

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

**K.**  
**v.**  
**FAO**

**141st Session**

**Judgment No. 5146**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr A. K. against the Food and Agriculture Organization of the United Nations (FAO) on 19 October 2022 and corrected on 30 November 2022, the FAO's reply of 20 March 2023, the complainant's rejoinder of 26 June 2023 and the FAO's surrejoinder of 25 September 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 FAO's decisions to impose on him the disciplinary measure of summary dismissal for misconduct, and to include his name in Clear Check, the United Nations (UN) system-wide screening database created to prevent the rehire of perpetrators of sexual harassment.

The complainant, a former staff member of the World Food Programme (WFP) – an autonomous joint subsidiary programme of the UN and the FAO – joined the WFP in 2003 as Director and Inspector General, Oversight Services Division, at the D-2 level at the WFP Headquarters. At the time of the events giving rise to the present

complaint, he was serving as a Country Director in the WFP South Sudan Country Office in Juba, also at the D-2 level.

On 30 November 2018, the WFP Office of Inspections and Investigations (OIGI) received a report of possible misconduct from Ms M., who was serving in the South Sudan Country Office in Juba under the complainant's supervision.

By a letter of 16 January 2019, the complainant was informed that he was under investigation for alleged sexual harassment and that he was suspended from duty with full pay pending the investigation.

On 22 May 2019, the complainant received a notification of the allegations made against him and, on 23 May 2019, he was interviewed by OIGI.

In its report, issued on 1 August 2019, OIGI concluded that there was sufficient evidence to indicate that the complainant engaged in harassment, sexual harassment and abuse of power against Ms M., and recommended that appropriate action be taken against him.

By a memorandum dated 11 October 2019, the Director, Human Resources Division (HR), communicated to the complainant the findings of the investigation and informed him that, based upon a review of the "administrative record for [the] matter", including the investigation report and corresponding exhibits as well as additional documents attached to the memorandum, it was considered that there was *prima facie* evidence supporting the initiation of disciplinary proceedings against him based on the charges that he:

- (i) sexually harassed Ms M. by engaging in unwanted and uninvited touching, attempted an actual non-consensual physical contact of a sexual nature on several occasions;
- (ii) harassed Ms M. by making inappropriate, critical and/or disparaging comments regarding her appearance and capabilities;
- (iii) abused his authority as Country Director by engaging in the above, as well as by requiring Ms M. to provide personal services for him and spend her personal time with the complainant; and

- (iv) in doing the above, exposed the WFP's reputation to significant risk.

The complainant was also informed that, in light of the seriousness of the charges brought against him, the disciplinary measure of summary dismissal was under consideration. He was invited to respond to the charges raised in the memorandum, which the complainant did on 20 December 2019. He provided supporting evidence and denied all allegations.

By a memorandum dated 23 September 2020, the Director, HR, informed the complainant of the decision to impose on him the disciplinary measure of summary dismissal, and that, as a consequence, he was banned from future direct or indirect employment and/or contractual opportunities with the WFP. The Director, HR, explained that the WFP considered that it had been established beyond a reasonable doubt that the complainant sexually harassed Ms M., a "junior direct report" who was on her probationary period for much of the relevant time, by engaging in unwanted and uninvited touching, by attempting an actual non-consensual physical contact of a sexual nature on several occasions, and by making a remark of a sexual nature, and that, in doing so, he exposed the WFP's reputation "to grave jeopardy". The Director, HR, also informed the complainant that the charges of harassment and abuse of authority brought against him were not pursued. She advised the complainant that his conduct irreparably breached the bond of trust necessary for an employment relationship with the WFP, highlighting that the allegations brought against the complainant were extremely serious because of the nature of the misconduct and considering his role and responsibilities as a senior manager, a Country Director and Ms M.'s supervisor.

By a memorandum dated 28 September 2020, the Director, HR, by reference to her memorandum dated 23 September 2020, informed the complainant that, in light of the decision to impose on him the disciplinary measure of summary dismissal, his personal information would be included in the Clear Check screening database as having a final determination of sexual harassment.

On 16 December 2020, the complainant filed an appeal to the WFP Executive Director against the decisions to impose on him the disciplinary measure of summary dismissal and to include his name in the Clear Check screening database. Following the rejection of this appeal on 12 February 2021, the complainant filed an appeal with the FAO Appeals Committee on 29 March 2021 requesting to set aside the “confirmation” of the charges of sexual harassment brought against him, to rescind the decision to summarily dismiss him and to reinstate him in the service of the WFP. In the event the reinstatement would not be feasible, he requested the Committee to award him compensation of his salary, including pensionable remuneration and due entitlements until his mandatory age of separation, with retroactive effect from his effective date of dismissal. The complainant also asked the Appeals Committee to order that his personal information be removed from the Clear Check screening database. Additionally, he asked to be awarded moral and material damages, as well as costs.

In its report, submitted to the FAO Director-General on 11 April 2022, the Appeals Committee recommended to dismiss the appeal in its entirety. It found that the complainant’s relationship with Ms M. could not qualify “as being strictly professional” and that, considering the complainant’s position, “this behavior alone was not acceptable”. The Committee also highlighted that the WFP had, in recent years, “decisively toughened” its zero-tolerance policy for all perpetrators of sexual harassment and abuse of authority and, “[a]s a consequence, the Committee noted that establishing facts beyond a reasonable doubt currently implied that when evidence existed that something questionable had happened, which could fall within the definition of sexual harassment and abuse of authority, that could provide enough ground already to warrant the imposition of disciplinary measures by the Programme”. It concluded that “[it] could therefore not exculpate the [complainant], even in the face of some possible inconsistencies it pointed to”. The Appeals Committee noted, “[n]onetheless, [that] the overall investigation process appeared solid” and that the due process rights of the complainant had not been violated by the WFP.

In his final decision, communicated to the complainant by a letter dated 21 July 2022, the FAO Director-General endorsed the Appeals Committee's recommendation to reject his appeal in its entirety. This is the impugned decision.

The complainant requests the Tribunal to set aside the impugned decision. In the alternative, he asks the Tribunal to find that the imposed disciplinary measure of summary dismissal was disproportionate and order the WFP to impose a less severe measure, such as a verbal reprimand. The complainant asks the Tribunal, in any event, to order the Organization to pay to him his full salary, including pension contributions and all due entitlements from 23 September 2020 until September 2021, which he quantifies to be 264,092.60 United States dollars, and to order that his personal information be removed from Clear Check. He also claims moral damages in the sum of at least 40,000 United States dollars as well as 30,000 United States dollars in costs. In his rejoinder, the complainant amends his alternative request to order the WFP to impose on him a less severe measure and requests the Tribunal, instead, to find that the imposed disciplinary measure was disproportionate and to remand the case to the FAO/WFP.

The FAO asks the Tribunal to consider the claim for a less severe disciplinary measure to be irreceivable as it is a new claim which was not made before the Appeals Committee. It submits that the complaint is otherwise unfounded in its entirety.

#### CONSIDERATIONS

1. The complainant is a former staff member of the WFP. He was summarily dismissed in September 2020. This followed disciplinary proceedings in which the complainant had been charged with sexual harassment, harassment and abuse of authority and a finding made he had sexually harassed a junior staff member.

2. The complainant challenged the decision to summarily dismiss him by first unsuccessfully appealing to the WFP Executive Director in December 2020 and thereafter unsuccessfully appealing to

the FAO Appeals Committee which issued its report in April 2022. It recommended the appeal be dismissed, a recommendation adopted by the FAO Director-General in his impugned decision of 21 July 2022.

3. A material portion of the complainant's pleas before the Tribunal is an analysis of the evidence leading to the ultimate contention that there was insufficient evidence to sustain the charges. As part of this analysis, the complainant develops an argument that the junior staff member he was found to have harassed was not a credible witness.

4. The complainant's pleas raise a number of disparate issues. One is that there had been flaws in the internal appeals process and, in particular, that the Appeals Committee had failed to undertake the task entrusted to it. For the reasons which follow, the Tribunal accepts this contention, and it is decisive.

5. Pursuant to FAO Staff Rule 303.1.11:

"The Appeals Committee shall advise the Director-General in cases of appeal by individual staff members regarding a grievance arising out of disciplinary action or arising out of an administrative decision, referred to in Staff Regulation 301.11.1."

6. Staff Rule 303.1.313 governed appeals to the Appeals Committee. Suffice it to note that this provision did not, nor any other, circumscribe the role of the Appeals Committee. In relation to evidence, Staff Rule 303.1.341 provided, under the heading "Evidence and Access to Information":

"The Committee shall take any evidence which it considers relevant and shall have authority to call staff members and to examine any pertinent documents."

A clear implication of this provision is that part of the Appeals Committee's role is to evaluate evidence either given earlier or given to the Appeals Committee pursuant to this rule. It is, in any event, a role established by the Tribunal's case law though subject to the normative legal documents of any given organization.

7. It is necessary to set out a comparatively lengthy passage from the Appeals Committee's report though it is the entirety of the report dealing with the merits of the appeal concerning the finding of guilt and the imposition of a disciplinary measure:

“19. The Committee then moved on to consider the claims by the Appellant. As a general overarching consideration, the Committee, having regard to the high hierarchical role of the Appellant while serving at the Programme, was of the view that utmost caution and carefulness is warranted in the performance of professional functions. While this rule concerns all staff members of the Programme, managers and directors would be expected to lead by example, setting very ambitious professionalism and integrity standards. The Committee though, **when examining the facts of the case as compiled and analyzed by OIGI**, failed to see how the relationship established and maintained by the Appellant in the workplace with the aggrieved party could qualify as being strictly professional. Considering the role he had, this behavior alone was not acceptable, according to the Committee.

20. The Committee then recalled the scope and extent of the zero tolerance policy in place for all perpetrators of sexual harassment and abuse of authority; in recent years the Programme had decisively toughened this policy in an attempt to discourage and prevent misconduct by staff members. As a consequence, the **Committee noted that establishing facts beyond a reasonable doubt currently implied that when evidence existed that something questionable had happened, which could fall within the definition of sexual harassment and abuse of authority, that could provide enough ground already to warrant the imposition of disciplinary measures by the Programme. The Committee could therefore not exculpate the Appellant, even in the face of some possible inconsistencies it pointed to.** Nonetheless, the overall investigation process appeared solid and the due process rights of the Appellant had not been violated by the Programme. In fact, the Committee questioned why the Programme had taken so long before launching an investigation into the conduct of the Appellant, in light of the multiple incidents that had happened over a prolonged timeline. However, the Committee also conceded that the aggrieved party might have been afraid to expose her supervisor. For this very reason, a zero tolerance was necessary vis-à-vis similar behaviours or they would continue to occur. Because of this, the Committee strongly censured such behaviours, including that of the Appellant.” (Emphasis added.)

8. There are a number of deficiencies in this analysis. One of significance is that it appears the Appeals Committee did not undertake its own analysis of the evidence before it. Rather it appears to have

relied on the compilation and analysis of the facts by OIGI. There are problems with this approach. OIGI's task was not the same as that of the Appeals Committee. The latter needed to assess, as it pointed out indirectly, whether the evidence established beyond reasonable doubt that the complainant had engaged in the conduct which led to his dismissal. It did not do this but relied on OIGI's report. In its report, OIGI identified its task in its "CONCLUSIONS" as ascertaining whether "there [was] sufficient evidence to indicate [the complainant] engaged in harassment, sexual harassment and abuse of power against [the junior staff member]". To ascertain there is sufficient evidence is quite different to assessing whether there is proof beyond reasonable doubt (see Judgments 4633, consideration 10, 4598, consideration 13, and 4360, consideration 12).

9. The complainant's statement of appeal to the Appeals Committee is 49 pages of detailed analysis. Much of it given over to an analysis of the evidence and the quality of the evidence and his contention that his evidence should be preferred to that of the junior staff member. His response to the reply of the Organization is of a similar length, more precisely 52 pages long, and basically to the same effect. The Organization's reply is 25 pages long and joins issue with the complainant in relation to significant factual matters. Its further reply is 19 pages and to similar effect. In these circumstances it was incumbent on the Appeals Committee to consider this evidence as part of resolving the conflicting positions of the complainant and the Organization and to form a view firstly whose evidence should be preferred and secondly whether the evidence it had accepted and about which it made findings of fact, proved the alleged misconduct beyond reasonable doubt. It did not do this. While it would not have been necessary for the Appeals Committee to expressly address each and every detailed element of the submissions made, it was necessary for them to do more than they did.

10. A comparatively recent statement of the role of appeal boards is found in Judgment 5003, consideration 5:

“Internal appeal bodies are not administrative courts whose sole responsibility in principle is to review the lawfulness of decisions which are challenged (see, for example, Judgments 3161, consideration 5, and 3077, consideration 3). Indeed, ordinarily, the task of the internal appeal bodies is to determine whether the decision under appeal is the correct decision or whether, based on the facts, some other decision should be made (see Judgment 3161, consideration 6). The power of internal appeal bodies extends to the overall re-examination of all matters submitted to them and is not subject to the same restrictions that might apply to the judicial review by the Tribunal. The only exception to this is if the rules governing the review body provide for such restrictions (see Judgment 3318, consideration 5). The internal appeal bodies play a fundamental role in the resolution of disputes, owing to the guarantees of objectivity derived from their composition, their extensive knowledge of the functioning of the organisation, and the broad investigative powers granted to them. By conducting hearings and investigative measures, they gather the evidence and testimonies that are necessary to establish the facts, as well as the data needed for an informed assessment thereof (see Judgment 3423, consideration 12). [...]”

11. The question which then arises is what flows from the erroneous approach of the Appeals Committee. While in the impugned decision of 21 July 2022, the Director-General did not embrace unreservedly all aspects of the reasoning of the Appeals Committee and advanced his own supplementary reasons, he nonetheless said he “accept[ed] the Committee’s overall reasoning and conclusions”.

12. Indeed, on one view, the Director-General may have repeated an error of the Appeals Committee. He said in the impugned decision:

“I further note that the Appeals Committee appears not to have identified any element questioning the Programme’s finding that it is established beyond a reasonable doubt that you engaged in the four confirmed charges of sexual harassment and that such a finding warranted the imposition of a disciplinary measure. It is my understanding that the Committee found that there were ‘possible inconsistencies’ in the facts, but that it also considered that any such ‘possible inconsistencies’ did not ‘exculpate’ you or otherwise put into question OIGI’s findings or the Programme’s decision to impose on you the disciplinary measure of summary dismissal [...]”

13. The relevant question was not whether the inconsistencies did or did not exculpate the complainant, but rather whether notwithstanding those inconsistencies the evidence could be accepted as of sufficient weight to establish the complainant's guilt at the requisite standard, namely beyond reasonable doubt. Moreover, the above passage appears to accept OIGI's findings can found a finding of guilt beyond a reasonable doubt. As explained earlier, OIGI's findings cannot serve this purpose.

14. Having regard to the matters just discussed, the impugned decision should be set aside.

15. A right to an effective internal appeal is an important one. As discussed earlier, the role of an internal appeals body ordinarily involves a comprehensive review of the facts and, if appropriate, the consideration of fresh evidence. The complainant is entitled to an effective internal appeal, and the matter should be remitted to the FAO to enable his appeal to be heard by a freshly constituted Appeals Committee (see, for example, Judgment 4934, consideration 10). The impugned decision should be set aside though, in the absence of an order of reinstatement, setting aside the impugned decision does not lead to the complainant's re-engagement as a staff member of the Organization.

16. Whatever the outcome of the present dispute, the effect of the failure to properly examine the complainant's internal appeal was to delay its final settlement. In the circumstances of the case, that failure has in itself caused the complainant moral injury which will be fairly redressed by ordering the Organization to pay him compensation of 5,000 United States dollars.

17. The complainant was legally represented. He is entitled to 10,000 United States dollars for his legal costs.

DECISION

For the above reasons,

1. The impugned decision of 21 July 2022 is set aside.
2. The matter is remitted to the FAO to be heard by a freshly constituted Appeals Committee.
3. The FAO shall pay the complainant 5,000 United States dollars in moral damages.
4. The FAO shall pay the complainant 10,000 United States dollars in costs.
5. All other claims are dismissed.

In witness of this judgment, adopted on 31 October 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.