

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

V.
v.
FAO

141st Session

Judgment No. 5148

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms B. V. against the Food and Agriculture Organization of the United Nations (FAO) on 3 January 2022, the FAO's reply of 10 May 2022, the complainant's rejoinder of 24 June 2022 and the FAO's surrejoinder of 3 October 2022;

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 challenges the decision not to select her for a G-5 position.

The complainant joined the FAO in 1999 as a Bilingual Typist, at grade G-3, under a series of daily contracts, in the Temporary Assistance Pool of the then Human Resources Division. In September 2000, she was granted a short-term appointment, at the same grade. In January 2003, she was appointed as Bilingual Typist, at grade G-3, under a fixed-term contract which was extended on a regular basis. In August 2003, she was promoted to Clerk Typist, at grade G-4. In January 2013, the complainant was appointed as Clerk Typist, at grade G-4, in the Nutrition and Food Systems Division (ESN), under a continuing appointment.

In July 2018, the complainant successfully applied to the FAO's Global Call for Expressions of Interest for General Service positions (General Service roster). By an email dated 20 July 2018, she was informed that the General Service roster would be consulted when a General Service position would open to identify suitable candidates whose qualifications and experiences matched the profile of the post.

The General Service Selection Committee (GSSC), responsible for handling the selection process for General Service posts falling under its terms of reference, was entrusted with the recruitment to the post of Office Assistant (post number 0425222), at grade G-5, in ESN. During the recruitment procedure for this position, the GSSC interviewed ten candidates, including the complainant, all directly selected from the General Service roster. On 29 May 2019, the GSSC adopted its Selection Report, recommending five candidates as suitable for the position. The GSSC did not recommend the complainant as a suitable candidate, highlighting that, during the interview, "her examples to the communication and team work questions were routine and not complex enough to demonstrate a key quality. [She] could have given better examples."

On 30 May 2019, the Director of the Office of Human Resources (OHR) informed the Director, ESN, of the Director-General's decision, adopted in light of the GSSC's recommendation, regarding the appointment of post number 0425222.

On 31 May 2019, the results of the selection process were published on the FAO's intranet. On that same day, the complainant addressed an email to the Director, OHR, expressing her disappointment with the decision not to select her for the post.

On 3 June 2019, the complainant addressed an email to Ms M., the Human Resources Officer for the GSSC, asserting that she had only been verbally informed of the outcome of the selection process for the post at issue, asking for clarifications as to the criteria applied by the Committee and requesting a copy of the GSSC's Selection Report.

On 4 June 2019, the Secretariat of the GSSC notified the complainant of the Committee's decision not to select her for further consideration for the post of Office Assistant in ESN.

On 10 June 2019, the Director, OHR, replied to the complainant's email of 31 May 2019, stating that the recruitment of General Service positions followed a competitive process and that the GSSC recommended, for the Director-General's decision, the most suitable candidates for the post. The complainant replied by an email of 11 June 2019, further disagreeing with the decision not to select her for post number 0425222 and reiterated her request to be given access to the Committee's Selection Report.

Also on 11 June 2019, Ms M. provided the complainant with information on the composition of the GSSC and noted, in regard to her request for the Selection Report, that "as per the Terms of Reference of the GSSC, recommendations submitted by the GSSCs, discussions in the GSSCs, and their minutes [were] strictly confidential".

On 16 August 2019, the complainant lodged an appeal with the Director-General. She requested the review of the selection procedure of post number 0425222 as well as the decision not to select her for further consideration for this position. The complainant also requested the disclosure of the GSSC's Selection Report.

On 9 October 2019, after receiving no response to her appeal, the complainant requested information regarding the subsequent steps in the process. By an email of 10 October 2019, the complainant was informed that, "[f]ollowing consultation with the Legal Office, it [was] proposed that [she] submit[ted] [her] appeal directly to the Appeals Committee". The complainant lodged an appeal with the Appeals Committee on 16 October 2019. The FAO submitted, as an annex to its statement before the Appeals Committee, a redacted copy of the GSSC's Selection Report.

The Appeals Committee rendered its report on 24 June 2021 and recommended to dismiss the complainant's appeal. However, it recommended to award her moral damages "for the lack of duty of care by the Organization" as well as costs.

By a letter of 11 October 2021, the Director-General informed the complainant of his decision to accept the Appeals Committee's recommendation to dismiss her appeal. Nonetheless, he decided not to endorse the Committee's recommendation to award the complainant moral damages and costs. This is the impugned decision.

The complainant requests the Tribunal to review the selection process for the post number 0425222 and to rescind it if considered to be unlawful. She requests the disclosure of the GSSC's Selection Report and asks the Tribunal to award her all benefits, entitlements, step adjustments, pension contributions and "all other emoluments she would have received had [she] been appointed to the post" at issue until her retirement in 2033. The complainant also seeks moral damages, costs and any other relief the Tribunal deems fair and equitable.

The FAO asks the Tribunal to dismiss the complaint as unfounded in its entirety.

CONSIDERATIONS

1. The complainant impugns the decision of 11 October 2021, whereby the Director-General endorsed the Appeals Committee's recommendation to dismiss her appeal against the non-selection decision for the post of Office Assistant, at grade G-5, but rejected its recommendation to award her moral damages and costs.

2. The complainant challenges the impugned decision on the following grounds:

- (i) the selection procedure and the decision not to select her were flawed;
- (ii) the internal appeals proceedings were unlawful;
- (iii) the impugned decision was not duly motivated; and
- (iv) the FAO breached its duty of care.

3. In her complaint, the complainant requests the communication of the Selection Report. As a redacted Selection Report was communicated to her during the internal appeal proceedings, the disclosure request is accordingly rejected.

4. Before turning to the merits, it is appropriate to recall the applicable legal framework. Article VIII of the FAO Constitution provides that staff appointments shall be made by the Director-General, subject to the paramount requirement of securing the highest standards of efficiency and technical competence, while ensuring a wide geographical distribution.

FAO Staff Regulation 301.4.1 confirms that “the power of appointment of staff members rests with the Director-General”. Staff Regulation 301.4.2 reiterates the necessity to secure “the highest standards of efficiency, competence and integrity” in the appointment of staff.

The relevant rules governing appointments and promotions are set out in FAO Staff Rules 302.4.92 and 302.4.93, which state the following:

“**302.4.92** When a vacancy is to be filled in an established post of one year or more from G-2 to P-5 levels, it shall be advertised to the staff except when:

[...]

(c) a candidate who has been subject to a staff selection procedure and was found to be qualified but not appointed to the specific post for which s/he originally applied is appointed to a post of the same or of a lower grade if the Director-General considers that the candidate meets the essential qualifications of the post;

[...]

302.4.93 When a post becomes vacant, first consideration shall be given to the possibility of selecting a properly-qualified staff member. In considering the applications of staff members of comparable qualifications, preference shall be given to those who have successfully completed their probationary period.”

FAO Manual Section 305 implements these provisions. FAO Manual paragraph 305.2.63 entitled “General Service Global Call of Interest” expressly authorises recruitment to General Service positions

through calls for expressions of interest and the placement of qualified candidates on rosters. Appendix B of Section 305 sets out the terms of reference for the GSSCs, providing that:

“TERMS OF REFERENCE

[...]

3. The GSSCs will be guided by the following principles:

a) the GSSCs will recommend for selection the most suitable candidates for the position whose qualifications and experience most closely meet the requirements of the post.

b) the list of recommended candidates will remain valid for one year and the names could be considered for other similar positions.”

These provisions, read together, confirm that the GSSC is the body responsible for evaluating candidates’ suitability and recommending those most closely matching the post’s requirements. The Director-General retains the discretion to make the final decision from among the recommended candidates, but this discretion must be exercised within the legal framework and with due regard to equal treatment (see, for example, Judgment 4589, consideration 4).

5. The Tribunal also recalls that, according to its settled case law in relation to competitions, it is not its role to replace the assessment made by the competent selection bodies with its own assessment (see, for example, Judgment 4594, consideration 8). In a case where the selection of a successful candidate is challenged, the Tribunal stated in Judgment 4625, consideration 3, as follows:

“[...] in matters of appointment, the choice of the candidate to be appointed lies within the discretion of the authority competent to make the appointment within the organisation concerned. Such a decision is therefore subject to only limited review and may be set aside only if it was taken without authority or in breach of a rule of form or of procedure, or if it was based on a mistake of fact or of law, or if some material fact was overlooked, or if there was abuse of authority, or if a clearly wrong conclusion was drawn from the evidence (see, in particular, Judgments 3652, consideration 7, and 3372, consideration 12). As a result, a person who has applied for a post that an organisation has decided to fill by a competition and whose application is ultimately unsuccessful must prove that the selection procedure was tainted by a serious defect (see, in particular, Judgments 4001, consideration 4, and 1827, consideration 6).”

In applying these principles, the Tribunal must therefore determine whether the complainant has demonstrated that the selection procedure was tainted by a serious defect that could have affected the outcome of the competition.

6. Under the complainant's first plea, she raises several arguments, which may be grouped as follows. First, she alleges that the selection procedure breached the applicable rules, which require appointment decisions to be made on the basis of the highest standards of technical competence, experience, qualifications and seniority from the candidates. In her view, the elements considered by the GSSC did not comply either with the applicable rules or the vacancy notice requirements. The rationale for selecting the shortlisted candidates was unclear, no elements were provided to prove that the shortlisted candidates were more qualified than she was, and undue weight was placed on interview performance rather than on professional record. Second, she contends that her candidacy was inadequately assessed. She emphasizes that her twenty years of continuous service, her seniority, and record of satisfactory performance were not given sufficient weight and that the GSSC failed to give "first consideration" to her potential promotion as a properly qualified internal staff member, contrary to Staff Rule 302.4.93. Third, she alleges unequal treatment, claiming that some recommended candidates had documented shortcomings that were disregarded, whereas her own evaluation in the Selection Report was limited and cursory. She points to the absence of numerical grades or scores as further evidence of unequal treatment and asserts that her internal candidate status was overlooked. Fourth, she argues that the post should have been advertised to the staff pursuant to Staff Rule 302.4.92. Lastly, she draws attention to the number of her unsuccessful interviews, about 86, for her application for General Service posts and to the alleged irregular appointment of the selected candidate, whose "Personal Profile Form" did not comply with the "format to be uploaded in the Taleo Platform".

7. Since the impugned decision concerns only the complainant's non-selection for the contested post, her broader claims regarding earlier competitions fall outside the scope of the present proceedings and need not be addressed.

8. It is convenient to begin by examining whether the non-advertisement of the post breached Staff Rule 302.4.92. The complainant seems to suggest that only direct selections would be permitted in respect of roster-based recruitment. The Tribunal disagrees with her interpretation. Staff Rule 302.4.92(c) clearly constitutes an exception to the requirement of post advertising. It allows the Director-General to fill a vacancy from among a roster of qualified candidates without readvertising the post if the candidate is considered qualified for the new position which is at the same level or at a lower level. The fact that the candidates for a post are drawn from a roster does not preclude a competitive process among these candidates. In the present case, the evidence shows that the candidates, including the complainant, were drawn from the Organization's General Service roster established by FAO Manual paragraph 305.2.63. That provision explicitly authorises recruitment for General Service posts through global calls for expression of interest and the maintenance of rosters of qualified candidates. The Tribunal therefore finds that the non-advertisement of the contested post was consistent with the applicable framework. In any event, as the complainant was invited to compete, interviewed, fully considered, and suffered no prejudice from the non-advertisement of the post, she has no interest in raising this issue. This argument accordingly fails.

9. With regard to whether the GSSC's assessment of the complainant's candidacy was inconsistent with the applicable rules or demonstrated unequal treatment, the Tribunal finds that the GSSC first screened the roster and identified 26 candidates who fulfilled the minimum requirements of the job description and shortlisted ten qualified candidates, including the complainant, for interview. The Selection Report shows that all candidates were interviewed by using the same set of competency-based questions, reflecting the three principal areas listed in the vacancy notice, namely communication, teamwork, and

results focus, and were evaluated on the same criteria. This satisfies the requirement of equal treatment. The GSSC considered the complainant's qualifications and experience at the initial screening stage but found that her interview performance did not demonstrate, to the same degree as the recommended candidates, the competencies required for the post. In the Selection Report, the GSSC specifically indicated why it did not recommend the complainant for the post: "[the] examples to the communication and team work questions were routine and not complex enough to demonstrate a key quality". Similar conclusions were not reached by the GSSC with respect to the other shortlisted candidates. The record thus supports a conclusion that her competencies were not of equal merit. There is no requirement in the FAO's applicable framework that all candidates must receive a numerical grade or score. The GSSC recommendations in order of preference are not inconsistent with the provisions prescribed in Appendix B of Section 305 of the FAO Manual.

10. Concerning the complainant's assertion that the GSSC should have relied primarily on length of service or familiarity with the division, the Tribunal highlights that competency-based interviews are a recognised and legitimate mechanism within the United Nations common system to evaluate behavioural and technical competencies that cannot be captured solely from written records. The complainant misapprehends the nature of merit-based recruitment under Article VIII(3) of the FAO Constitution, which gives paramount importance to efficiency and technical competence, not seniority or tenure. As Appendix B of Section 305 of the FAO Manual entitles the GSSC to recommend the most suitable candidates whose qualifications and experience most closely meet the requirements of the post, it was open to the panel to conclude that the quality of examples provided at interview more accurately reflected the candidate's ability to most closely meet the requirements of the post.

11. The complainant's reliance on Staff Rule 302.4.93 is misplaced. The Tribunal recalls that this provision provides that "first consideration shall be given to the possibility of selecting a properly-

qualified staff member”. This Rule establishes that the duty of “first consideration” applies when internal candidates are found to be “properly qualified” for the post. It is also worth noting that the Tribunal’s case law establishes that priority to an internal candidate arises only when the competing candidates are of equal merit (see, for example, Judgment 3652, consideration 12). In the present case, there were ten shortlisted candidates, both external and internal. The complainant was one of the internal candidates. Whether an internal candidate meets this threshold of “properly qualified” depends on an assessment of qualifications, experience, and competencies, which lies within the review of the GSSC and, subsequently, the discretion of the appointing authority. It is not for the Tribunal to substitute its own view for that of the competent selection body unless it is shown it committed a manifest error of assessment in rejecting the complainant’s application (see, for example, Judgment 4594, consideration 8) and, as recalled above, the appointing authority’s decision regarding the choice of the candidate is subject to only limited review (see Judgments 4866, consideration 1, 4836, consideration 2, and 4625, consideration 3).

12. The Tribunal observes that the Appeals Committee concluded in its report that it had not found clear evidence that the selection process had been flawed, stating:

“25. [...] the Committee acknowledged that the GSSC had treated interviewed candidates equally, evaluating their performance and relative suitability for the post in areas such as communication, teamwork and results focus. It also acknowledged that the GSSC did not consider the [complainant’s] interview to display the knowledge and experience that she possessed and to properly reflect the skills that she claimed to have to fill the post of Office Assistant, grade G-5, ESN. As a result, the Committee did not see a strong reason to recommend that the decision by the Director-General be reconsidered.”

As the Appeals Committee concluded, the Tribunal is also satisfied that the GSSC conducted a proper competency-based selection process, applied the same questions, and recorded evaluations for all candidates, demonstrating that it treated every candidate on an equal footing and with full impartiality. The complainant fails to provide persuasive evidence to prove that the GSSC’s evaluation was tainted with a

manifest error. Nor has she produced evidence to prove the alleged unlawfulness in the successful candidate's appointment. As the FAO correctly explains, the selected candidate did use the correct platform responding to the call for expression of interest for the roster. The Tribunal therefore concurs with the Appeals Committee's conclusion that there was no serious defect in the selection process that impacted on the consideration and assessment of the complainant's candidacy. It is not enough simply to assert that one is better qualified than the selected candidate (see, for example, Judgment 3669, consideration 4). The evaluation made by the GSSC, though succinct, does not amount to a serious defect warranting the Tribunal's intervention. The Tribunal is also satisfied that the Director-General's decision not to select the complainant to the post is not tainted with any flaw.

The complainant's first plea is unfounded.

13. In her second plea, the complainant argues that the internal appeal proceedings were unlawful. Under this heading, she alleges that the Appeals Committee failed to evaluate her arguments and evidence, did not bring its deliberations to their logical consequences, and did not motivate its recommendation. The Tribunal is satisfied that the Appeals Committee examined all the relevant documents and submissions of the parties, responded to all issues raised by the complainant, and ensured the complainant's right to an effective internal appeal. Accordingly, the complainant's second plea is unfounded.

14. In her third plea, the complainant submits that the Director-General failed to motivate the impugned decision and, more specifically, his decision not to award her moral damages and costs as recommended by the Appeals Committee. According to the Tribunal's case law, an executive head who departs from the recommendation of an internal appeal body must state the reasons for disregarding it and must motivate the decision actually reached (see Judgments 5038, consideration 9, 4930, consideration 3, 4777, consideration 3, and 3862, consideration 20). In the present case, the Director-General explained in detail why he could not accept the Appeals Committee's recommendation to award moral damages for a breach of duty of care and for legal fees.

He observed that the Committee's criticisms of the GSSC were of a general nature and did not point to any breach of a rule applicable to the complainant's competition. He further clarified that the Committee's finding of a breach of the duty of care was misguided, since the GSSCs had taken the complainant's internal experience into account when inviting her for interview, her experience had been considered in assessing all candidates, and the Organization had responded to her queries in a timely manner. As to the Committee's criticism concerning the absence of explanation to the complainant, the Director-General correctly noted that this was misplaced. In this respect, the Tribunal recalls that, according to its case law, the reasons for a non-selection decision need not be provided at the same time as the decision itself and may be communicated subsequently, for instance in the course of an internal appeal (see, for example, Judgment 4903, consideration 7). As the Organization had later provided her with a redacted Selection Report setting out the GSSC's rationale during the internal appeal proceedings, the Organization discharged its obligation in this respect. The Tribunal is satisfied that the Director-General provided sufficient motivation for the impugned decision. The plea is accordingly unfounded.

15. In her fourth plea, the complainant alleges that the FAO breached its duty of care. She submits, under this head, that the Organization failed to share with her the full Selection Report in a timely manner, that the internal appeals proceedings were subject to undue delay and that she was treated in a humiliating and demeaning manner through both the non-selection decision and her subsequent reassignment.

16. The Tribunal notes that, in paragraph 24 of its report, the Appeals Committee stated the following, which led to its separate conclusion regarding a breach of the FAO's duty of care:

"24. As for the case at hand, the Committee was not convinced that there had been any irregularities throughout the selection process for the post of Office-Assistant, grade G-5, ESN. Having regard, in particular, to the work experience of the [complainant] in ESN, the Committee could not determine why she had not been considered to be suitable for the post by the GSSC.

As the [complainant] was an internal candidate the Committee would have expected more consideration to be given by the GSSC to her seniority within the Organization. Similarly, the Committee was convinced that upholding the duty of care would have required more open communication in the context of the selection process between the Organization and the [complainant]. The Committee would have expected the Organization, in reporting its decision not to disclose the selection report to her, to have at least provided a detailed explanation as to the reason why she had not been appointed by ESN.”

17. The Tribunal considers that, while the Appeals Committee correctly gave reasons for its conclusion that no serious defect had been established in the selection process, it erred in finding a breach of the duty of care, which the Director-General later found to be unsubstantiated. This finding by the Appeals Committee was based on its view that internal candidates who were not selected should be provided with an explanation clarifying why the GSSC had recommended not to appoint the complainant. The Tribunal notes, nonetheless, that, as established above, the Organization shared with the complainant a redacted copy of the Selection Report during the internal proceedings, which contained the GSSC’s rationale for not recommending her selection to the post at issue. As the Tribunal consistently held, for example, in Judgment 4903, consideration 7, “the duty to state the reasons for the rejection of an application in a selection procedure does not mean that they must be notified at the same time as the decision itself. These reasons may be disclosed at a later date to the staff member concerned, for example in the context of internal appeal proceedings (see, in particular, Judgments 4683, consideration 12, 4467, consideration 7, and 2978, consideration 4).” Therefore, the complainant’s submission is unfounded.

18. As regards the alleged undue delay of the internal appeals procedure, the complainant submitted her memorandum of appeal to the Appeals Committee in October 2019; the FAO submitted its pleadings in February 2020; the Appeals Committee reviewed the case in March 2021 and issued its report in June 2021; and the Director-General issued his decision in October 2021. The Tribunal finds that this delay was not excessive. Even if some delay may have occurred,

the complainant has not demonstrated that it had any material adverse effect on her. In the absence of such evidence, delay itself does not entitle a complainant to moral damages (see, for example, Judgments 4859, consideration 8, 4487, consideration 14, 4396, consideration 12, 4231, consideration 15, and 4147, consideration 13).

19. In the present case, the complainant has also failed to adduce any evidence from which the Tribunal could conclude, or reasonably infer, that she was subjected to humiliating or demeaning treatment.

20. The complainant's last plea is unfounded.

21. It follows from the foregoing 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 22 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.