

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

S.

v.

**Global Fund to Fight AIDS, Tuberculosis
and Malaria**

140th Session

Judgment No. 5014

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms A. S. against the Global Fund to Fight AIDS, Tuberculosis and Malaria (“the Global Fund”) on 10 November 2020, the Global Fund’s reply of 28 January 2021, the complainant’s rejoinder of 3 March 2021 and corrected on 9 March 2021, the Global Fund’s surrejoinder of 4 May 2021, the complainant’s additional submissions of 13 May 2021 and the Global Fund’s final comments thereon of 23 August 2021;

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

Having examined the written submissions;

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

The complainant challenges the decision to reject her request to be reassigned to a different team, and consequently to a different reporting line, as well as her request for a new assessment of her position.

The complainant joined the Global Fund on 9 November 2009 as a Finance Analyst in the Program Finance Team. On 1 January 2012, she was promoted to the Senior Finance Officer and Resource Mobilisation position (grade 05) in the Financial Planning and Analysis Team. She was then appointed to several teams, with no promotion of her grade, before being assigned to the Sourcing Department in September 2014. She held grade 05, which was replaced by grade D following the entry

into force of the new grading system in October 2014. In 2015, the complainant was asked to report to Mr O.Y., and this lasted until Mr O.Y. retired in 2019.

In October 2016, a review of the complainant's job description (job title, Terms of Reference and grade) was conducted by an external service provider, and her position title was renamed to "Specialist – Sourcing Financial Management". Between 2017 and 2018, the complainant raised issues about her reporting line and job description.

In February 2018, the Sourcing Department and Supply Chain Department were merged to create the Supply Operations Department. On 7 June 2019, the Head of this new department informed the complainant that her position was transferred to the newly created Data, Analytics, Processes, and Tools Team ("DAPT Team"). She was then asked to report to Mr M.C. The complainant objected to this decision, referring to past disagreements she had with Mr M.C., but the Head of the Supply Operations Department upheld the decision.

On 29 August 2019, the complainant submitted a request for resolution challenging the transfer decision of 7 June 2019. She also requested that her job description be corrected in the internal information technology system, "Workday", with retroactive effect. She further requested a review of her reporting line or to be offered an appropriate position in another department. On 23 October 2019, the Head of the Human Resources Department provided her with information about the 2016 job review and the modification of her position title, and informed the complainant that her position title would be updated in Workday (which was done on 13 December 2019), but rejected her other request stating that her grievances were unfounded and that, because her tasks had remained unchanged since October 2016, there was no rationale for a new review.

On 9 December 2019, the complainant lodged an appeal challenging the decision to assign her to the DAPT Team. She also contested her new reporting line emphasising that there were unresolved issues in that respect since 2015. She requested a new review of her position and sought acknowledgment that the organisation had mistreated her (appeal No. 40).

On 27 July 2020, the Appeal Board issued its report. It found that the complainant's grievances regarding her position title, Terms of Reference, and grade, which were set in October 2016, were irreceivable, as she failed to contest them through the Grievance and Dispute Resolution process within the appropriate timeframe. It also found that her claims relating to bullying, unfair treatment, and unethical conduct were irreceivable because she had not followed the procedure laid down for harassment claims. On the merits, the Appeal Board held that the Global Fund had discretionary authority to organise the structure and functioning of its Secretariat, including the creation of new departments and positions. It found that the changes made to the complainant's position and reporting line were within the limits of this discretion, and that there were no procedural flaws in the decisions regarding the complainant's reporting lines. The Appeal Board therefore recommended dismissing the appeal.

By letter dated 7 August 2020, the complainant was informed of the decision of the Executive Director to endorse the recommendation of the Appeal Board and to dismiss her appeal. This is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision and, accordingly, the decision of 7 June 2019, and to remit the matter to the Global Fund for her grade and title to be corrected with retroactive effect from September 2014. She asks for her grade to be corrected from "D" to "E", and her title from "Specialist" to "Manager". She also seeks an award of moral damages in the amount of 250,000 Swiss francs, and costs. She further seeks punitive damages in relation to the Global Fund's request to be granted additional time to submit its surrejoinder.

The Global Fund asks the Tribunal to reject the complaint as partly irreceivable and entirely unfounded and, therefore, to reject the ancillary claims for moral damages and costs. It also asks the Tribunal to order the complainant to bear her costs. In its surrejoinder, it asks the Tribunal to reject as irreceivable the claim for punitive damages, and in any event, to find it unsubstantiated.

CONSIDERATIONS

1. The complainant impugns the decision of 7 August 2020, made by the Executive Director of the Global Fund, which endorsed the Appeal Board's recommendation to dismiss her appeal as partly irreceivable and unfounded in its entirety.

2. The complainant's request for an oral hearing is rejected, as the Tribunal considers that it is sufficiently informed through the written submissions provided by both parties to issue a fair and balanced decision.

3. The complainant bases her complaint on three main grounds:

- (i) Improper managerial decisions regarding her transfer on 7 June 2019.
- (ii) Breaches of duty of care and violation of her dignity by the defendant organisation.
- (iii) Flaws in the internal appeal proceedings, including breach of due process, inadequate substantiation, erroneous statements, and the failure to address allegations of harassment amounting to institutional harassment.

4. The defendant organisation raises, as a threshold issue, that the complainant's claim for correction of her grade and job title with retroactive effect is irreceivable as she failed to contest these decisions within the prescribed time limit. Additionally, it argues that the Tribunal lacks the competence to issue injunctions concerning post grading decisions and contends the complainant's harassment claims are irreceivable due to non-exhaustion of internal remedies.

5. The Tribunal notes that the Appeal Board's report dated 27 July 2020, endorsed by the Executive Director's decision, correctly concluded that the claims related to job title, Terms of Reference, and grading were time-barred.

According to Article 3 (“Receivability”), Annex X (“Grievance and Dispute Resolution”) to the Global Fund Employee Handbook, the complainant was required to lodge a request for resolution by no later than 90 days “after the employee was notified of the decision giving rise to the Request for Resolution” or “after the employee became aware of the action or omission of the Global Fund management giving rise to the Request for Resolution”.

The complainant’s job description was reviewed by an external service provider and her position title was renamed in October 2016. The complainant alleges that she was not provided with information about the review nor with her new job’s description. However, it appears from the facts that the complainant’s acknowledgment of raising issues concerning her job in 2016 with Mr N., Head of the Human Resources Department, according to her 29 August 2019 letter to Mr N., and email exchanges in January 2017, demonstrate her awareness of the relevant details as early as 2017. Consequently, her claims on these matters are time-barred.

6. Regarding the complainant’s allegations of bullying and harassment, Article 4.3, Annex XI (“Prohibition of Harassment and bullying”) to the Employee Handbook, provides “[...] An employee who alleges being a victim of conduct prohibited under this Annex may file a grievance in relation to such allegation pursuant to Annex X [...], only after the completion of the formal process set out in Annex IX – Investigations to the Employee Handbook”. The complainant has not filed a grievance through the internal procedures, justifying the Appeal Board’s finding of irreceivability of the harassment allegations.

7. Pursuant to Article VII, paragraph 1, of the Statute of the Tribunal, “[a] complaint shall not be receivable unless the decision impugned is a final decision and the person concerned has exhausted such other means of redress as are open to her or him under the applicable Staff Regulations”. It is firmly established in the case law that, in order to comply with that provision, the complainant must follow the available internal appeal procedures properly (see, for example, Judgments 4571, consideration 3, 3749, consideration 2, and

3296, consideration 10). Consequently, the complainant's claims of institutional harassment and correction of her position title and grade were irreceivable due to the failure to exhaust internal remedies.

8. Additionally, the Tribunal's case law affirms that it lacks the competence to order adjustments to post grading, as such determinations fall within an organisation's discretionary managerial authority (see, for example, Judgment 4193, consideration 6).

9. On the merits, the Tribunal has examined three main pleas advanced by the complainant and finds each ground unfounded as explained below.

10. The complainant's first plea concerns the managerial decision to transfer her on 7 June 2019, alleging inadequate justification and breach of a supposed established practice requiring prior consent. The Tribunal finds that these arguments are unfounded.

11. The Tribunal stated the following in Judgment 4687, consideration 5, which refers to Judgments 4595, consideration 2, and 4427, consideration 2:

“Consistent precedent has it that an executive head of an international organization has wide discretionary powers to manage the affairs of the organization pursuant to the policy directives and its rules, and that such decisions are consequently subject to only limited review. The Tribunal will ascertain whether a transfer decision is taken in accordance with the relevant rules on competence, form or procedure; whether it rests upon a mistake of fact or law, or whether it amounts to abuse of authority. The Tribunal will not rule on the appropriateness of the decision as it will not substitute the organization's view with its own [...]”

12. Given the merger of the Sourcing Department and Supply Chain Department and the creation of the DAPT Team, the complainant's transfer was clearly within the executive head's managerial discretion. The transfer did not affect her legal status, grade, or tasks, which remained consistent with her qualifications and prior responsibilities. The Tribunal notes that oral explanations about the justification of her

transfer were provided to the complainant, and she was also provided with an adequate opportunity to comment, as required by the Tribunal's case law (see, for example, Judgment 4830, consideration 15, regarding the need of consultation prior to a transfer decision, and Judgment 4084, consideration 13, regarding the interest of the Organization justifying the transfer decision). As affirmed in Judgment 3734, consideration 5, for a practice to be binding, it must be consistent, longstanding, and widely recognized. Such conditions are not satisfied in this case. The complainant's personal conflicts with new reporting lines do not constitute a legal basis for the Tribunal to interfere, as the Tribunal may only do so on the limited grounds that the decision was taken *ultra vires*, shows a formal or procedural flaw or mistake of fact or law, if some material fact was overlooked, or if there was misuse of authority or an obviously wrong inference from the evidence (see, for example, Judgments 4599, considerations 11 and 12, and 3488, consideration 3).

13. The complainant's second plea alleges breaches of the organisation's duty of care and respect for dignity, specifically citing alleged sham reporting lines and unequal remuneration.

14. The complainant provided no substantial evidence supporting these allegations. Moreover, the unequal pay matter was not timely and appropriately raised through the internal recourse procedure, and falls outside the scope of the case. In any event, the complainant has not demonstrated a breach of her dignity or rights.

15. Consequently, the complainant's second plea is unfounded.

16. The complainant's third plea addresses alleged flaws in the internal appeal proceedings, including breaches of due process due to the Appeal Board's failure to disclose documentary evidence (namely the documentation serving as a basis for the complainant's previous transfer to the Procurement Operations Team and the appointment of Mr O.Y. as her direct line manager, the documentation underlying the review of the complainant's position in 2016, and the documentation serving as a basis for the transfer of the complainant's position to the

DAPT Team and the appointment of Mr M.C. as her direct line manager), refusal to hear witnesses, improperly allowing external counsel, giving the defendant organisation an extension of time for its response, erroneous statements, and insufficient substantiation regarding allegations of bias.

17. Article 1.3.3 of “Operating Procedures for Appeal”, stipulating that “[...] The Panel may decide that a document or written statement is not relevant and shall be excluded from the case documentation”, grants the Appeal Board discretionary authority regarding the admissibility of evidence. The Board reasonably exercised this discretion when it refused to require the disclosure of documents that, in its opinion, were not relevant for the review of the case. Additionally, the Board appropriately granted an extension of time under Article 1.4 “Extension of Time-limits”, which provides that “[w]aivers to the deadlines set out in these procedures may be considered by the Chair of the Appeal Board in exceptional circumstances”. The Tribunal finds no procedural violations or manifest errors warranting its interference.

18. The Tribunal notes that contrary to the complainant’s claim that the recommendation from the Appeal Board was not properly substantiated as it did not consider each of the complainant’s pleas, specifically the one regarding her suspicion of abuse and bias in the managerial decision, the Appeal Board issued a unanimous and reasoned recommendation that appropriately addressed the key issues presented. The Tribunal’s consistent case law establishes that internal appeals bodies are not obliged to address every individual argument raised, provided their conclusions adequately reflect the essential points considered (see, for example, Judgment 4764, consideration 6). Moreover, as the Tribunal has stated on many occasions, allegations of bias can only be accepted if there is sufficient evidence to substantiate them (see, for example, Judgments 4099, consideration 11, 3914, consideration 7, 3543, consideration 20, and 1775, consideration 7), which the complainant has not provided.

19. As the complainant failed to discharge her burden of proof regarding allegations of irregularities in the internal appeal proceedings, her third plea is unfounded.

20. In view of the foregoing, the complaint is dismissed in its entirety, including the ancillary claims for moral damages, punitive damages and legal costs, as the complainant's primary claims are unfounded.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 1 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.