his probationary period, and to order that that decision, along with the contested and damaging comments in Ms P.'s recommendation, the probation review, the performance improvement plan, and the Performance Enhancement Action Plan be expunged from his personnel file. He also asks the Tribunal to order the GCF to correct his record and "work products" and to properly acknowledge, recognise and give credit for his contribution to the IEU's and the GCF's work (with corrigendum notices where these have been already published outside the IEU or the GCF), and to provide him with a reference in this regard. He claims material damages in an amount equivalent to twenty-one months' salary for the GCF's failure to allow him to complete his three-year contract and for the damage to his career progression and overall reputation. He also claims material damages for the loss of his children's education benefits and the opportunity for them to join the intended school as a consequence of the failure to confirm him in his post. He claims moral damages in an amount equivalent to six months' salary for the damage to his health as a consequence of work-related illness. He also claims 70,000 United States dollars in moral damages for the suffering caused to him by the impugned decision and the process leading up to that decision; 50,000 dollars for the pain and suffering he endured due to the unlawfully prolonged duration of the appeal process (nearly two years from the submission of his appeal on 10 August 2019 until the final decision on 2 July 2021); and 30,000 dollars for the failure to afford him equal access to the administrative review process and the loss of the right to an effective

remedy prior to resorting to formal litigation. Lastly, he claims the legal fees he incurred for the internal appeal and the present complaint in the amount of 10,000 dollars, and such other relief the Tribunal may deem as being in the interest of justice.

The GCF asks the Tribunal to dismiss the complaint as partly irreceivable, partly moot, and unfounded in its entirety.

### CONSIDERATIONS

1. Underlying this complaint is the complainant's initial challenge to the decision of Ms P., who was then his first-level supervisor and the Head of the IEU, communicated to him on 29 May 2019, to extend his one-year probationary period (which commenced on 1 May 2018) by six months, as she was not satisfied with his performance. In his internal appeal, the complainant also challenged what he referred to as a decision by the Executive Director on 2 August 2019 "concerning the interpretation of the Appeals Procedures, and, specifically, denying a category of staff the right to access the normal Administrative Review process – the precursor to accessing the Appeals Committee – and compelling them to file directly with the Appeals Committee, thus creating an arbitrary and discriminatory disparity in the level and quality of their access to justice". Whilst in its report, the Appeals Committee recommended that the complainant's internal appeal be dismissed and the reliefs he sought be rejected in their entirety, in the impugned decision, dated 2 July 2021, the ad interim Head of the IEU decided to depart from that recommendation and to allow his internal appeal in part.

2. The ad interim Head of the IEU rationalized his departure from the recommendation of the Appeals Committee in the following terms:

**“First**, contrary to the [...] Appeals Committee's view [...] I wish to make clear that I have authority, pursuant to the Terms of [R]eference of the Head of the [IEU], to make the final decision in relation to your appeal, particularly given that matters relating to probation are inextricably linked to the power to appoint, which power has been delegated to me by the Board.

The [...] Appeals Committee, by sending the report to the Executive Director and not to me, and by asserting in clarificatory language in the said paragraph that the [Executive Director] is the authority vested with the power to take decisions in relation to appeals of staff members of the Independent Units against the terms of their appointment, made an error of law. By grounding its analysis on the Administrative Instruction on Administrative Review and Appeals Procedure, the [...] Appeals Committee overlooked the fact that the aforementioned Terms of [R]eference have been adopted by the Board and, as such, take precedence over administrative instructions, pursuant to Section II(4) of the Administrative Instruction on the Legal Framework of the [GCF] [...]

**Second**, I consider that the Executive Director's e-mail of 2 August 2019, providing clarifications on the Administrative Instruction on Administrative Review and Appeals Procedure does not amount to an individual decision adversely affecting your terms of appointment and/or your rights under the HR Guidelines. This e-mail only provided you with further clarification regarding the implementation of the rules governing the internal appeal process at the [GCF]. Additionally, I share the [...] Appeals Committee's findings [...] that the fact that you had no next-in line supervisor did not prejudice you from exercising your rights and to access the available internal remedies.

**Third**, as regards the merits, while I agree with the [...] Appeals Committee's findings that you had opportunities to provide your comments before the extension of the probationary period [...], and that your performance was reviewed in accordance with Section C.I(11) of the HR Guidelines, which constitutes the only relevant legal framework for the performance evaluation of staff members on probationary period, I acknowledge that you were not provided with a workplan within the meaning of Section C.I(11.2) of the HR Guidelines. Although I consider that your [s]upervisor, the former Head of the IEU, provided you with appropriate and continuous feedback enabling you to improve your performance, I consider that the lack of workplan has affected the lawfulness of the decision of 12 July 2019 to extend your probationary period. I also acknowledge that this flaw in the probation process entitles you to moral damages."

3. It was for this latter reason that the ad interim Head of the IEU decided to award the complainant 2,000 United States dollars in moral damages "for the lack of work plan". The ad interim Head of the IEU also decided that the performance evaluation conducted during the probationary period be sealed from reference checks and remain accessible within the GCF only to the Head of Human Resources.

4. In challenging the impugned decision, the complainant identifies the objects of this complaint as a “series of failures and of gross negligence by the [GCF] in evaluating his performance, ranging from [the] absence of any workplan [which was eventually admitted in the impugned decision] belated reviews, absence of meaningful performance dialogue, lack of adequate guidance and warning, to inappropriate and retaliatory conduct by his supervisor, offensive remarks and absence of consideration of his competence”. He states, additionally, that these failures were accompanied by irregularities in the internal grievance process, some of which are sufficient to invalidate the impugned decision. He alleges that the most significant of these failures is that the impugned decision was taken without authority and is therefore “null and void”.

5. The Tribunal will address two preliminary issues, which arise because of the GCF’s application for the joinder of this complaint with the complainant’s second complaint, as well as the GCF’s application for the disclosure of documents.

6. The first preliminary issue arises from the application by the GCF for the joinder of this complaint, in which the complainant challenges the decision to extend his probationary period, with his second complaint, in which he challenges the decision not to confirm him in the post and to terminate his appointment at the end of his extended probationary period. The Appeals Committee had rejected a request to join the complainant’s two underlying internal appeals. The Tribunal’s case law concerning the joinder of complaints confirms, in consideration 4 of Judgment 4822, for example, that the touchstone for formal joinder has historically been that the complaints involve the same or, more recently, similar questions of fact and law, and it is not sufficient that they stem from the same continuum of events. The Tribunal observes that the facts in this and the complainant’s second complaint are part of a continuum of events, but the legal issues raised in each of them are different. The complaints also do not pertain to the same impugned decision. Accordingly, the complaints will not be

joined, although the Tribunal will refer to the two judgments, if necessary, to avoid any potential overlapping.

7. The second preliminary issue arises from an application for disclosure. In the course of the written proceedings, on 28 July 2022, Counsel for the GCF asked the Tribunal to disclose annexes 14, 35 and 36 to the complaint, to “waive the confidential nature of annexes 1 to 4 to the rejoinder” and to allow the GCF to comment thereon. By a letter of 23 August 2022, the Registrar informed Counsel for the GCF of the Vice-President’s decision, taken by delegation of authority from the President, to reject the request for disclosure. The Registrar added that the Tribunal would decide in due course, when it examined the complaint in a future session, whether the requested material would be included in the record, in which case the GCF would be invited to comment on that material. As the Tribunal finds it unnecessary to refer to, or to rely on, the subject annexes for the resolution of this complaint, it will not order their disclosure.

8. In seeking to set aside the impugned decision, the complainant asks the Tribunal to make the following orders:

- (i) Set aside the decision to extend his probation;
- (ii) Order that Ms P.’s contested and damaging comments in her recommendation and decision to extend his probation, as well as the probation review, be expunged from his record;
- (iii) Set aside the performance improvement plan contained in the recommendation and the decision to extend his probation;
- (iv) Set aside the Performance Enhancement Action Plan;
- (v) Order that his record and “work products” be corrected to properly acknowledge, recognise and attribute credit for his contribution to the IEU’s work (with corrigendum notices where these have been already published outside the IEU or the GCF);
- (vi) Order that he be provided with a reference that accurately recognises his contributions, rather than bearing the current inaccurate content authored by Ms P.;

- (vii) Award him material damages in an amount equivalent to twenty-one months' salary for the GCF's failure to allow him to complete his three-year contract, and for the damage to his career progression and overall reputation;
- (viii) Award him compensation for the loss of his children's education benefits and the opportunity for them to join the intended school as a consequence of the failure to confirm him in his post (amount to be assessed by reference to such benefits for both school years);
- (ix) Award him moral damages in an amount equivalent to six months' salary for the damage to his health as a consequence of work-related illness;
- (x) Award him 70,000 United States dollars in moral damages for the suffering the impugned decision, and the process leading up to it, caused him;
- (xi) Award him 50,000 United States dollars in moral damages for the pain and suffering he endured due to the "prolonged duration" of the appeal process (nearly two years from the submission of his appeal on 10 August 2019 until the final decision on 2 July 2021);
- (xii) Award him 30,000 United States dollars in moral damages for the failure to afford him equal access to the Administrative Review process, and the discriminatory loss of a "tier of review" and the right to an effective remedy prior to resorting to formal litigation before the Appeals Committee;
- (xiii) Reimburse him the legal fees he incurred for the internal appeal and the present complaint in the amount of 10,000 United States dollars;
- (xiv) Award him any other relief the Tribunal deems as being in the interest of justice.

9. The GCF contends that this complaint is partly irreceivable and partly moot.

The Tribunal rejects the GCF's submission that the request in consideration 8(i) above is moot because the complainant is no longer a serving official and granting this request would serve no practical purpose, so this matter no longer raises a live controversy. In the first place, the request to set aside the decision to extend his probation has been the complainant's main object in these proceedings and this remains a live controversy. Moreover, the GCF cites no authority for its submission that a matter is moot because a complainant is no longer a serving official.

For the same reason, the Tribunal also rejects the GCF's submission that the requests in consideration 8(iii) and 8(iv) above are moot because the performance improvement plan and the Performance Enhancement Action Plan no longer have any effect, since the complainant left the GCF on 1 February 2020. The Tribunal further rejects the GCF's submission that the requests in consideration 8(ii) and 8(v) pertaining to the complainant's record are moot. In particular, its assertion that the ad interim Head of the IEU has already satisfied these claims with the impugned decision so that granting them would serve no additional practical purpose is misleading. The ad interim Head had therein only decided that the complainant's performance evaluations conducted during his probationary period "shall be sealed from reference checks and remain accessible within the GCF only to the Head of Human Resources".

10. Concerning its pleas of irreceivability, the GCF submits that some of the complainant's requests in this complaint are irreceivable, as by them he brings the same matters for decision and seeks mostly the same ancillary redresses in the present complaint that he does in his second complaint (seemingly in breach of the principle that the same matter cannot be submitted for decision in separate proceedings).

The GCF refers particularly to the complainant's request in consideration 8(ii) above, namely that Ms P.'s contested and damaging comments in her recommendation and decision to extend the complainant's probation, as well as the probation review, be expunged from his record. However, this is a consequential order the Tribunal

may make on this complaint if it determines that the decision to extend the complainant's probation was unlawful. Moreover, it will be open to the Tribunal, when it considers the complainant's second complaint, to determine whether claims therein are duplicated.

The complainant's requests in consideration 8(v) and 8(vi) above, respectively for an order that his record be corrected to properly acknowledge and fairly attribute credit for his overall contribution to the IEU's work, *et cetera*, and that he be provided with a reference that accurately recognises his contribution are irreceivable, as it is not within the Tribunal's competence to issue such orders.

The complainant's requests for material damages for the failure to allow him to complete his three-year contract in consideration 8(vii), and for the loss of his children's education benefits in consideration 8(viii), will be dealt with in the complainant's second complaint challenging the decision not to confirm him in his post and to terminate his appointment, as they properly arise from that decision. They are outside the scope of this complaint and therefore irreceivable.

His request for compensation for the damage to his health as a consequence of work-related illness in consideration 8(ix) above, is not in itself irreceivable. The Tribunal may determine whether it is meritorious.

The complainant's allegations of harassment, retaliation and a toxic work environment are receivable, because it is clear that the complainant raises them merely as pleas to support his contention that the decision which he challenges in this complaint was unlawful, though ultimately it will be unnecessary to deal with these allegations.

11. The complainant proffers a number of pleas to support his contention that the decision to extend his probation was unlawful. The Tribunal finds it sufficient to consider only the plea concerning his supervisor's failure to provide him with a workplan, as it is decisive for the resolution of this complaint, without it being necessary to consider any of his other pleas. This is except to state that the complainant, who bears the burden to prove his plea that the decision to extend his probation was tainted with abuse of authority, has not provided

evidence to prove, as required, that that decision was motivated by personal prejudice, bad faith, ill will or was taken for reasons extraneous to the GCF's best interests or for some objective other than those which the authority vested in it is intended to serve.

12. In the third aspect of the impugned decision, reproduced in consideration 2 of this judgment, the ad interim Head of the IEU acknowledged that the complainant was not provided with a workplan within the meaning of Section C.I(11.2) of the HR Guidelines, and he accepted that the lack of a workplan had affected the lawfulness of the decision of 12 July 2019 to extend the complainant's probationary period. He decided that this flaw in the probation process entitled the complainant to moral damages.

13. The complainant reproduces Section C.I(11.2) of the HR Guidelines to support his submission, which the Tribunal accepts, that as the language of this provision is unambiguous and in imperative terms, evidenced by the multiple use of the word "must", the acknowledgement that the provision was breached left no other recourse for the ad interim Head of the IEU but to set aside the decision to extend the complainant's probationary period. His failure to do so was an error which, in the Tribunal's view, also mirrors a breach of the GCF's duty of care towards the complainant. Section C.I(11.2) of the HR Guidelines states as follows:

"The supervisor must meet with the newly appointed staff member as soon as possible after the staff member's entry on duty to establish the staff member's work plan. The work plan must be discussed with the staff member and a copy must be provided to her/him."

14. The clear, unambiguous, and mandatory nature of Section C.I(11.2) of the HR Guidelines required the ad interim Head of the IEU not only to acknowledge that the decision to extend the complainant's probation was flawed because of the failure to provide him with a workplan, but also required him to set aside that decision and to make relevant consequential orders. The Tribunal will therefore set aside the decision of 12 July 2019 to extend the complainant's

probation. It will also set aside the impugned decision of 2 July 2021 to the extent that the ad interim Head of the IEU did not therein set aside the initial 12 July 2019 decision. Consequentially, the GCF will be ordered to expunge from the complainant's personnel file the complainant's probation review, the performance improvement plan and the Performance Enhancement Action Plan. The GCF will also be ordered to place a copy of this judgment into the complainant's personnel file.

15. Inasmuch as it cannot be ascertained that the complainant suffered damage to his health as a result of the decision to extend his probation, his claim for moral damages in this regard is rejected. He has failed to provide evidence to prove that there was a nexus between the decision to extend his probation and the damage to his health he alleges.

16. The complainant's claim for moral damages for the flawed decision to extend his probation is rejected, as in the impugned decision he was awarded moral damages in the amount of 2,000 United States dollars, and he has not put forward any argument to justify the award of an additional amount.

17. The complainant's claim for moral damages for the delay in the internal appeals procedure is also rejected, as he has not articulated the injury or adverse consequences which the delay had upon him, as the Tribunal's case law requires (see, for example, Judgment 4493, consideration 8).

18. The complainant's claim for the costs he incurred in the internal appeals procedure is rejected, as he does not show that there were exceptional circumstances that would attract such an order (see, for example, Judgments 4220, consideration 15, 4217, consideration 12, 4157, consideration 14, and 4156, consideration 9). However, as he succeeds in this complaint, he will be awarded 10,000 United States dollars in costs in these proceedings.

DECISION

For the above reasons,

1. The initial decision of 12 July 2019 to extend the complainant's probation is set aside, and so is the impugned decision of 2 July 2021 to the extent stated in consideration 14 of this judgment.
2. The GCF shall place a copy of this judgment in the complainant's personnel file.
3. The GCF shall expunge from the complainant's personnel file the complainant's probation review, the performance improvement plan and the Performance Enhancement Action Plan.
4. The GCF shall pay the complainant 10,000 United States dollars in costs.
5. All other claims are dismissed.

In witness of this judgment, adopted on 7 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.