

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

**Y.**  
**v.**  
**FAO**

**141st Session**

**Judgment No. 5149**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr A. V. Y. against the Food and Agriculture Organization of the United Nations (FAO) on 1 November 2021 and corrected on 6 December 2021, the FAO's reply of 28 March 2022, the complainant's rejoinder of 13 June 2022, the FAO's surrejoinder of 30 August 2022, the complainant's additional submissions of 26 October 2022 and the FAO's final comments thereon of 5 December 2022;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions;

Considering that the facts of the case may be summed up as follows:

The complainant challenges the decision to issue him with a written reprimand.

The complainant joined the FAO in June 2011 as Senior Emergency and Rehabilitation Coordinator, at grade P-5. At the material time, he was serving as the FAO Representative ad interim at the FAO Representation in Syria (FAOSY).

On 8 October 2017, Mr I., a driver at FAOSY, drove an armoured vehicle belonging to the Organization from the FAO's Office in Damascus, Syria, to the Beirut airport, Lebanon, to collect a Programme Officer and return to Damascus. During the journey, a defect in the

braking system was encountered due to the fact that the vehicle had not been properly maintained. The journey was completed without incident, but questions were later raised as to who was responsible for the incident.

On 5 March 2018, Mr I. filed a harassment complaint against his supervisor, Mr M., Logistics Officer, at FAOSY who was notably in charge of managing the Representation's fleet of armoured vehicles and drivers' assignments. Mr I. alleged that Mr M. had harassed him over a period of time and that the incident of 8 October 2017 had contributed to the deterioration of the working relationship between them. The complainant entrusted the handling of this complaint to Ms E., Programme Officer, at FAOSY. Interviews were conducted with FAOSY staff, including both Mr I. and Mr M. Following her review, Ms E. recommended that the complainant issue a warning letter to Mr M., which he did on 8 March 2018. Both the warning letter and Mr I.'s complaint were placed in Mr M.'s personnel file. Mr I. subsequently submitted three further complaints against Mr M. On 12 June 2018, a second warning letter was issued to Mr M.

In the meantime, on 2 April 2018 and 4 June 2018, Mr M., who had been informed, on 3 December 2017, that his contract would not be extended beyond its expiry date on 31 December 2017, submitted allegations of abuse of authority against the complainant to the Office of the Inspector General (OIG). He alleged that the complainant had exerted undue pressure on him, under the threat of non-renewal of his contract, to sign a letter by which he accepted responsibility for the incident of 8 October 2017. Mr M. further alleged that the complainant handled the harassment allegations made against him by Mr I. in a biased and unfair manner.

On 29 June 2018, OIG informed the complainant about the allegations made against him and invited him to respond in writing. The complainant submitted his observations on 30 June 2018 and 16 July 2018. Following the review of Mr M.'s complaint, the complainant's response and supporting documentation, OIG decided to open a formal investigation. On 17 September 2018, it interviewed the complainant. During this interview, the complainant was provided with a Notification

of Investigation informing him that it was alleged that “[he] may have abused [his] authority as FAO Representative” in violation of the Organization’s Policy on the Prevention of Harassment, Sexual Harassment and Abuse of Authority (Administrative Circular 2015/03 or the Harassment Policy), which could amount to unsatisfactory conduct. OIG interviewed the complainant again on 22 and 23 September 2018.

In February 2019, OIG issued its investigation report, in which it found that the complainant, had (i) “as head of office and FAO Representative [ad interim] acted in such a way that he should reasonably have known would exert undue pressure on Mr [M.] to formally accept responsibility for the 8 October incident”, (ii) “failed to apply the [Harassment Policy] when it came to the handling of Mr [I.]’s complaints against Mr [M.]” and (iii) “acted unfairly by issuing an official warning letter to Mr [M.] without providing a fair opportunity, or ensuring that such an opportunity be provided, to Mr [M.] to respond to the allegations against him”. However, OIG found that the complainant’s action, while inappropriate, did not amount to abuse of authority as defined in the Harassment Policy. Nonetheless, OIG concluded that the complainant had failed to meet his “special obligation to uphold the highest standards of conduct” as the FAO Representative ad interim, as set out in the Standards of Conduct for the International Civil Service (the Standards of Conduct), by unfairly putting pressure on Mr M. to accept responsibility for the 8 October 2017 incident, by allowing Mr I.’s complaints to be reviewed outside the Harassment Policy and by failing to inform Mr M. of the reasons for the non-renewal and subsequent renewal of his contract. OIG therefore recommended that appropriate administrative action be taken against the complainant.

By a memorandum of 22 February 2019, the Director of the Office of Human Resources (OHR), informed the complainant that, based on the findings of the investigation report, the Organization proposed to issue him with the non-disciplinary measure of a written reprimand, pursuant to FAO Manual paragraph 330.1.32, which would be placed on his personnel file. The complainant was invited to submit his

comments on the investigation report in writing, which he did on 12 March 2019.

By a memorandum dated 14 March 2019, the Director, OHR, informed the complainant of his decision to issue him with a written reprimand. The Director, OHR, also informed the complainant that the memorandum of 22 February 2019, along with his comments thereon and the written reprimand would be placed on his personnel file. On 2 May 2019, the complainant lodged an appeal with the Director-General, requesting a review of the Director, OHR's decision. The Assistant Director-General, Corporate Services Department (ADG, CS), informed the complainant, by a letter dated 28 June 2019, of the decision to dismiss his appeal to the Director-General as without merit.

The complainant lodged an appeal with the Appeals Committee on 16 August 2019, challenging the decision of 28 June 2019. The Appeals Committee rendered its report to the Director-General on 30 March 2021. At the outset, the Committee noted that its power of review in cases of "administrative written reprimands" was more limited than in cases of disciplinary measures and that "it could not, in line with its mandate, re-evaluate the evidence gathered by the OIG". It recommended to dismiss the appeal as unfounded.

By a letter of 4 August 2021, the Director-General informed the complainant of his decision to accept the Appeals Committee's recommendation to dismiss his appeal. This is the impugned decision.

The complainant requests the Tribunal to find that the impugned decision is unlawful, and to order that the reprimand imposed upon him be revoked with retroactive effect. He also asks the Tribunal to order that all documents related to the imposed reprimand and those related to the procedure before the Tribunal be deleted from his personnel file. He seeks moral damages in the amount of 50,000 United States dollars, and costs.

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

## CONSIDERATIONS

1. The complainant signifies that he applies for oral proceedings. However, he does not state in the brief the grounds for the application as the form indicated. His request for oral proceedings is therefore rejected. In any event, the Tribunal considers that the parties have presented sufficient submissions and documents to allow it to be properly informed to resolve the issues raised in this complaint.

2. The complainant, on a number of occasions, asks the Tribunal to ignore submissions or arguments the FAO proffers on the basis that it presents them for the first time, particularly in the FAO's surrejoinder. The Tribunal makes clear that there is no authority for such requests and observes, further, that the complainant had the opportunity to address any new submissions the FAO made in the additional submissions he subsequently filed.

3. As the complainant centrally challenges a decision to issue him with a written reprimand, the Tribunal recalls its case law, stated in consideration 15 of Judgment 2752, that it exercises only a limited power of review in the case of warnings or reprimands which are not of a disciplinary nature. Accordingly, it will not interfere with such a decision unless the measure was taken without authority, or violates a rule of form or procedure, or is based on an error of fact or of law, or if essential facts have not been taken into consideration, or if it is tainted with abuse of authority, or if a clearly mistaken conclusion has been drawn from the facts. However, as explained in Judgment 274, a warning or reprimand must be based on unsatisfactory conduct since what it is saying in effect is that if the conduct is repeated a disciplinary measure may be taken.

4. This case had its origins in the 8 October 2017 vehicle incident when an official was collected from the Beirut airport in a FAO vehicle that had not been properly maintained and had faulty brakes. The facts reveal the administrative actions that followed, which culminated in the complaint lodged by Mr M. against the complainant

and the issue of the written reprimand to the complainant by the Director, OHR, in the memorandum of 14 March 2019. The Director referred to the OIG investigation report into the allegations that the complainant had violated the Harassment Policy at FAOSY. It had been alleged that the complainant abused his authority at FAOSY in respect of Mr M. The Director recalled that he had informed the complainant, in his memorandum of 22 February 2019, that the Administration had proposed to issue him with a written reprimand pursuant to FAO Manual paragraph 330.1.32, in light of the OIG procedure; that the reprimand was not a disciplinary measure but a formal warning that he was expected to ensure that he was familiar with and to adhere to the Standards of Conduct, policies and rules of the FAO. As well, he had been notified that the reprimand would have been placed on his personnel file.

5. After referring to the complainant's comments to his 22 February 2019 memorandum, the Director, OHR, stated that it had not been concluded that the complainant had engaged in an abuse of authority in relation to Mr M.'s contract renewal. The Director however noted that the evidence gathered from the OIG's investigation did not confirm that after the complainant formally notified Mr M. that his contract would not have been renewed he had clearly and explicitly informed him that he had reversed that decision and the vehicle incident was being addressed as an entirely separate matter from that of the contract renewal.

Regarding the allegation that the complainant had mishandled the harassment complaints, the Director, OHR, noted the complainant's acknowledgment that he was unaware of the applicable policies and procedures and that ignorance was no excuse.

The Director further noted the complainant had advanced, as mitigating circumstances, his commitment to the FAO and his work therein; his lack of intention to harm Mr M.; his lack of a corrupt motive and his willingness to undertake the necessary training. The Director however reminded the complainant that, as a manager, it was incumbent upon him to be aware of the FAO's policies and rules; to discharge his

responsibilities accordingly and to seek the guidance of his supervisors. The Director reiterated his advice to the complainant in the 22 February 2019 memorandum, that the non-disciplinary reprimand was directed at his acknowledged failure to be familiar with and to follow the applicable rules and procedures his managerial role required. He concluded that, accordingly, there was nothing disproportionate or inappropriate in the issue of the written reprimand requiring the complainant to have the requisite knowledge and to meet the responsibilities of his office. He further informed the complainant that the memorandum at issue, as well as the prior one of 22 February 2019 and his comments on them would be placed on his personnel file.

6. The ADG, CS's reasoning in rejecting the complainant's request to review the Director, OHR's decision of 14 March 2019 was essentially similar. She stated that the written reprimand was issued in order to address deficiencies in the way the complainant handled the harassment complaints and for the manner in which he had handled Mr M.'s contract renewal. The ADG, CS noted the complainant's contentions that the decision at issue was based on errors of fact and erroneous conclusions drawn therefrom and that the FAO did not properly consider the mitigating factors. She also noted the complainant's supporting arguments, for example, that the decision not to renew Mr M.'s contract beyond December 2018 was based, among other things, on confidential information he received from Mr Z. (a former FAO driver) but that he had reversed the non-renewal decision as soon as it became clear that a different procedure should have been followed; that he had called a meeting on 19 December 2017 with Mr M., Ms E. and Ms M. to inform Mr M. that he had changed his decision and his contract was going to be renewed. The ADG, CS referred to letters the complainant had attached from Ms E. and Ms M. in which they confirmed this and further stated that there had been no discussion concerning a vehicle that was sent to the airport in that meeting. The ADG, CS also noted the complainant's statement that he was concerned about this because of the vehicle incident and he had called another meeting on the afternoon of 19 December 2017 to

discuss various matters, including servicing of vehicles and rationalizing the costs thereof.

7. As to mitigating factors, the ADG, CS noted the complainant's statements to the effect that although he accepted responsibility for his handling of the harassment complaint against Mr M., the FAO had failed to train him in the difficult duty station (Damascus, Syria) to handle such cases; that handling such complaints while working there not knowing when one would be bombed was not the same as doing so in Rome, Italy; that other United Nations agencies were far better equipped with many staff members to deal with administrative and human resources matters; that he was contacted for the first time about ethics training in February 2018, which indicated that the Organization knew that such training was required and the situation would have been avoided if that training was done in 2017; that the written reprimand only vaguely stated that his performance and the hardships at the duty station had been considered but that its conclusion did not reflect those factors; and that he had set out at length his employment record and achievements but the Administration did not consider whether a person with such an impeccable record would intentionally make such an error, especially considering the fact that none of Mr M.'s rights were breached and the FAO's reputation that was at stake was not considered.

8. The ADG, CS then cited paragraph 22 of the Standards of Conduct which stated that international civil servants must not abuse their authority or use their power or position in a manner that is offensive, humiliating, embarrassing or intimidating to another person. She also referred to paragraph 17 of the Standards of Conduct, which placed a special obligation on managers and supervisors to "uphold the highest standards of conduct" and paragraph 18 of the Standards of Conduct, which relevantly stated that managers and supervisors should "communicate effectively with their staff and share relevant information with them". The ADG, CS also referred to FAO Manual paragraph 330.1.32, which stated that a "written reprimand does not constitute a disciplinary measure but is a formal warning to the staff

member involved [and] is distinguished from a written censure (see [paragraph] 330.2.1) by the gravity of the misconduct”.

9. The ADG, CS concluded that while taking into account all relevant circumstances, the Administration did not impose a disciplinary sanction on the complainant; that his managerial shortcomings, as deduced from the evidence, amounted to a significant departure from the standards expected of him. In particular, the credible evidence firmly established that he had pressured Mr M. by making the renewal of his contract conditional upon Mr M.’s formal acceptance of responsibility for the vehicle incident. The ADG, CS made this statement by reference to an email of 20 December 2017 in which Mr M. had requested the complainant to make a firm decision on the renewal of his contract. The ADG, CS noted that it was on that same day that Mr M. signed the letter accepting responsibility for the vehicle incident. The ADG, CS concluded that the fact that the complainant approved the renewal of his contract shortly thereafter on 27 December 2017 established a causal relationship between those two events. Regarding the complainant’s assertion that Mr M.’s email of 20 December 2017 provided proof that he took responsibility for the vehicle incident, the ADG, CS emphasized that while the Administration recognized that the complainant was entitled as a manager to look into complaints of poor performance brought to him, he was not to exert pressure on a staff member to accept responsibility which that staff member contested. Additionally, the ADG, CS concluded that the letters which Ms E. and Ms M. provided to support the complainant’s assertion that he had informed Mr M. that his contract would have been renewed at the meeting of 19 December 2017 was not persuasive and did not negate the fact that Mr M. sent the complainant a message the following day asking him to make a final decision on the renewal of his contract at the same date. The ADG, CS reasoned that Mr M.’s request would not have been necessary had the complainant provided a clear and firm commitment to renew his contract at the 19 December 2017 meeting.

Regarding the submission that his “intentions and lack of corruptive motive were extremely relevant when determining the subsequent administrative action to be taken”, the ADG, CS concluded that this was irrelevant by reference to paragraph 12(d) of the Harassment Policy which states that harassment does not have to be intentional or deliberate.

The ADG, CS rejected the complainant’s assertion that the FAO had failed to train him to handle harassment complaints as alarming because he seemingly failed to recognize that, as a manager, he had a special obligation to uphold the highest standards of conduct. The ADG, CS drew the complainant’s attention to paragraph 14 of the Harassment Policy which placed a special obligation on him to familiarize himself with the Policy, as well as with the relevant Standards of Conduct. She also stated that, moreover, the duty of staff members of international organizations to acquaint themselves with the rules and regulations which apply to them is well established.

Regarding the complainant’s statement that the written reprimand only vaguely stated that his performance, achievements, contributions to the FAO and the hardships at the duty station had been considered but its conclusion did not reflect that they were, the ADG, CS stated that they had not been questioned and the written reprimand did recognize them. However, these factors did not provide a basis for his failure to familiarize himself with the rules, and that, moreover, the written reprimand did not impose a disciplinary measure, but was aimed at addressing the deficiencies which he had acknowledged and the gravity of his actions.

10. As the facts reveal, in recommending the rejection of the complainant’s appeal against this decision (endorsed by the Director-General in the impugned decision of 4 August 2021) the Appeals Committee stated, at the outset of its discussion of the merits of the appeal, that its power of review in cases of “administrative written reprimands” was more limited than in cases of disciplinary measures. The Committee cited as authority consideration 15 of Judgment 2752, where the Tribunal relevantly stated that it exercises only a limited

power of review in such cases. The Appeals Committee thereby made an error of law as in that statement the Tribunal was referring to its own power of review in such cases. The Tribunal has consistently stated, as it recalled in consideration 5 of Judgment 5003, for example, that an appeal body is wrong, when defining its own competence, to rely on the Tribunal's case law concerning the Tribunal's limited power of review and not to that of an internal appeal body. This, according to the Tribunal, is because internal appeal bodies are not administrative courts whose sole responsibility in principle is to review the lawfulness of decisions which are challenged, and that, ordinarily, the task of 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 as its power 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, which restriction is not provided for in the FAO's rules. This error of law by the Appeals Committee is sufficient basis for setting aside the impugned decision without it being necessary to consider other grounds.

11. In the normal course of events, the Tribunal would remit the case to the FAO for the Appeals Committee to issue a fresh opinion. The Tribunal will do so in this case. The Tribunal will also order the FAO to remove the written reprimand from the complainant's personnel file pending the final resolution of the matter. 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 3,000 United States dollars.

12. The complainant's claim for moral damages for excessive delay in the internal appeal procedure is rejected. Even assuming that there was excessive delay, he has not provided evidence to establish the

moral injury he suffered as a result of it (see, for example, Judgment 4859, consideration 8).

13. As the complainant has prevailed in this complaint, he is entitled to costs, for which he will be awarded 10,000 Swiss francs.

### DECISION

For the above reasons,

1. The impugned decision of 4 August 2021 is set aside.
2. The matter is remitted to the FAO to be heard by a newly constituted Appeals Committee.
3. The FAO shall remove the written reprimand from the complainant's personnel file pending the resolution of the matter.
4. The FAO shall pay the complainant 3,000 United States dollars in moral damages.
5. The FAO shall pay the complainant 10,000 Swiss francs in costs.
6. All other claims are dismissed.

In witness of this judgment, adopted on 24 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.