

S. (No. 2)

v.

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

140th Session

Judgment No. 5015

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Ms A. S. against the Global Fund to Fight AIDS, Tuberculosis and Malaria (“the Global Fund”) on 23 August 2021 and corrected on 24 September 2021, the Global Fund’s reply of 23 December 2021, the complainant’s rejoinder of 9 February 2022, corrected on 9 March 2021, the Global Fund’s surrejoinder of 22 April 2022, 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 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 reject her request for additional medical leave days or compensation, her request for a similar position within another unit, and her request to adjust her position title.

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 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 was conducted by an external service provider, and her position title was renamed to "Specialist – Sourcing Financial Management". However, the complainant was not provided with the final job description or any documents related to this review at that time. 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., and challenging his abilities as a manager, 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.

The complainant lodged an appeal (appeal No. 40) challenging the decision to assign her to the DAPT Team, which was dismissed by the Executive Director on 7 August 2020. She subsequently filed a complaint with the Tribunal, which led to Judgment 5014, also delivered this day.

On 13 June 2019, the complainant expressed again, by email, her frustration with the decision to transfer her to the DAPT Team, and on 17 June 2019, after multiple exchanges between the complainant and Human Resources, she was placed on medical leave and did not return to work until the filing of this complaint before the Tribunal. She kept providing Human Resources with medical certificates attesting that she was unfit to return to work unless her work setting was changed.

On 20 January 2020, the Global Fund informed the complainant that she had reached the maximum entitlement of 130 days of medical leave on 17 December 2019 and asked her to apply for Sick Leave under Insurance Cover (SLIC) to continue to receive insurance coverage subject to the insurer's approval. The complainant refused to apply for SLIC explaining that the organisation should bear the financial costs of her absence, and not the insurer, given the circumstances that led to her health issues. She added that the Administration could use her annual leave entitlement or initiate a separation process.

On 31 January 2020, the Global Fund informed the complainant that after exhaustion of her annual leave, she would have to resume work or apply for SLIC. On 6 March 2020, the organisation informed her that she would exhaust her annual leave balance on 17 March 2020. On 9 March 2020, the complainant reiterated her refusal to apply for SLIC. Discussions ensued, to no avail, between the complainant and the Administration.

Between 24 June 2020 and 23 September 2020, the parties exchanged emails regarding the computation of the complainant's medical leave entitlements, as the complainant claimed to be entitled to additional medical leave as of 17 June 2020. On 23 September 2020, the complainant initiated an internal appeal process, after authorization by the Global Fund, contesting its rejection of the additional medical leave. The matter was referred to the Appeal Board (appeal No. 44).

On 19 June 2020, the complainant filed a request for resolution seeking to be granted a position matching her qualification and experience outside the Supply Operations Department, explaining that that was the only possibility for her to return to work. If this was not possible, she asked for “a clear explanation [...] and an alternative way forward”. She also requested compensation for lost employment benefits. On 17 August 2020, the Global Fund refused the compensation request noting that the claims had already been raised in her appeal No. 40 and rejected by a final decision on 7 August 2020. The complainant challenged this refusal to the Appeal Board (appeal No. 46).

Following the update of her position title in the Workday system announced on 23 October 2019, the complainant continued to allege manipulation of the system, referring to 2016, and indicated, in email exchanges on 14 August 2020 and 20 October 2020, that she was seeking compensation for the damages caused by this tampering. She also claimed that she became aware, in September 2020, that her position title had been updated in the Workday system. As the Global Fund refused to entertain the request for resolution on 15 October 2020, as these issues had already been disposed of in her appeal No. 40, on 31 October 2020, the complainant lodged an appeal challenging the changes to her job description as uploaded in the system (appeal No. 47).

On 6 November 2020, the Appeal Board decided to join the three appeals. It issued its report on 12 May 2021, recommending the rejection of all three appeals (appeals Nos. 44, 46, and 47). Regarding receivability, the Appeal Board found that the overlapping claims for damages in appeals Nos. 44 and 46 did not affect their receivability. It also determined that the claims of appeals Nos. 46 and 47 did not overlap with those previously submitted in appeal No. 40. However, it declared irreceivable the claims related to harassment allegations due to the complainant’s failure to file a formal complaint as required by the Global Fund Employee Handbook. Regarding appeal No. 47, the Appeal Board concluded that the complainant had been authorized to file her complaint directly with it and that delays were not attributable to her but rather to her circumstances. On the merits, the Appeal Board

recommended to reject the complainant's request in appeal No. 44 for 65 additional medical leave days or compensation, citing a lack of support in the regulatory framework. Regarding appeal No. 46, it considered that the complainant's refusal to engage with the SLIC process and the failure to provide detailed medical documentation invalidated her claims, and the Administration acted appropriately in denying her request to be reassigned to another position. With respect to appeal No. 47, the Appeal Board found no procedural flaws in the adjustments made to the complainant's position title. In conclusion, the Appeal Board noted that a constructive attitude from both parties was needed and strongly encouraged the complainant to accept the SLIC process.

On 27 May 2021, following the recommendations of the Appeal Board, the Executive Director dismissed the complainant's appeals. He endorsed the Appeal Board's reasoning on the merits, as well as the reasoning on the irreceivability of the claims for damages relating to allegations of harassment. He departed, however, from the Appeal Board's findings for the remainder, namely the claims for a new administrative position, job description, reporting line, title and grade because they had been submitted in a separate proceeding. This is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision, along with her Terms of Reference uploaded in Workday on 13 December 2019, which had been tampered with in 2016. She seeks that the matter be remitted to the Global Fund for an independent re-evaluation of her grade, position, and title based on untampered Terms of Reference, with any resulting changes applied retroactively. She further requests acknowledgment of a breach of Section 1, Annex V of the Employee Handbook concerning entitlement to paid medical leave, and the award of damages. In terms of material damages, she seeks compensation for the loss of opportunity to be promoted – calculated as the salary and benefits she would have received had she been promoted during the 2016 exercise, with 10 per cent interest – as well as for the loss of employment-related benefits from the date they were cut until her return to work. She claims moral damages in the amount of 350,000 Swiss francs for breach of the duty of care and

principles of good faith and transparency; 30,000 Swiss francs for failure to address allegations of harassment; and 50,000 Swiss francs for breach of due process resulting in the denial of fair and effective internal remedies. Additionally, she seeks exemplary damages of 10,000 Swiss francs for the bad faith of the Executive Director leading to the impugned decision, 10,000 Swiss francs for the organization's bad faith in its response to her appeal dated 10 January 2021, and 10,000 Swiss francs for the organization's egregious conduct more broadly. Lastly, she requests that her legal costs be awarded.

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.

CONSIDERATIONS

1. The complainant impugns the final decision of 27 May 2021, by which the Executive Director of the Global Fund endorsed the Appeal Board's recommendation dismissing her three internal appeals (Nos. 44, 46, and 47).

2. The complainant requests the Tribunal to order the disclosure of several documents related to the re-evaluation of her job position, including the request to the external service provider and its full report, notes of the Job Evaluation Committee meetings, the final decision of that committee, and Mr O.Y.'s job description as Manager, Procurement Operations from around April 2015. This disclosure request is rejected, as it will become clear below that these documents are not relevant for the adjudication of the complaint.

3. The defendant organisation contends, as a preliminary matter, that the complainant's allegations of institutional harassment are outside the scope of this complaint and, in any event, irreceivable because they were not raised through the appropriate internal procedures. In response, the complainant argues that her internal appeals (Nos. 46 and 47) effectively amounted to formal harassment complaints.

4. The Tribunal notes that the complainant raises multiple interconnected arguments, namely alleged errors in calculating her medical leave entitlement (appeal No. 44), refusal to assign her to a position outside the Supply Operations Department (appeal No. 46), alleged manipulation of her Terms of Reference by altering her job description (appeal No. 47), as well as claims of ineffective remedy and procedural unfairness during the appeal process. Additionally, she asserts that the internal bodies' failure to adequately address her allegations of harassment warrants compensation.

5. As regards her harassment allegations, the Appeal Board rightly concluded that harassment allegations addressed in appeal No. 40 could not be entertained again in appeals Nos. 44, 46, and 47. It should be noted that the Tribunal already adjudicated this issue in Judgment 5014, also delivered this day, finding these allegations are irreceivable due to the complainant's failure to exhaust internal remedies. The complainant cannot litigate the same issue in concurrent proceedings. Thus, the complainant's harassment allegations are therefore moot.

Regarding the Medical Leave Entitlement (appeal No. 44)

6. The complainant argues that the defendant organisation failed to honour her entitlement to paid medical leave as stipulated in the relevant provisions. In support of this, she observes that 130 days of medical leave are granted each year, with a cap of 195 days for every four-year period. She therefore concludes that from 17 June 2020, she became eligible to an additional 65 days of paid medical leave.

Section 1, Annex V to the Employee Handbook, stipulates the following:

“Employees who are unable to perform their duties because of sickness, injury or incapacity are entitled to a maximum absence of 130 working days on full pay in any revolving period of 365 calendar days (‘medical leave’), starting from the first instance of absence, provided that the total days on medical leave shall not exceed 195 days in any revolving four-year period.”

7. The provision is clear and unambiguous and leaves no room for any constructive interpretation (see, for example, Judgments 4519, consideration 6, and 3358, consideration 5). It establishes two clear limits: (1) in any 365 calendar days period, an employee is entitled to a maximum of 130 days of medical leave with full pay; (2) within a broader revolving four-year period, the total accumulated medical leave with full pay may not exceed 195 working days. Consequently, after exhausting 130 days within a revolving period of 365 calendar days, the employee is no longer entitled to further medical leave with full pay.

8. It should be also noted that Section 5, Annex V to the Employee Handbook, provides the following:

“Employees who have exhausted all entitlements to medical leave and who remain absent for an additional 30 working days or longer may be eligible for the Global Fund [SLIC], as set out in the Insurance Regulation. Coverage for employees under SLIC is subject to approval by the insurer. Employees may take annual leave or apply for an advance against SLIC until they become eligible for SLIC.”

9. The defendant organisation’s interpretation of these provisions is correct. Having exhausted her 130 days of medical leave entitlements on 17 December 2019 and her annual leave entitlement on 17 March 2020, the complainant’s available course of action was either applying for SLIC or returning to work. The complainant’s plea regarding additional entitlement to medical leave is unfounded.

Regarding Alleged Failure to Facilitate her Safe Return to Work (appeal No. 46)

10. The complainant alleges a breach of the defendant organisation’s duty of care, namely refusing her request for reassignment outside the DAPT Team, describing her absence as “unauthorized”, ignoring her medical certificate, and failing to take timely action.

11. The Tribunal finds no breach of duty of care. As consistently recognized by the Tribunal, internal assignments fall within managerial discretion of an executive head of an international organization, and it

is not always possible to cater to the needs of each individual employee, as the product or result of the work being done is often justifiably considered a higher priority over the individual's personal interests (see, for example, Judgment 4345, consideration 5). In the present case, the organisation appropriately advised the complainant to apply for SLIC upon exhausting her 130-day medical leave entitlement. The complainant's refusal to engage with the SLIC process placed her outside established regulatory procedures, resulting in the legitimate categorization of her absence as unauthorized. Moreover, the medical certificates she submitted could not substitute for the independent medical assessment required by the SLIC procedure. Consequently, the organisation had neither an obligation nor was in a practical position to facilitate her requested reassignment or take further action.

***Regarding Alleged Manipulations of her Terms of Reference
(appeal No. 47)***

12. The complainant asserts that Human Resources made unauthorized, covert alterations to her job description without consulting her and concealing the changes from her for years. According to her, this intended preventing her from obtaining a job upgrade, removing indications of seniority, and maintaining a fictitious reporting line under Mr O.Y. until his retirement.

13. However, this plea was similarly raised in the complainant's internal appeal No. 40, and dismissed in Judgment 5014, also delivered this day.

Therefore, this plea is irreceivable.

Regarding Alleged Ineffective Remedy and Denial of Fair Appeal

14. The complainant asserts multiple procedural grievances, alleging that the Appeal Board denied her a fair appeal and the possibility of an effective remedy, thereby breaching due process by improperly granting extensions, displaying bias through clarification requests, making inaccurate statements, and disregarding medical

evidence. She also asserts that the impugned decision was influenced by a staff member of Human Resources and many stakeholders involved.

15. As the Tribunal has stated on many occasions, allegations of this kind can only be accepted if there is sufficient evidence to substantiate them (see, for example, Judgments 4099, consideration 11, 3914, consideration 7, and 3543, consideration 20). The complainant failed to discharge her burden of proving such allegations. The record demonstrates, instead, that the Appeal Board conducted a diligent, detailed, and impartial examination of the evidence and the parties' submissions, properly granting time extensions and requesting clarifications on the medical leave computation in accordance with the applicable rules, in particular the Operating Procedures for Appeal. The complainant was given an adequate opportunity to state her case. Moreover, the Executive Director subsequently made his own decision, which endorsed the Appeal Board's conclusions. Accordingly, the complainant's plea is unfounded.

16. Since the complainant's main claims fail on their merits, all related ancillary claims for material, exemplary, and moral damages, as well as legal costs, are dismissed.

17. In view of the foregoing, the complaint must be dismissed in its entirety.

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.