

**C.**  
**v.**  
**FAO**

**141st Session**

**Judgment No. 5144**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr M. C. against the Food and Agriculture Organization of the United Nations (FAO) on 19 October 2022 and corrected on 18 November 2022, the FAO's reply of 16 February 2023, the complainant's rejoinder of 17 March 2023 and the FAO's surrejoinder of 9 June 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 the non-renewal of his fixed-term appointment.

The complainant joined the World Food Programme (WFP) – an autonomous joint subsidiary programme of the United Nations and the FAO – in 2006 under a Special Services Agreement. In 2008, he was recruited on a fixed-term appointment. In July 2015, he was reassigned to Libya as Logistics Officer, at grade P-3.

By email dated 19 June 2018, the Professional Staffing Committee notified the complainant that his position would be abolished as of 31 July 2018. The Committee explained that it had been unable to identify a position for him during the June 2018 reassignment exercise

and that his name would be included in the list of staff available for reassignment. The Committee advised him to apply for positions that would be advertised in the next reassignment exercise, scheduled for October 2018, and encouraged him to contact the Staffing Coordinator to explore further employment opportunities. It also mentioned that while efforts would be made to identify a suitable alternative assignment in the upcoming reassignment exercises, “should this not prove successful and [the complainant] remain unassigned by 30 June 2019, then WFP may consider available options, including separation from service, in accordance with WFP’s existing rules and regulations”.

On 1 August 2018, the complainant was placed on special leave with full pay.

Between June 2018 and June 2019, the complainant unsuccessfully applied for 25 positions in several reassignment exercises. Following each reassignment exercise, the complainant was informed, respectively on 22 October 2018, 22 February 2019, 25 April 2019 and 5 July 2019, that the Professional Staffing Committee had not been able to identify a suitable position for his reassignment.

On 6 June 2019, the complainant wrote to the Staffing Coordinator, requesting her feedback “on the past reassignment outcome and [her] [...] advice towards future opportunities”. The Staffing Coordinator responded on 9 June 2019, offering him a “live career discussion”.

By letter dated 15 July 2019, the WFP Executive Director notified the complainant that, because it had not been possible to identify a suitable position for him in the last reassignment exercises, his fixed-term contract would not be renewed beyond 30 September 2019. The WFP Executive Director added that the complainant could however continue to apply to any suitable vacant positions until his separation date.

On 7 August 2019, the complainant applied for a Logistics Officer position, at grade P-3, based in Rome, Italy, for which he was not selected.

In September 2019, the complainant wrote to the Director, Human Resources (HR), asking for a reversal of the WFP Executive Director's decision not to renew his appointment. The Director, HR, responded that it was not possible to reverse this decision. She stated that multiple efforts had been made by the WFP to find a suitable position for the complainant since June 2018, however the Professional Staffing Committee had been "unable to identify an assignment where [the complainant's] skills and profile would meet the operational requirements".

On 30 September 2019, the complainant separated from service.

On 15 October 2019, the complainant submitted an appeal to the WFP Executive Director, challenging the non-renewal of his fixed-term appointment.

On 16 December 2019, the WFP Executive Director rejected the complainant's appeal. The WFP Executive Director found that the aspects of the complainant's appeal involving non-reassignment decisions communicated to him between June 2018 and 5 July 2019 were time-barred. The WFP Executive Director however noted that the complainant was receivable to contest his non-selection for the Logistics Officer position, at grade P-3, based in Italy, because the Director, HR, "confirmed to [him] that [he] had not been selected for any positions for reassignment – including this position – on 27 September 2019". The WFP Executive Director nevertheless stated that "this position had specialized terms of reference and required a candidate with significant accounting and finance background as it involved providing support in supply chain budgeting and planning" and "[the complainant's] profile did not meet those technical requirements as [he] did not have the relevant accounting and budget background".

On 7 February 2020, the complainant submitted an appeal to the Appeals Committee, directed against the 16 December 2019 decision.

On 30 September 2021, the Appeals Committee issued its report, in which it recommended that (i) the decision not to renew the complainant's appointment be set aside, (ii) he be reinstated, and (iii) the WFP duly examine, in consultation with him depending on his reinstatement, his request for moral damages. Specifically, the Appeals Committee found,

based on a review of documents provided *in camera* by the WFP involving reassignment decisions made in 2018 and 2019, that “there were a number of positions which seemed to match the skills and professional background of the [complainant]” and it “could not find a strong reason as to why he had not been considered, including when the positions were assigned to external candidates”.

By letter dated 29 July 2022, the FAO Director-General informed the complainant that he had decided to reject the Appeals Committee’s recommendations. The Director-General observed, in particular, that “the fundamental reason for the non-renewal of [the complainant’s] appointment was the fact that no position matching [his] profile could be found after more than one year of endeavors to this end – which was also the case for the post of Logistics Officer [...] to which [he] applied on 7 August 2019, which called for accounting and finance skills that [the complainant] did not possess”. This is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision and order his reinstatement with retroactive effect from his date of separation. In the alternative to reinstatement, he requests to be paid material damages corresponding to all lost salaries, benefits, entitlements and emoluments, calculated from the date of his separation to the date of his mandatory pension age. He further claims moral damages, in the sum of 50,000 euros, as well as costs, including for the internal appeal process, in the amount of 8,000 euros. Lastly, he asks for the disclosure of the documents reviewed *in camera* by the Appeals Committee as well as information about external recruitments for the years 2018 and 2019, especially for the functions of Programme and Logistics.

The FAO asks the Tribunal to reject the complaint in its entirety and submits that several aspects of the complaint are irreceivable.

## CONSIDERATIONS

1. The complainant impugns the decision of 29 July 2022, in which the FAO Director-General dismissed his appeal against the decision of 16 December 2019 by the WFP Executive Director, which

confirmed the non-renewal of his fixed-term appointment originally decided on 15 July 2019, and rejected the Appeals Committee's recommendations.

2. In seeking to set aside the impugned decision, the complainant mainly advances five pleas:

- (a) breach of due process because the Appeals Committee proceeded to a review *in camera* of documents provided by the Organization concerning the prior non-reassignment decisions, without sharing them with him;
- (b) lack of motivation of the impugned decision, in that the impugned decision does not justify the conclusion that no suitable position matched his profile, particularly given the Appeals Committee's finding that several positions assigned to external candidates appeared to match the complainant's skills;
- (c) failure to accord him preference as an internal candidate, and non-renewal contrary to paragraph 8.3 of Annex 1 to the WFP Human Resources Manual Section II.3 on the Terms of Reference of the Staffing Committee, which provides that the Staffing Committee should review the recruitment of external candidates when a position cannot be filled by an existing staff member;
- (d) breach of the duty of care by failing to take into account his long service and previous performance evaluations and failing to make genuine efforts to reassign him; and
- (e) he was "unfairly targeted or discriminated against for reasons unrelated to performance".

3. The Organization raises receivability as a preliminary issue. It contends that the complaint is receivable only insofar as it concerns the non-renewal of the complainant's appointment on account of his continued unassigned status for more than one year, and the decision not to reassign him to the Logistics Officer post in Rome, which he sought to review on 15 October 2019. It argues that any challenge to the decision notifying him of the abolition of his position or prior non-reassignment decisions (19 June 2018; 22 October 2018; 22 February

2019; 25 April and 5 July 2019) is irreceivable for failure to exhaust internal remedies within the applicable time limit, and that the complainant may not use these proceedings to circumvent such time limits. It further submits there is no need to consider the earlier non-reassignment decisions as contextual material because the case law cited by the complainant applies to misuse of authority, which the complainant is not alleging.

4. The complainant, by contrast, submits that he does not seek a ruling on the validity of each earlier non-reassignment decision but asks that they be taken into account as context in assessing the lawfulness of the impugned non-renewal. He maintains he became aware of the damage caused by the previous steps only when they culminated in his non-renewal. In his rejoinder, he alleges that his separation was imposed without lawful reason and was extremely unfair, raising concerns that he was “unfairly targeted or discriminated against for reasons unrelated to performance”.

5. The Tribunal notes that the complainant does not impugn the decision to abolish his post nor the earlier non-assignment decisions, but asks that they be taken into account as part of the circumstances leading to the final decision of non-renewal. The Tribunal further notes that the complainant contends that he was “unfairly targeted or discriminated against for reasons unrelated to performance”, which, in essence, amounts to allegations that the non-renewal of his contract was decided for an improper purpose. Under the Tribunal’s case law, the decision to abolish a post and the consequent decision to terminate the appointment of the holder of that post, in the event that she or he is not reassigned, are legally separate (see, for example, Judgments 4369, consideration 5, and 3905, consideration 15). However, the Tribunal may examine the circumstances surrounding the abolition of post in a challenge to the subsequent termination of a staff member’s employment, even if no legal challenge was made, within time or at all, to the abolition of the post itself (see Judgments 3933, consideration 5, and 3172, consideration 16), for the limited purpose of, for example, ascertaining whether there has been an abuse of authority which entails

consideration of whether the decision was taken for an improper purpose. Moreover, it is open to a complainant to impugn a redeployment process, if a failure to redeploy him has led to the termination of his employment (see, for example, Judgment 3933, consideration 8).

6. On the merits, the Tribunal recalls that, according to its consistent case law, the wide discretion an international organization enjoys in deciding whether or not to renew a fixed-term appointment is subject to only limited review, as the Tribunal respects the organization's freedom to determine its own requirements and the career prospects of staff (see, for example, Judgment 4503, consideration 7). However, this discretion is not unfettered, and the Tribunal will set aside such a decision if it was taken without authority or in breach of a rule of form or of procedure, if it rested on an error of fact or of law, if some essential fact was overlooked, if there was abuse of authority, or if clearly mistaken conclusions were drawn from the evidence (see, for example, Judgments 4916, consideration 4, and 4495, consideration 15). Moreover, the case law also requires that the reason for the non-renewal must be valid (and not an excuse to get rid of a staff member) and be notified within a reasonable time (see Judgments 4917, consideration 12, 4503, consideration 7, and 3769, consideration 7).

7. Regarding the first plea on due process, the Organization argues that the documentation of prior non-reassignment decisions has no bearing on the outcome of the matter and does not form the basis of the impugned decision. However, the Tribunal notes that the complainant's non-reassignment history formed the continuum that led to his non-renewal. In support of his position, the complainant relies on Judgment 4005, consideration 6, which states that "[a] fundamental principle of the adversarial process is the right to know and have an opportunity to respond to the evidence adduced by the opposing party", that the non-disclosure of evidence in the absence of a reason in law "constitutes a serious breach of the complainant's right to procedural fairness" and that "[a] staff member must, as a general rule, have access to all evidence on which the authority bases (or intends to base) its

decision against [her or] him” (see Judgment 2700, consideration 6). The Appeals Committee indicated in its report that it conducted, at the FAO’s request, a review *in camera* of documents provided by the Organization, in order to reach its conclusions on the merits of the complainant’s appeal. In these circumstances, the non-disclosure of these documents to the complainant breached due process. This plea is well founded.

8. Regarding the complainant’s second plea on lack of motivation, the Tribunal recalls its case law that the executive head of an international organization, when taking a decision on an internal appeal that departs from the recommendations made by the appeals body, to the detriment of the employee concerned, must adequately state the reasons for not following those recommendations (see, for example, Judgments 4062, consideration 3, 3830, considerations 6 and 8, 3695, consideration 9, and 3208, consideration 11). The Tribunal stated in Judgment 2347, consideration 14:

“The rationale for requiring decisions to be motivated is to allow the staff member to know why he or she had received an unfavourable decision and to make an informed decision as to whether or not he or she should have recourse to the Tribunal.”

9. In the present case, the Appeals Committee stated in its report as follows:

“After examining reassignment decisions by functions in the years 2018 and 2019, the Committee wondered if indeed the [complainant] was not suitable for all the positions he had applied to. In this regard, the view of the Committee was that there were a number of positions which seemed to match the skills and professional background of the [complainant] and could not find a strong reason as to why he had not been considered, including when the positions were assigned to external candidates. The Committee noted that the only reason provided by the Programme was the use of discretionary power throughout the various reassignments processes which were treated as a purely administrative matter, without trying to find a solution to the case of the [complainant] after deciding to abolish his post.”

10. The Tribunal notes that the Appeals Committee expressly identified a reasoning gap: after the abolition of the complainant's post and across five reassignment exercises, there were a number of positions apparently matching his background, some filled by external candidates, yet no strong reason was given for not considering him. In these circumstances, the Director-General, when rejecting the Committee's recommendations, was required to provide adequate reasons showing why the seemingly matching posts referred to by the Appeals Committee did not suit his profile and why external candidates were preferred. The impugned decision does not do so. The Director-General merely stated that the post was abolished, that the Staffing Committee considered 25 applications over more than a year, and that the non-renewal followed when no reassignment materialized. While citing the finance/accounting requirements of the specific Logistics Officer post in Rome, he did not engage with the Committee's broader concern regarding other positions that appeared to match the complainant's background. Accordingly, the Tribunal finds that the Director-General failed to state adequate reasons when disagreeing with the Appeals Committee on this point.

The impugned decision must therefore be set aside on this ground.

11. Turning to the third and fourth pleas, the complainant contends that he should have been given preference as an internal candidate regarding reassignment after his post had been abolished and that the Organization failed to make genuine efforts to reassign him, notwithstanding his long service and positive evaluations. The Organization replies that it discharged its obligations by encouraging him to apply for relevant positions over a one-year period, the Staffing Coordinator provided him with career advice, and his applications were fully considered.

12. As regards the Organization's duty of care, the Tribunal recalls that while there is no obligation to guarantee reassignment, the Organization has the duty to explore options or to make reasonable efforts for the reassignment of a staff member whose post has been abolished (see, for example, Judgments 4097, consideration 9, and

2902, consideration 14). Unlike in cases where an organization actively reached out to other offices and documented efforts to secure reassignment, the record here shows only that the complainant was encouraged to apply for posts. But, in the circumstances of this case, the Tribunal considers that the FAO was obliged to make more efforts than simply encouraging him to apply to suitable posts. In Judgment 3908, consideration 16, the Tribunal explained that, while it has long recognized the right of an international organization to abolish positions, which will imperil the continuing employment of the occupants of those abolished positions, a concomitant of that right is an obligation to deal fairly with the staff who occupy those abolished positions. This obligation extends to finding, if they exist, other positions within the organisation for which those staff have the experience and qualifications. Historically, the Tribunal generally considered the extent of an organization's duty to reassign staff members whose positions were abolished mainly in relation to the type of contract they held, the nature of the post and/or the role to which they were assigned, their length of service with the organization, and recognized a greater duty in respect of staff who held permanent positions (see, for example, Judgment 3754, consideration 16).

There is no evidence that the complainant's long service, logistics background, or service profile, were considered against positions later filled by external candidates. In addition to paragraph 8.3 of Annex 1 to the WFP Human Resources Manual Section II.3 on the Terms of Reference of the Staffing Committee, the Tribunal notes that paragraph 7.5 of the WFP Human Resources Manual Section II.4 "Service Profile", states that "[a] staff members service profile is a combined indication of the staff members mobility history and hardship service while under a WFP international professional appointment. A staff member's service profile will be taken into account with a view towards achieving balance of assignments as it allows Staffing Coordinators and the Staffing Committee to take into account the nature, duration and hardship of a staff member's current and previous assignments when making reassignment decisions." In the present case, the complainant joined the WFP in 2006. In July 2015, he was reassigned to Libya, a hardship duty station, as Logistics Officer, at

grade P-3, under a fixed-term appointment. However, there is no evidence that this information was taken into account in the reassignment exercises. In this regard, the Tribunal considers that the Appeals Committee correctly found that the Organization treated the reassignment process as a “purely administrative” exercise, without making genuine or reasonable efforts to explore reassignment options for the complainant whose post had been abolished. The Tribunal therefore concludes that the Organization failed to discharge its duty of care towards the complainant.

13. The Tribunal finds that the complainant has not sufficiently substantiated his allegations, set forth in his fifth plea, that he was “unfairly targeted or discriminated against for reasons unrelated to performance”.

14. Regarding the complainant’s claim for reinstatement, under the Tribunal’s well-settled case law, the reinstatement of a staff member who held a fixed-term contract is ordered only in exceptional cases (see, for example, Judgments 4405, consideration 8, 4063, consideration 11, 3353, consideration 35, and 1317, consideration 38). The present case is not exceptional. In the event that he is not reinstated, the complainant claims material damages equivalent to all lost salaries, benefits, entitlements and emoluments, calculated from the date of his separation to the date of his mandatory pension age. The complainant has no grounds for claiming payment which he would have received until he reached retirement age, as the renewal of his fixed-term contract would by no means have guaranteed that the Organization would continue to employ him until his retirement. Nevertheless, he is entitled to material damages for the loss of the valuable opportunity to have his contract renewed. Given the circumstances of this case, the Tribunal finds that the material damage suffered by the complainant shall be fairly redressed by ordering the Organization to pay him material damages in the amount of 80,000 euros. Inasmuch as the complainant has not articulated the specific effects which the unlawful decision has had upon him, apart from his personal circumstances more generally, the Tribunal will not award him the moral damages that he claims.

15. Regarding the complainant's claim for moral damages on grounds of excessive delay in the internal appeal process, the Tribunal's consistent case law has it that the amount of compensation for unreasonable delay in internal proceedings will ordinarily be influenced by at least two considerations. One is the length of the delay and the other is the effect of the delay. These considerations are interrelated as a lengthy delay may have a greater effect. That latter consideration, the effect of the delay, will usually depend on, amongst other things, the subject matter of the appeal (see Judgments 4978, consideration 14, 4804, consideration 5, 4563, consideration 14, and 3160, considerations 16 and 17). In the present case, the Tribunal accepts the Organization's statement that the complainant's appeal to the Appeals Committee was submitted at the onset of the COVID-19 pandemic, which did result in some operational constraints. Accordingly, the complainant's claim is rejected.

16. The complainant's request for disclosure of documents reviewed by the Appeals Committee regarding reassignment decisions in 2018 and 2019 is moot as the Organization has provided such documents in its reply. His request for detailed information about external recruitments for the years 2018 and 2019 is not necessary for his case, as the written submissions and evidence produced by the parties were ample and sufficiently clear to enable a properly informed determination.

17. As the complainant succeeds, he is entitled to an award of costs, which the Tribunal sets at the amount of 8,000 euros that he seeks. There are no grounds for awarding costs for the internal procedure, which may only be awarded under exceptional circumstances (see, in particular, Judgment 4541, consideration 12) that are not present in the instant case.

DECISION

For the above reasons,

1. The impugned decision of 29 July 2022 from the FAO Director-General as well as the decisions of 16 December 2019 and 15 July 2019, taken by the WFP Executive Director, are set aside.
2. The FAO shall pay the complainant material damages in the amount of 80,000 euros.
3. The FAO shall also pay the complainant 8,000 euros in costs.
4. All other claims are dismissed.

In witness of this judgment, adopted on 23 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.