

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

R. (No. 4)

v.

IOM

141st Session

Judgment No. 5133

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourth complaint filed by Ms M. R. against the International Organization for Migration (IOM) on 1 November 2022, IOM's reply of 9 February 2023, the complainant's rejoinder of 13 April 2023 and IOM's surrejoinder of 25 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 IOM's decision to maintain its earlier decision to impose upon her the disciplinary measure of discharge from service after due notice and to pay her 50 per cent of the termination indemnity in execution of Judgment 4460, in which the Tribunal remitted the matter to IOM in order for the Director General to "take a new decision on the complainant's appeal against the decision to discharge her".

Facts relevant to this case are to be found in Judgments 4459 and 4460 respectively on the complainant's first and second complaints to the Tribunal.

Suffice it to recall that by a letter of 15 December 2017, the complainant was charged with misconduct for having: (1) failed to comply with the Director General's clear and repeated instructions with regard to her reassignment by failing to respect deadlines for reply and indicate preferences between options for reassignment proposed for her; (2) engaged in a pattern of actions to delay possible reassignment and, in the case of reassignment to Khartoum, Sudan, indicated repeatedly that although she accepted the assignment, she intended indefinitely to delay its implementation; (3) appeared to have engaged in inappropriate contacts with representatives of the Government of Lebanon in an attempt to circumvent the Director General's decision regarding her reassignment to Beirut, Lebanon; and (4) challenged the truthfulness of the information the Director General had provided to her regarding her accreditation for the post in Lebanon.

Having considered the complainant's response denying any misconduct and accusing IOM of harassment, the Director, Human Resources Management Division (HRM), confirmed, in a letter of 5 January 2018, the charges and informed her of the Director General's decision to impose upon her the disciplinary measure of discharge after due notice on the basis that the Director General had lost confidence in her ability to successfully fulfil her functions as an IOM staff member and to conduct herself in compliance with the IOM Unified Staff Regulations and Rules and the IOM Standards of Conduct. The Director, HRM, added that the decision would become effective upon the complainant's receipt of the letter and that she would receive a payment in lieu of notice.

The complainant challenged this decision through the internal means of redress and, by a letter of 18 January 2019, she was informed that the Director General had decided to reject her internal appeal. She impugned this decision in her second complaint with the Tribunal filed on 25 March 2019. Prior to that, on 25 February 2019, she had filed her first complaint with the Tribunal challenging the decision not to defer her transfer, under IOM's policy on rotation, to Sudan until she was able to find adequate medical and schooling facilities for her disabled daughter.

On 27 January 2022, the Tribunal delivered Judgments 4459 and 4460 on the complainant's first and second complaints. In Judgment 4459, the Tribunal found that IOM had breached its duty of care by refusing to defer the complainant's reassignment. It set aside the impugned decision and awarded the complainant moral damages and costs. In Judgment 4460, the Tribunal found that IOM's refusal to defer the complainant's reassignment might have had an effect on the first and second charges proffered against her and was not satisfied IOM would have taken the decision to discharge her had this been the case. Noting that "[i]ssues of proportionality may well arise which [...] must be considered", the Tribunal set aside the impugned decision and remitted the matter to IOM "in order for the Director General to take a new decision on the complainant's appeal against the decision to discharge her".

By a letter of 8 August 2022, the Director, Department of Human Resources (DHR), informed the complainant that, after consideration of Judgment 4460, the Director General had decided to maintain the original disciplinary measure imposed upon her, i.e. discharge after due notice. The stated reason was that the third and fourth charges against the complainant, namely that she had made inappropriate contact with representatives of the Government of Lebanon in an attempt to circumvent the former Director General's earlier decision regarding her reassignment to Beirut (third charge), and that she had challenged the truthfulness of the former Director General's statements concerning her accreditation for reassignment to Beirut (fourth charge), were substantiated. This amounted to serious misconduct incompatible with the standards expected of international civil servants, rendering her continued service with IOM untenable. At the same time, in recognition of the finding that the first and second charges were not substantiated, the Director General had also decided to pay the complainant 50 per cent of the termination indemnity which, in her case, was equal to 50 per cent of 12 months' salary. This is the impugned decision.

The complainant asks the Tribunal to set aside the decision to impose upon her the disciplinary measure of discharge after due notice, to reinstate her and to award her damages and costs.

IOM submits that the impugned decision was justified and in accordance with the legal framework, and it asks the Tribunal to dismiss the complainant's claims.

CONSIDERATIONS

1. The complainant impugns the decision of the Director General, communicated to her by letter of 8 August 2022 from the Director, DHR, to maintain the disciplinary measure of discharge after due notice. This decision was taken by the Director General following the delivery of Judgment 4460, in which the Tribunal set aside the initial decision to impose on the complainant the disciplinary measure of discharge after due notice and remitted the matter to IOM "in order for the Director General to take a new decision on the complainant's appeal against the decision to discharge her". The complainant contends that the impugned decision is unlawful and disproportionate and requests that it be set aside and that she be reinstated and awarded compensation and costs.

2. It is convenient to summarise the facts relevant to this case, which can be found in Judgments 4459 and 4460, respectively arising from the complainant's first and second complaints to the Tribunal. The complainant commenced employment with IOM in 2001 and was assigned to Damascus, Syria; in 2005, she was appointed Chief of Mission in Damascus, at grade P-5. Between 2008 and 2016, several proposed transfers under the rotation policy were postponed in view of the needs of her disabled daughter. In 2017, she was reassigned to the position of Chief of Mission in Khartoum, but requested deferral until she could secure appropriate medical and schooling facilities for her daughter. By email of 13 July 2017, she was instructed to take up duties in Khartoum no later than 1 October 2017, but she failed to comply. She then challenged internally the 13 July 2017 decision and, in a letter of 19 December 2018, the Director General informed her that the decision requiring her to transfer to Khartoum no later than 1 October 2017 did not infringe any of her rights. In Judgment 4459, the Tribunal

found that IOM had breached its duty of care by not granting the complainant's request to temporarily defer her reassignment to Sudan and considered that IOM should have continued to waive her transfer under the rotation policy until she was able to secure suitable facilities for her daughter's educational needs. The Tribunal therefore set aside the 19 December 2018 decision and awarded the complainant 10,000 euros in moral damages and 8,000 euros in costs.

3. Parallel to these events, the complainant was charged with misconduct culminating in the Director General's decision of 5 January 2018 to impose on her the disciplinary measure of discharge after due notice on the basis of four charges: (1) failure to comply with the Director General's instructions relating to her transfer to Khartoum; (2) engaging in a pattern of actions to delay her transfer; (3) inappropriate contact with representatives of the Government of Lebanon in an attempt to circumvent the Director General's decision concerning her reassignment to Beirut; and (4) challenging the truthfulness of the Director General's statements regarding her accreditation to Beirut.

4. In Judgment 4460, the Tribunal set aside the discharge decision and remitted the matter to IOM "in order for the Director General to take a new decision on the complainant's appeal against the decision to discharge her". At considerations 10 and 11 of Judgment 4460, the Tribunal held that the first and second charges proffered against the complainant might have been affected by the breach of IOM's duty of care established in Judgment 4459 and that issues of proportionality might arise which had to be considered. It remitted the matter to IOM and said:

"10. The Director General maintained the discharge decision in the impugned decision on the basis that the four charges had been proved, in effect, viewing the decision to discharge the complainant as proportionate on the four charges, cumulatively. However, in Judgment 4459, which is also delivered in public this day, the Tribunal has set aside the impugned decision which confirmed the Director General's decision not to temporarily defer the complainant's reassignment to Sudan. The Tribunal concluded that in the particular circumstances of the case, IOM breached its duty of care towards the complainant by not granting her request to temporarily defer

that reassignment. That decision may well have had an effect on the first and second charges proffered against the complainant. In the circumstances, the Tribunal cannot be affirmatively satisfied that the decision to discharge the complainant, which the Director General confirmed in the impugned decision, would have been the same. Issues of proportionality may well arise which, under the Tribunal's case law, must be considered in a case such as this (see, for example, Judgments 3953, consideration 14, and 4400, consideration 29). For this reason, the impugned decision of 18 January 2019 will be set aside.

11. The matter will be remitted to IOM in order for the Director General to take a new decision on the complainant's appeal against the decision to discharge her. As a consequence, the complainant's claims for reinstatement and for damages will remain in abeyance."

5. Following the remittal of the matter to IOM, the Director General decided to maintain the original disciplinary measure of discharge after due notice, on the basis that the third and fourth charges remained substantiated and amounted to serious misconduct incompatible with the standards expected of international civil servants, rendering the complainant's continued service with IOM untenable. However, in recognition of the finding that the first and second charges were not substantiated, the Director General decided that the complainant should receive payment of 50 per cent of the termination indemnity pursuant to Annex 15 to the IOM Unified Staff Regulations and Rules. As she had completed more than 15 years of service, this payment equated to 50 per cent of 12 months' salary.

6. The complainant contends that the third and fourth charges relied upon by IOM to maintain the original disciplinary measure, namely engaging in inappropriate contacts with Lebanese officials and challenging the truthfulness of the then Director General's statements, were not proven beyond a reasonable doubt so as to justify her discharge. According to her, she never initiated any contact with the Lebanese authorities but merely conveyed information she had received informally. IOM argues that it can reasonably be inferred from her email of 11 April 2017, in which she informed the Director General that the Lebanese Government had endorsed her nomination as Chief of Mission in Beirut, that she had sought and received information as a

result of unauthorised and improper contact with representatives of the Government of Lebanon. IOM also argues that there was no valid reason for her to be engaged in discussions with national officials at that time, given that the Director General had already informed her, on 20 January 2017, that her accreditation had been refused and that her assignment to Beirut was no longer viable. IOM asserts that her actions violated the IOM Unified Staff Regulations and Rules and the Standards of Conduct, and that the Director General's new decision to maintain the original disciplinary measure was justified in fact and law, and constituted a reasonable exercise of administrative discretion.

7. According to the Tribunal's well-settled case law, a decision-maker imposing a disciplinary sanction, including the serious sanction of discharge, must be satisfied that the factual foundation for the finding of misconduct is proven beyond reasonable doubt (see Judgment 4936, consideration 6). Moreover, the burden of proof rests on an organisation to prove allegations of misconduct beyond reasonable doubt before a disciplinary sanction can be imposed (see, for example, Judgments 4227, consideration 6, 4106, consideration 11, and 3649, consideration 14). It is equally well settled that the role of the Tribunal is not to assess the evidence itself and determine whether the charge of misconduct has been established beyond reasonable doubt but rather to assess whether there was evidence available to the relevant decision-maker to reach that conclusion (see, for example, Judgments 4949, consideration 10, and 4362, consideration 7).

8. The Tribunal observes that, in her email of 11 April 2017 to the Director General, the complainant stated:

"I have just been informed that the Lebanese Government has endorsed my nomination as [Chief of Mission] Lebanon and welcomes the opportunity to work with me. I have been assured that IOM has been officially informed about this. I hope this puts an end to all the issues related to my rotation."

The complainant's argument that she never initiated any contact, formal or informal, with the Lebanese authorities and that the information relayed in her 11 April 2017 email was not sought improperly, is contradicted by her own statement in that email which explicitly asserts

endorsement of her nomination by the Lebanese Government, expressed the hope to resolve the “issues” concerning her rotation, and basically seeks to revive the proposal of having her nomination as Chief of Mission in Lebanon. Based on the content of that email, it was reasonable for the Director General to infer that she had sought and received information as a result of unauthorised contact with Lebanese Government officials in an attempt to circumvent his decision regarding her reassignment to Beirut. It was also reasonable, if not self-evident, for the Director General to infer that she contested the truthfulness of the information he had provided to her on 20 January 2017, namely that her accreditation as Chief of Mission in Beirut had been refused and that her assignment to Beirut was no longer viable. In the circumstances, it was open to the Director General to conclude that the third and fourth charges were proven beyond reasonable doubt. Such conduct was inconsistent with Staff Regulation 1.5 and paragraph 5.36 of Instruction IN/15 Rev. 1 (IN/15 Rev. 1) on IOM’s Standards of Conduct, which, respectively, prohibit staff members from communicating information that has not been made public or from using such information for “private advantage” and from seeking to influence Member States to obtain a reversal of an internal decision taken by the Director General. Her conduct was also inconsistent with Staff Regulation 1.2, which places staff under the authority of the Director General, Staff Rule 1.2.1(b), which requires them to follow the Director General’s directions and instructions, and paragraph 5.10 of IN/15 Rev. 1, which requires their loyalty. The Tribunal is satisfied that the third and fourth charges have been established by uncontroverted evidence on the record. Accordingly, the complainant’s plea that the charges were unproven beyond reasonable doubt is unfounded.

9. The complainant also contends that the disciplinary measure of discharge was excessive under the principle of proportionality, that IOM maintaining its wrongful initial measure merely continued the lack of good faith previously shown, and that IOM disregarded the fact that the initial discharge was a flawed decision set aside by the Tribunal. IOM submits that, as the third and fourth charges remained substantiated, the imposed disciplinary measure was proportionate to

the gravity of the complainant's proven actions, which amounted to serious misconduct. IOM also submits that the Director General duly considered the Tribunal's findings in Judgment 4460, as evidenced by his revised conclusion regarding the first and second charges in the impugned decision, namely his recognition of the finding that these charges had not been substantiated. IOM further submits that the Director General's decision to maintain the original disciplinary measure and to pay the complainant 50 per cent of the termination indemnity pursuant to paragraph 1(c) of Annex 15 to the IOM Unified Staff Regulations and Rules was a proportionate response to the gravity of the complainant's proven actions.

10. Regarding the severity of a disciplinary measure, the Tribunal's case law has it that while the disciplinary authority within an international organisation has a discretion to choose the disciplinary measure imposed on an official for misconduct, its decision must always respect the principle of proportionality which applies in this area (see, for example, Judgments 4832, consideration 47, 4343, consideration 17, 4244, consideration 4, and the case law cited therein). In determining whether disciplinary action is disproportionate to the offence, both objective and subjective features are to be taken into account and, in the case of dismissal, the closest scrutiny is necessary (see, for example, Judgment 2656, consideration 5).

11. The framework for the imposition of disciplinary measures is governed by Staff Regulation 10 of the IOM Unified Staff Regulations and Rules which relevantly provides:

"REGULATION 10
Disciplinary Measures

- (a) The Director General may impose disciplinary measures on a staff member if:
 - [...]
 - (iii) he or she is proven to be engaged in any activity incompatible with his or her duties with the Organization.
- (b) Disciplinary measures may take the form of any one or a combination of the following: written reprimand; reduction of step(s); fine; discharge after due notice; summary dismissal.

- (c) Disciplinary measures shall be imposed in accordance with the requirements of due process and shall be commensurate with the gravity of the act committed.”

12. As stated in Judgment 4460, consideration 10, with the first and second charges out of the four being abandoned, the Tribunal decided to remit the matter to IOM in order for the Director General to decide whether issues of proportionality arose which required a reconsideration of the original disciplinary measure. This is what the Director General did in the present case. He reassessed the disciplinary measure in light of the remaining two charges, namely the third and fourth charges, and he altered it by awarding 50 per cent of the termination indemnity, which in the complainant’s case was equal to six months’ salary. This reflects that IOM followed the Tribunal’s instruction in Judgment 4460 to reconsider proportionality. Considering all the surrounding circumstances, particularly that the complainant had already been expressly informed by the Director General that her accreditation for Lebanon had been rejected and her assignment there withdrawn, that by letter of 16 February 2017 she had been instructed to indicate by 3 March 2017 her preference between a Headquarters post in Geneva, Switzerland, or the position of Chief of Mission in Khartoum and that she failed to respect this deadline, her subsequent approach to Lebanese officials in an attempt to revive a withdrawn nomination and her questioning of the Director General’s statements amounted to a grave breach of her duty as a staff member of IOM. Such actions struck at the core of the duties of loyalty, discretion, and respect for authority required of international civil servants. It cannot reasonably be maintained that the disciplinary measure of discharge after due notice was manifestly disproportionate to the gravity of the acts she committed. The Tribunal therefore considers that, in taking the impugned decision, the Director General did not exceed the limits of his discretionary authority, and the complainant’s plea in this regard is unfounded.

13. The complainant alleges that IOM breached its duty of care by failing to defer her reassignment to Sudan despite her daughter's special needs and by attaching little importance to its commitment to empower and retain a long-serving female staff member, reflecting a hostile working environment. She also alleges that the ongoing pattern of institutional harassment influenced the decision to dismiss her. The issue of duty of care and related claims for remedies regarding IOM's failure to consider her family situation and its refusal to defer her assignment to Sudan have already been adjudicated in Judgment 4459. Moreover, the complainant's allegations relating to harassment were the subject of her third complaint, which was dismissed by the Tribunal in Judgment 4746, delivered on 31 January 2024. Consequently, the complainant is precluded from relitigating these matters under the doctrine of *res judicata*.

14. The complainant further contends that in the absence of any rational justification for such a harsh disciplinary measure, bias and retaliation can be inferred. She argues that the charges of misconduct were only raised after she appealed her reassignment to Sudan, suggesting retaliation for exercising her right to appeal.

15. The Tribunal has pointed out many times in its case law that bad faith may not be presumed and must be proved (see Judgments 4451, consideration 16, and 4345, consideration 6). The burden of proof is on the complainant, and to support her allegation she must demonstrate that there was malice, ill will, improper motive, fraud or similar dishonest purpose (see Judgment 3902, consideration 11). Similarly, it is incumbent on the complainant to establish that actions or conduct complained of were retaliatory (see Judgments 4391, consideration 13, and 4363, consideration 12). A mere assumption or suspicion of retaliation does not meet the requisite standard of proof, the onus of which is borne by the complainant (see Judgment 4867, consideration 5).

16. In the present case, the new decision, taken after the Tribunal's remittal of the matter to IOM, addressed the points raised by the Tribunal in Judgment 4460 and, maintaining only the substantiated

charges, it confirmed the original disciplinary measure and granted the complainant 50 per cent of the termination indemnity. The Tribunal is satisfied that the impugned decision was taken by the Director General in the proper exercise of his authority, in accordance with the Organization's rules and following the correct procedure, it was in regular form and it was not disproportionate to the complainant's proven misconduct. The complainant has not adduced persuasive evidence to establish retaliation, bad faith or improper motive on the part of IOM. Her plea in this respect is therefore unfounded.

17. It follows from the foregoing considerations that the complaint must be dismissed in its entirety.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 27 October 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.