

R.
v.
IAEA

141st Session

Judgment No. 5109

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr M. L. R. against the International Atomic Energy Agency (IAEA) on 8 July 2022, the IAEA's reply of 8 November 2022, the complainant's rejoinder of 20 December 2022 and the IAEA's surrejoinder of 3 April 2023;

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 claims compensation for moral injury due to the harassment he suffered by his supervisor.

The complainant was a staff member of the IAEA from September 2019 to February 2022.

On 30 April 2021, he filed with the Office of Internal Oversight Services (OIOS) a formal harassment complaint against his supervisor, Mr P. On 5 May 2021, OIOS launched a formal investigation into the matter.

On the same day, 5 May 2021, the Division of Human Resources (MTHR) advised the complainant that it had put in place the following interim protective measures: Mr P. was instructed to cease all

communication with the complainant or, if he needed to communicate with him, to do so through a designated third person and only for significant work-related reasons; the complainant's working space and reporting lines were changed – he would henceforth report directly to the Section Head; the complainant's assignments and workplan were reorganised so as to minimize overlap with Mr P.'s areas of responsibility; and Mr P. was requested to avoid any action which could be perceived as retaliatory vis-à-vis the complainant and eventually lead to additional allegations of misconduct.

On 23 August 2021, OIOS transmitted to the Director, MTHR, its Final Investigation Report on the complainant's harassment complaint, concluding that harassment had been substantiated in relation to five allegations. OIOS also concluded that Mr P. had failed to discharge his responsibilities as an international civil servant, and had also failed to serve as a role model and to uphold the highest standard of conduct as a supervisor, including ensuring a safe and respectful working environment.

On 21 September 2021, the Director, MTHR, informed the complainant that, following a careful review of the Final Investigation Report, the Director General considered that his claim of harassment had been established. The Director, MTHR, added that the matter would proceed in accordance with Appendix G to the Staff Regulations and Staff Rules, "Procedures to be Followed in the Event of Reported Misconduct", and the complainant would be notified of the outcome in due course. On 13 October 2021, the matter was referred to the Joint Disciplinary Board (JDB) for its review and recommendation.

On 18 October 2021, the complainant requested compensation for moral damages he had suffered due to harassment by Mr P. On 11 November 2021, the Director, MTHR, rejected the request for compensation on the basis that the IAEA had acted in line with its duty of care towards him, as it had fulfilled its obligation to investigate his harassment claim, and had taken proper and appropriate steps to protect him and to prevent further harassment.

On 23 November 2021, the complainant requested a review of the 11 November 2021 decision, reiterating his request for a copy of the Final Investigation Report on his harassment complaint. On 2 December 2021, he was provided with a three-page summary of the Final Investigation Report. From 15 December 2021 until 9 March 2022, the procedure for responding to his request for review was put on hold pending a process toward a mutually acceptable settlement.

Meanwhile, OIOS carried out an investigation into the allegations of harassment Mr P. had made against the complainant and, on 13 January 2022, it submitted its Final Investigation Report concluding that one of Mr P.'s allegations was substantiated, namely that the complainant had harassed Mr P. by making abusive and undermining comments to him in front of other colleagues. OIOS nonetheless noted that the context in which the complainant had made these comments was one of substantiated harassment by Mr P. against him, and one in which Mr P. had failed in his duty as a supervisor to ensure a respectful working environment. Having reviewed this report and the complainant's comments thereon, the Deputy Director General and Head of the Department of Management (DDG-MT) concluded that the complainant had used inappropriate language in the workplace but, given the totality of the circumstances, including the fact that the complainant had separated from the IAEA on 6 February 2022, he decided to close the matter. The complainant was relevantly informed on 31 March 2022.

On 10 February 2022, the complainant was informed that, further to the JDB's review and recommendation, the Director General considered that the evidence established, beyond a reasonable doubt, that Mr P. had engaged in misconduct by failing to observe the standards of conduct expected of him regarding working relations, and had engaged in one instance of harassment; engaging on one occasion in behaviour amounting to "a breach of confidentiality obligations"; and failing to observe the Standards of Conduct for the International Civil Service as regards respect for diversity. The Director General imposed a disciplinary sanction on Mr P. and ordered that the letter informing him of the outcome in this matter be placed in his personnel file.

By a letter of 21 April 2022, the Director General informed the complainant that, in light of the actions the Administration had taken in response to his harassment complaint and the fact that Appendix E to Administrative Manual Part II, Section 17, entitled “Prevention of Harassment and Sexual Harassment Framework”, did not envisage the award of compensation for moral damages, he had decided to uphold his earlier decision of 11 November 2021 not to award him such compensation. This is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision and to order the IAEA to pay him 60,000 euros in compensation for the moral damages he suffered due to the established harassment, the institutional harassment, the IAEA’s delay in addressing these issues, and the damage to his health. He also asks the Tribunal to order the IAEA to pay him 10,000 euros in punitive damages for its failure to set up a system for the protection of victims of established harassment. He seeks 10,000 euros in legal costs for the unsuccessful settlement process and the submission of the present complaint.

The IAEA asks the Tribunal to dismiss the complaint as irreceivable in part and unfounded in its entirety.

CONSIDERATIONS

1. The complainant was a member of staff of the IAEA. The IAEA accepted he had been harassed at work but refused to accede to a request that he be paid moral damages.

2. The central issue in these proceedings is whether the approach adopted by the IAEA in refusing the request, was attended by legal error. A convenient starting point is a concession made, correctly, by the IAEA in its reply. It is that it was not precluded from awarding moral damages, even if it is not explicitly envisaged in Appendix E. In substance, this is a concession that the IAEA had a discretionary power to award moral damages in circumstances where harassment has been proved, as was the position in the present case. The critical question is

whether the Director General, in the impugned decision of 21 April 2022, acted on the basis there was a discretionary power but decided to exercise it by denying compensation.

3. The letter of 21 April 2022 is two and a half pages long. The concluding paragraph (putting aside the final paragraph concerning a right of appeal) is in the following terms: “In light of the above-mentioned actions taken by MTHR and OIOS, and given that compensation for moral damages is not envisaged under Appendix E, I have decided to uphold the decision conveyed to you on 11 November 2021, in the context of Staff Rule 12.01.1(D)(1).”

4. Much of the preceding discussion in the 21 April 2022 letter concerned the actions taken by the IAEA to address the complainant’s grievance about having been harassed on the basis that harassment had been established. In its pleas, the IAEA seeks to explain the reference to Appendix E in the above passage by saying: “[T]his statement is merely offered to demonstrate that compensation is not obligatory under the Agency’s framework.” But the statement does more than that.

5. An inference can readily be drawn that the Director General was guided in his decision making simply by the absence of any provision in Appendix E about awarding moral damages. Also, an inference can readily be drawn that he did not recognise that, notwithstanding that absence, he nonetheless had a discretionary power to award moral damages (see, for example, Judgment 4808, considerations 10 and 11). He did not consider how that discretion might be exercised. This was important because earlier in the 21 April 2022 letter he said: “I understand that you conveyed to MTHR contemporaneous concerns about how much this process was weighing on you and impacting your well-being, and this is corroborated by evidence obtained in the course of the investigation.” It is true that the IAEA rejected two medical reports as establishing a causal link between the harassment and the clinical diagnosis the complainant had received. But this rejection had not ended the matter, given the apparent acceptance in the 21 April 2022 letter of what the complainant had been

saying about the impact of the harassment on his well-being. That acceptance alone would sustain a conclusion that he suffered a moral injury for which moral damages should be awarded (see, for example, Judgment 4602, consideration 16, and the case law cited therein). The impugned decision should be set aside.

6. The events which led to the complainant lodging a formal complaint of harassment with OIOS in late April 2021 (and in respect of which he had taken notes) began in October 2020. That is five years ago. It would be open to the Tribunal to remit the matter to the IAEA to enable the Director General to consider whether he should exercise his discretionary power to award moral damages in favour of the complainant. However, that would be likely to delay the resolution of the matter for several, if not many, months. Accordingly, the Tribunal will award moral damages itself, as it is empowered to do (see, for example, Judgment 4808, considerations 13 to 19).

7. While the IAEA criticises the medical report drawn up by Dr S., who had treated the complainant, this report nonetheless points to serious psychological effects of the harassment on the complainant. In these proceedings, the complainant claims 60,000 euros for moral damages and he also claims punitive damages in the sum of 10,000 euros. No basis is established for punitive damages. As to moral damages, the Tribunal assesses the amount due to him at 20,000 euros, though the Tribunal does not accept that the IAEA delayed in addressing and resolving his harassment complaint. Thus, no amount of the moral damages can be attributed to delay. His claim for moral damages for institutional harassment was not raised in the internal appeal process and will be dismissed as irreceivable.

8. The complainant was represented by counsel and is entitled to legal costs assessed in the sum of 10,000 euros.

DECISION

For the above reasons,

1. The impugned decision dated 21 April 2022 is set aside.
2. The IAEA shall pay the complainant 20,000 euros as moral damages.
3. The IAEA shall also pay the complainant 10,000 euros in costs.
4. All other claims are dismissed.

In witness of this judgment, adopted on 3 November 2025, Mr Michael F. Moore, President of the Tribunal, Ms Rosanna De Nictolis, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, René M. Vargas M., Registrar.

Delivered on 10 February 2026 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

ROSANNA DE NICTOLIS

HONGYU SHEN

RENÉ M. VARGAS M.