

T.

v.

Energy Charter Conference

141st Session

Judgment No. 5113

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr M. T. against the Energy Charter Conference (“the organisation”) on 12 December 2022 and corrected on 2 and 7 February 2023, the organisation’s reply of 3 April 2023, the complainant’s rejoinder of 8 June 2023 and the organisation’s surrejoinder of 5 July 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 contests his Performance Appraisal Report (PAR) for the period from 1 June 2021 to 31 May 2022 and the decision not to renew his appointment due to unsatisfactory performance.

The complainant joined the Energy Charter Secretariat, the secretariat of the organisation, in 2008. On 1 January 2019, he was appointed as Head of Unit for Expansion under the Secretary-General’s direct supervision at grade A3, on a three-year fixed-term appointment, which was subsequently extended from 1 January to 31 December 2022.

By a letter dated 24 February 2022, the Secretary-General notified the complainant that, following a restructuring of the organisation, the title of his post had been changed to Expansion Official. He was also

informed that, as of 1 January 2022, his new immediate supervisor would be the Head of Unit for Administration and External Activities. However, pending the appointment of the aforementioned Head of Unit, the Deputy Secretary-General would serve as his immediate supervisor.

By an email dated 9 May 2022, the complainant was invited to complete his PAR and to discuss it with his immediate superior by 31 May 2022.

On 28 May 2022, the complainant submitted to the Deputy Secretary-General a draft PAR for the period from 1 June 2021 to 31 May 2022 with a description of his tasks and responsibilities.

On 31 May 2022, the complainant received his PAR completed by the Deputy Secretary-General. In the sections of the PAR entitled “Immediate Superior’s Review of Performance” and “Immediate Superior’s General Assessment”, the Deputy Secretary-General made several negative comments on the complainant’s performance for the period under review, indicating in particular that he “d[id] not exhibit qualities suitable for, and lack[ed] professional courtesy and awareness necessary for, a staff of an international organisation such as the Secretariat”. In the section of the PAR entitled “Proposals”, she recommended the non-renewal of the complainant’s contract.

By a letter dated 21 June 2022, transmitted by email on 22 June 2022, the Secretary-General informed the complainant that, “[f]ollowing [his] recent [PAR] and after consultation with Senior Management, [he] ha[d] decided not to renew [his] appointment” upon its expiry on 31 December 2022. The complainant, who was on sick leave at that time, acknowledged receipt of the Secretary-General’s decision on 4 July 2022. He stated that he would “deal with the matter immediately upon [his] return from sick leave”, which had recently been extended by his medical doctor.

By a letter dated 4 July 2022, addressed to the Secretary-General and transmitted by an email of 8 July 2022, the complainant requested the withdrawal of the decision not to renew his appointment. Having received no reply to this request, the complainant submitted, by a letter dated 11 August 2022, a request for advice to the Advisory Board

contesting the content of his PAR and the Secretary-General's decision not to renew his appointment. The complainant highlighted that the Deputy Secretary-General had served as his immediate supervisor for only five months of the period under review and asserted that her review of his work performance was "comprised predominantly of spurious, defamatory and largely preposterous comments and observations". He also argued, in essence, that he was denied the possibility to respond to the allegations made by his supervisor in his PAR prior to its submission to the Secretary-General and to the subsequent decision not to renew his contract.

The Advisory Board adopted its report on 23 September 2022. At the outset, it noted that the complainant's request for advice was time-barred, as it had been submitted beyond the forty-day time limit prescribed under Rule 25.2(b) of the Staff Manual. However, in light of the complainant's period of sick leave, the Board decided to admit his appeal as receivable. The Advisory Board found that the complainant's PAR was flawed, considering in particular that "the appraisal was made in writing by the immediate superior without preceding discussion with the complainant", and that it had not been finalised within the statutory deadlines noting that it appeared from the file that none of the parties signed the PAR by 31 May 2022. It recommended that the possibility of an amicable settlement of the case be reconsidered, that the complainant's PAR be redacted in part and that the redacted version be kept in his personnel file. It also recommended that "[n]o presence of the complainant [be] required in the office until the formal expiration of his contract on 31 December 2022, in order not to further damage the working atmosphere surrounding himself, his immediate superior and the Secretary-General".

After an unsuccessful attempt to reach a settlement, the Secretary-General informed the complainant, by an email dated 4 October 2022, of the decision to uphold the non-renewal of his contract. This is the impugned decision.

The complainant requests the Tribunal to annul the Secretary-General's decision to end negotiations on an amicable settlement, his PAR for the period from 1 June 2021 to 31 May 2022, and the decision not

to renew his contract. He asks the Tribunal to order his reinstatement. In the alternative, the complainant requests the Tribunal to award him compensation for the moral, material and reputational damage suffered. Lastly, he seeks an award of costs in the sum of 10,000 euros.

The organisation asks the Tribunal to dismiss the complaint as irreceivable for failure to exhaust the internal means of redress and, in any event, as unfounded.

CONSIDERATIONS

1. The complainant had been a member of staff of the Energy Charter Conference. He impugns before the Tribunal the Secretary-General's decision, departing from the Advisory Board's recommendations, to uphold the non-renewal of his contract based on unsatisfactory performance.

2. The Tribunal first addresses the organisation's submission that the complaint is irreceivable insofar as the complainant failed to exhaust internal means of redress since he failed to challenge the decision not to renew his appointment within the applicable time limits.

3. Pursuant to Regulation 25(a)(i) of the Staff Manual, the Advisory Board advises the Secretary-General, at the request of the official concerned, "on any individual dispute arising from a decision of the Secretary-General and which an official [...] consider inequitable to themselves or contrary to the terms of the appointment or to the provisions of these Staff Regulations or of applicable Staff Rules or applicable Staff Circulars [...]". The Advisory Board meets "within no more than 30 days of receipt of a properly documented written request from an official for its advice in respect of disputes referred to in Regulation 25 a) (i) and (ii)" (Rule 25.2(a)(ii)). Nonetheless, before the advice of the Board is requested, "the official concerned shall address the Secretary-General in writing within ten days following notification of the disputed decision, requesting that it be modified or withdrawn" (Rule 25.2(b) of the Staff Manual).

4. In the case at hand, the decision not to renew the complainant's appointment, dated 21 June 2022, was sent to him by email on 22 June 2022. The organisation argues that he ought to have written to the Secretary-General within the following ten days to request that the decision be withdrawn, in accordance with Rule 25.2(b), that is to say by 4 July 2022, allowing for the intervening weekend. As the complainant did not write to the Secretary-General until 8 July 2022, the organisation contends that his challenge to the non-renewal decision was time-barred and that, as a result, the present complaint is irreceivable for failure to exhaust the internal means of redress. However, the complainant asserts that he discovered the email notifying him of the non-renewal of his appointment only on 4 July 2022. According to him, the ten-day time limit set by Rule 25.2(b) only started to run as of this date, and his request of 8 July 2022 was sent to the Secretary-General within the applicable time limit.

5. According to the Tribunal's settled case law, it is incumbent upon the sender of a document to prove, in the event of any dispute in this regard, that it was actually received by its addressee (see, for example, Judgments 3871, consideration 9, and 2074, consideration 6). In the present case, the record shows that the non-renewal decision was sent to the complainant – who was then on sick leave – by an email of 22 June 2022. However, the organisation has provided no evidence establishing that the complainant opened, and thus read, the email, and became aware of the decision it contained, on that date. As noted earlier, the complainant did not acknowledge receipt of the email until 4 July 2022. In these circumstances, the organisation's objection to receivability, which is based on the unproven assumption that the complainant received the non-renewal decision on 22 June 2022, must be rejected.

6. Among the many pleas entered by the complainant to challenge the lawfulness of the impugned decision, one in particular is decisive for the outcome of the dispute. It concerns the fact that the complainant received no proper warning regarding the performance

shortcomings noted in his PAR, on which the decision not to renew his appointment was based.

7. This issue was recently addressed in Judgment 4840, where the Tribunal made the following observations in consideration 24:

“The Tribunal recalls its well-settled case law that in terms of alleged unsatisfactory performance, a staff member should not only be warned but also given an opportunity to improve and correct the alleged poor or unsatisfactory performance. In Judgment 3282, consideration 5, it stated the following in this respect:

‘As in Judgment 2916, under 4, the Tribunal holds that ‘an organisation may not in good faith end someone’s appointment for poor performance without first warning him and giving him an opportunity to do better [...] Moreover, it cannot base an adverse decision on a staff member’s unsatisfactory performance if it has not complied with the rules established to evaluate that performance [...]’”

Similarly, in Judgment 3026, consideration 8, the Tribunal recalled that “[a]n opportunity to improve requires not only that the staff member be made aware of the matters requiring improvement, but, also, that he or she be given a reasonable time for that improvement to occur”.

8. The Tribunal finds that the organisation breached its duty of care in its treatment of the complainant. The record shows that the complainant received an email from the Administration on 9 May 2022 inviting him to complete his PAR and to discuss it with his immediate superior by 31 May 2022. On 28 May 2022, the complainant submitted to the Deputy Secretary-General, his immediate superior, a draft version of the PAR with a description of his tasks and responsibilities. On 31 May 2022, the Deputy Secretary-General completed the complainant’s PAR, negatively assessing his performance and recommending that the Secretary-General should not renew his appointment. This recommendation was endorsed by the Secretary-General in his decision dated 21 June 2022.

There is no evidence that the concerns regarding the complainant’s performance were brought to his attention at any time prior to 31 May 2022, when the completed PAR was forwarded to him. The decision

not to renew his appointment was taken just three weeks later. As a result, he was not afforded an opportunity to address or rectify the alleged shortcomings in his performance, nor was he granted a reasonable period within which any improvement could have been expected to occur.

9. Both the impugned decision and the decision not to renew the complainant's appointment on the grounds of unsatisfactory performance must therefore be set aside, without it being necessary to address the complainant's remaining pleas directed against these decisions.

10. The complainant asks the Tribunal to order his reinstatement or, alternatively, to award him compensation for the moral, material and reputational damage. He also requests that his PAR be set aside. According to the Tribunal's case law, the reinstatement of an official on a fixed-term contract is ordered only in exceptional cases (see Judgments 5055, consideration 7, and 3417, consideration 9). In the present case, having also regard to the time that has elapsed since the complainant's separation from the organisation, the Tribunal considers that reinstatement would not be appropriate. However, as a result of the unlawful decision not to renew his appointment, the complainant lost a valuable opportunity to pursue his employment with the organisation, in respect of which he is entitled to an award of material damages. In the circumstances of this case, the Tribunal assesses those damages in the amount of 60,000 euros. The complainant is also entitled to moral damages for the breach of the organisation's duty of care, which the Tribunal assesses at 15,000 euros.

11. So far as concerns the complainant's PAR, the Advisory Board correctly found that the section of the form containing the immediate superior's appraisal had been completed without any prior discussion with the complainant, and that, since none of the parties had signed the PAR by 31 May 2022, it had not been finalised within the prescribed time limit. According to the case law cited above, an organisation cannot base an adverse decision on a staff member's unsatisfactory performance if it has not complied with the rules

established to evaluate that performance. In view of the irregularities noted by the Advisory Board, set out above, the complainant's PAR for the period from 1 June 2021 to 31 May 2022 will be set aside.

12. The complainant's request to annul the Secretary-General's decision to end negotiations on an amicable settlement is rejected as irreceivable as it does not concern "non-observance, in substance or in form, of the terms of appointment of officials" employed with international organizations which have accepted the jurisdiction of the Tribunal (see Article II, paragraph 5, of the Tribunal's Statute).

13. As the complainant succeeds, he is entitled to an award of costs, which the Tribunal sets at the amount of 10,000 euros.

DECISION

For the above reasons,

1. The impugned decision of 4 October 2022 and the decision of the Secretary-General of 21 June 2022 are set aside, as is the complainant's PAR for the period from 1 June 2021 to 31 May 2022.
2. The Energy Charter Conference shall pay the complainant 60,000 euros in material damages.
3. It shall pay the complainant 15,000 euros in moral damages.
4. It shall also pay the complainant 10,000 euros in costs.
5. All other claims are dismissed.

In witness of this judgment, adopted on 5 November 2025, Mr Michael F. Moore, 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 10 February 2026 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

HONGYU SHEN

RENÉ M. VARGAS M.