MISSION APPEALS TRIBUNAL	Case No.:	MAT/2022/01
	Judgment No.:	MAT/EUFOR/02
	Date:	30 September 2023
	Original:	English

Before: Erik Berg
Marco Fasciglione
Anne Verhelst

Registry: Naples

Registrar: Patrizio Raimondi

M.

Appellant

v.

EUROPEAN UNION FORCE IN BOSNIA AND HERZEGOVINA (EUFOR)

Respondent

JUDGMENT

Counsel for Appellant:
B.

Counsel for Respondent:
H.

Introduction

1. The NATO Mission Appeals Tribunal (hereafter "the Tribunal") has been seized of an appeal, dated 16 July 2022 and registered on 27 July 2022, as Case No. 2022/01 by Mr M., represented by attorney-at-law Mr B., against the European Union Force in Bosnia and Herzegovina (hereafter: EUFOR). The appellant is seeking annulment of the respondent's final decision dated 14 February 2022. In this decision his complaint has been dismissed, his financial claim has been dismissed and it has been decided that no disciplinary action against personnel of EUFOR is taken. Appellant is seeking a disciplinary investigation against his supervisor that includes polygraph testing of the person that he calls his supervisor (hereafter: his supervisor) and Human Resources Management (hereafter: "HRM") personnel. He claims a compensation of € 100,000 or € 250,000 depending on whether he can or cannot return to work, plus medical and legal expenses for suffering from occupational injury or accident.

2. The Panel was designated on 16 August 2022.

3. The respondent's response was registered on 14 September 2022. Based on Rule 37 of the MAT Rules of Procedure effective 1 July 2022, (hereafter: "ROP 2022") an Order No. 1 was issued to the respondent on 10 December 2022, published on 21 December 2022, seeking evidence about the status of the appellant's supervisor. The respondent's answer to this Order was registered on 4 January 2023. An Order No. 2 was issued to the appellant on 7 January 2023, in order to let him to respond, if he wished, to the documents that the respondent had entered (*"and NOT to earlier documents"*). The appellant's answer, however, turned out to be related to the earlier document of the response of 14 September only. It was registered on 25 January 2023. After due consideration, the Tribunal has qualified it as a reply to the respondent's response of 14 September 2022. Consequently, on 26 April 2023 Order No. 3 was issued to give opportunity to the respondent to enter a rejoinder, and to seek information from the respondent about EUFOR's policies on bullying, intimidation and/or harassment in the workplace. The respondent registered this information about the relevant policies on 2 May 2023. On 3 May 2023 Order No. 4 was seeking further information, which was given by the respondent on 4 May 2023. The answer to the respondent's question of 4 May 2023 (what to respond to in a rejoinder), was given in Order No. 5 of 5 May 2023. No rejoinder has been registered.

4. On 18 August 2023 the appellant registered the information that he is now retired and that the retirement fund has decided that this is *"with 100% disability"*.

5. In accordance with Rule 25 of the ROP 2022 (the "Documentary Principle") and considering that there is no reason to make an exception as allowed by Rules 31, 32 and 33, the Tribunal has decided not to hold oral proceedings, in camera hearings or witness hearings before deciding the case.

6. The Tribunal has deliberated, physically in Naples on 30 January 2023 and many times by electronic means, always in closed sessions, the last time on 30 September 2023.

Facts

7. The background and material facts of the case may be summarized as follows.

8. The appellant contends that he has been an employee of EUFOR and its predecessors since 17 February 1997, after quitting his job at Radio-Television Bosnia and Herzegovina. The most recent contract of employment between parties dates from 28 August 2012. In it, it is

agreed that appellant, born in 1978, will fill the post of Labourer (CL HQL 126) in grade LCH-2 step 6, for indefinite duration. A job description is attached to the contract. According to the contract the employment is governed by the provisions of the "Balkan Civilian Staff Regulations for Crisis Response Operations (hereafter: "CSR") and relevant applicable administrative procedures as in effect at any given time." These CSR are effective since March 2012 and will hereafter be referred to as CSR 2012. The contract states further that it supersedes any previous written or verbal agreements.

9. The respondent has submitted HQ EUFOR Civilian Job Descriptions for Posts CL HQL 114-128 versions 1 September 2012 and 1 July 2019.

10. The principal duties mentioned in the 2019 Job Description (almost unchanged since 2012) include *to clean and maintain all outside areas, clear all roads, sidewalks, entrances and walkways on site by operating road-sweeping machinery and hand tools, transport materials including furniture, and personnel as required, perform basic landscaping duties […], assist in moving, setting up and taking down equipment for special events such as parades, open air concerts, change of command ceremonies, etc.*

11. As additional duties are mentioned: *maintain assigned equipment, and report deficiencies to Supervisor, […] Perform all other related duties as required.*

12. The 2012 job description mentions that no particular education is required. However, the labourer must possess a valid driver's license type B, and must be able to operate normal landscaping equipment. He must be able to work outdoors in all weather conditions and perform medium to heavy labour. He may be required to work flexible hours and shift work.

Complaint for hierarchical review

13. On 16 September 2021 appellant filed, through his attorney at law, in accordance with article 34.1.1 of the CSR that have superseded the CSR 2012 since 1 January 2021 (hereafter: "CSR 2021") a complaint against his supervisor with the Civilian Human Resources Manager (hereafter: "CHRM"), demanding a hierarchical review and an initial decision.

14. He contended that his supervisor was using, manipulating, and humiliating him, never acknowledged him as a colleague or a human being but as a slave, who had to do every job there is for the least amount of compensation. He claimed that he expressed himself many times in front of his supervisor, telling him that he was sick, that his body hurt, but his supervisor just laughed, and made fun of him in front of other people that worked there. He contended that there are many witnesses to these facts. These facts constitute a violation of article 16.2.6 of the CSR 2021.

15. He also contended that he got sick for the first time in 2003. Now he was on sick leave since 14 June 2021 because of physical damage suffered as a result of his work. He stated that he suffered from chronic bronchitis and heart disease, due to the hazardous nature of the tasks that his supervisor made him perform. He was not getting personal protective equipment.

16. The appellant also claimed that he was never given a chance to be advanced (in violation of Articles 31 and 32.2 of the CSR 2021) and did not receive an extra duty allowance (in violation of Article 32.4 of the CSR 2021), although, according to the appellant, he was performing at least 12 other jobs, such as audio technician, escort, courier for his supervisor, billeting office assistant handling keys, and distributing announcements in

buildings, kitchen assistant transporting food for a NATO general, pest control assistant distributing dispensers in buildings, and distributing masks and gloves. Until 2003 he performed paint jobs, too.

17. The appellant requested an initial decision that awards him a compensation of € 100,000 for physical and psychological damages, and that initialises disciplinary actions against his supervisor under article 33.1.2. of the CSR 2021.

Initial decision

18. In his initial decision of 13 October 2021, the J1-CHRM argued that the appellant's salary advanced yearly. With regard to the extra duty allowance, he argued that it is only available to personnel formally replacing a vacant higher-level position. He pointed to an evaluation dated 16 July 2021 by the Republika Srpska first degree commission for evaluation of ability to work that shows that the appellant's health condition was not considered as injury at work but as a disease with Code 54, Dorsalgia. Also, he argued that over the past 15 years, in view of the appellant's health condition several light tasks were given to him instead of the heavier ones in his job description. These were in accordance with the general scope of the job description, and with the appellant's educational level and experience. Also he argued that, contrary to the appellant's contentions, Personal Protective Equipment was provided.

19. With regard to the accusations against the appellant's supervisor, J1-CHRM had not been able to identify from records, any witness and through communication with supervisors past and present, any incidents of wrongdoing by the appellants supervisor. On the contrary, his performance evaluations consistently commended his positive support to the Department of Public Works and the staff through excellent communication, commitment, loyalty and trust. The decision concluded therefore, that the request was without merit. The claim for financial compensation was unfounded, and the request for disciplinary action was also unfounded.

Formal complaint against the initial decision

20. On 29 October 2021, in accordance with article 34.2 of the CSR 2021, the appellant filed a formal complaint to the Chief of Staff (hereafter: "COS") against the initial decision. In short: he maintained that he performed many jobs above the level of his job description. With regard to the requested extra allowance, he claimed that he had been performing the position of Sound Technician, and the position of Escort for 15 years. He mentioned that it is painful to read that he was assigned lighter tasks to accommodate his bad health while his being disabled is a result of the tasks that he was doing. He had recently undergone spinal surgery. He pointed to the fact that the doctor told him already in 2003 to avoid heavy physical activities. He reiterated his claim for € 100,000 or € 250,000, compensation of medical expenses and for disciplinary procedures against his supervisor.

Final decision

21. On 14 February 2022 in accordance with article 34.2.1 of the CSR 2021 COS EUFOR has taken a final decision on behalf of the Commander (hereafter: "COM") EUFOR. COM EUFOR determined that the activities that the appellant mentioned, were not outside the scope of his duties. There were no requirements for a Sound Technician, and no post for such role had been ever foreseen in his organizational unit. Tasks such as escorting, pest control, delivering supplies, were inherent duties of a labourer. That the scope of assigned activities was greater than explicitly mentioned, was specially intended to spare him from physically more demanding tasks that form the major tasks and duties in the job description. The right to an extra duty allowance was not applicable because no formal higher lever position was formerly assigned. Overtime work had always been compensated for. The

most recent health certificates (2021) from the Health insurance office of Republika Srpska first degree commission for evaluation of ability to work had confirmed that the appellant was not suffering from a work-related injury, but from spinal medical issues. The HQ-Department of Public Works had long adapted the appellant's scope of duties to accommodate him in the face of his condition in the hope of keeping him employed and to preserve his health and safety. COS EUFOR noted that the appellant had voluntarily applied for vacant positions in 2019/20 that had *bona fide* physical labour requirements but during the Selection Board interviews he did not confer any information on his condition that would have prevented him from fully performing the roles, duties, and responsibilities of those positions.

22. With regard to the claim of negligence and misconduct of the appellant's supervisor, COS EUFOR states that his review has not enabled him to identify any incidents of wrongdoing by the appellant's supervisor to the appellant or any other staff member. COS EUFOR points, to the contrary, to the positive performance evaluations that J1-CHRM also noted. The COS EUFOR states: *"The dispensation of any disciplinary proceedings and actions fall under my preview as EUFOR Chief of Staff and I have determined your allegations to be without veracity."*

23. COS EUFOR therefore dismisses the complaint, dismisses the financial claim, and as no evidence for disciplinary misbehaviour has been found, no disciplinary action against civilian personnel of EUFOR is taken.

Parties' submissions

The appellant's submissions

24. In the first place the appellant contends that COS EUFOR did not act in accordance with article 34.2.1a of the CSR 2021 since he didn't invite the appellant for a hearing, and he ignored submitted facts.

25. A number of contentions are related to the issue of the task of Sound Technician. The appellant has submitted many annexes with respect to this issue. One of appellant's arguments is that COS EUFOR incorrectly interpreted the work of a sound technician, that such a task could only be performed by the appellant, and that "setting up sound equipment" as mentioned in the job description was not explained to any employee. Evidently the hard work involved in setting it up and managing it during a concert has not been properly explained to COS EUFOR. This proves the malicious intent of CHRM. Although, according to the appellant, COS EUFOR maintains there was no post of Sound Technician, the appellant claims having received the COS's award *"for his noteworthy service as a sound technician at NATO HQ Sarajevo"*. According to the appellant, one cannot engage a sound technician and not pay him arguing that his work is required only sometimes.

26. A third argument relates to having had to perform more overtime work than allowed by the law of Republika Srpska. The appellant agrees that he was compensated for this extra time.

27. In a fourth argument the appellant claims that COS EUFOR neglected the presented numerous health certificates that the appellant also submitted with his appeal. These health certificates show, according to the appellant, that he suffered injury or accident because of his work, or he suffered from other work-related medical issues. He also claims that the HRM office did not provide a document to COS showing a new diagnosis, *"M511 Prolapsus disci intervertebralis lumb. Et disc. Intervert. Alicorum cum radiculop"* He states that during these proceedings he is still undergoing medical evaluation and "*the HRM*

office will soon get the final evaluation confirms all his allegations about his health problems relating to his work."

28. The appellant requests the exposure of all of his health records since 2000 as they are in the HRM office and all pictures from the Press office that prove his activities in ceremonies.

29. The appellant contends again that his supervisor committed a *"violation of the NATO Code of Conduct including human rights violations"*. He also argues that COS EUFOR *"did not investigate any criminal conduct inside the Department of Public Work office where he would find money-laundering, insider trading of jobs, selling contractor's jobs to his close allies. Investigation including polygraph testing of several named and unnamed staff members will unveil the net of corruption, misconducts of the CSR, and the NATO Code of Conduct."*

30. Appellant is seeking a disciplinary investigation against his supervisor including polygraph testing of his supervisor and HRM personnel and DPW management, and a compensation of € 100,000 or € 250,000, plus medical and legal expenses for suffering from occupational injury or accident.

31. With his appeal, the appellant has submitted 18 numbered Annexes, many consisting of several documents.

32. In his 23 pages reply of 25 January 2023, with 25 extra Annexes, the appellant contends, claims and requests the same. He also explicitly mentions the weights of several pieces of sound equipment (23 kg, 21 kg). He also accuses his supervisor of various lies made in the statement that the respondent has submitted. The appellant also complaints about the many jobs that he alleges to have performed and about which he had already complained in earlier stages of the proceedings – but not in the complaint against the final decision. He maintains that he was abused and fulfilled various different jobs that are not part of his own job as labourer. In regard to this he claims that in accordance with *"the CSR and Labour Law, it is written that Employer may keep employee in different position maximum for 60 days, and after this period employee should be promoted or removed from that job".* Also, he states that the Director of Public Works *"is apparently misinformed by supervisors about the tasks that the appellant was performing and about the sound system".*

33. The appellant points to several articles in the CSR in order to substantiate that his escort and sound equipment related activities cannot be seen as part of a labourer's job, and should not have been given to him to perform without an extra allowance. Also, he points to the law of Republika Srpska with relation to the duties of the employer after the occurrence of occupational disease or injury at work.

The respondent's submissions

34. The respondent contends that several positions that the appellant has taken in the appeal, could and therefore should have been taken in earlier stages of the proceedings, and the same goes for the submitted documents. The respondent also notes that many of the medical documents have not been translated to English. The appeal contains many unsubstantiated serious but very general allegations with regard to fraud and corruption by his supervisor, the Department of Public Works and the Human Resources Management office.

35. The respondent points at the text of Rule 34.2.1a of the CSR 2021 to show that a hearing is not required. All presented facts had been scrutinized and considered. This gave a clear picture. Hence there was no reason to hear the appellant.

36. With regard to sound equipment related activities the respondent does not diminish the appellant's qualification and professional experience gained in a previous employment at BHTV. A fulltime requirement for Sound Technician did not exist in EUFOR for many years, and the appellant was occasionally asked to help. The pictures submitted by the appellant show a DJ-like, amateurish image compared to what a professional studio-like service would look like. The e-mail communications and the award can't be understood in the way that the appellant wishes. The sentence in the award citation that the appellant has quoted was really longer than the appellant quoted. It reads further: *"and his exceptional contribution of preparation and planning of NATO medal parades from June 2005 to October 2009".* Also, his elementary school education would not have sufficed for a LCH level 4 job, at which level the job of a Sound Technician could be rated. The respondent maintains that the occasional sound related activities can be part of the job, as described in the job description that is part of the contract.

37. With regard to having been asked to perform excessive overtime work, the respondent points to articles 38 and 39 of the current Labour Law of the Republika Srpska, which enables the worker to voluntarily work up to 10 hours per week and 150 hours per year. The respondent points at articles 20.33 of the CSR 2012 and 20.2.2 of the CSR 2021 that mention a maximum of 40 hours per month.

38. With regard to the health issue the respondent contends that there is no evidence at all in the medical documentation of the appellant that supports the contention that his poor health status can be qualified as work-related, named as an injury or illness caused, contributed or significantly aggravated by events or exposures in the work environment.

39. According to the respondent, it may be concluded from the documents submitted by the appellant, that the appellant smokes up to 20 cigarettes per day and that he was encouraged to stop smoking by the doctors. Also, he suffers from a hereditary disease (Marphan syndrome) which, according to EUFOR's Medical Adviser of Bulgarian nationality (who can understand the untranslated medical reports), typically affects lungs and heart. There is no indication that the appellant sought any therapy to mitigate his personal risks. The lower back problems that the appellant suffers are caused by herniated discs and by spinal degeneration for which he underwent neuro-surgery as late as in August 2021.

40. With regard to the back pain, the health certificate of 11.02.2022 explicitly excludes a work-related injury, allegedly occurred between 5 and 7 May 2021: *Accident at work? No.* According to Annex 15 the appellant had started an SMS conversation on 5 May 2021 about his general grievance, and he discontinued for more than two months.

41. With regard to the appellant's claim that he did not get protective clothing, the respondent points to Annex 10.

42. In response to the claim of not having investigated the appellant's allegations, the respondent states these allegations are unsubstantiated and the decision dismissing them was based on scrutiny and facts. *"During his years of employment at EUFOR, the appellant was by no means maliciously exploited and physically overwhelmed, but rather spared from heavy work due to his reduced general health – other than his colleagues, which can be noticed daily inside the camp".*

43. The respondent requests to dismiss the appeal as widely lacking the minimal formal requirements and as being without merit, or *in eventu*, to bring the appeal into a structured and generally understandable form, and then schedule a hearing with the involvement of witnesses as quoted in Annexes D through H.

44. The respondent has added Annexes A through K to his response. Among them are the written statements of Director DPW of 12.1.2022, of the appellant's supervisor of 14.01.2022, of the Supervisor Building and Ground Maintenance of 15.1.2022 and of the Principal Human Resources Administrator of 20.1.2022.

45. As was mentioned above, the respondent has not submitted a rejoinder.

Jurisdiction and Admissibility

46. The possibility for LCH personnel in EUFOR to appeal a final decision in a Mission Appeals Tribunal has been created in articles 34.2.1, 34.2.2 and 34.3 of the CSR 2021. The Tribunal's Rules of Procedure were then to be found in Annex K to the CSR 2021. Hereafter these will be referred to as "ROP 2021". Rule 4 of the ROP 2021 determines that the Mission Appeals Tribunal shall be established. A new, different version of the ROP, ACO Directive 005-045, is applicable from 1 July 2022. Hereafter it is referred to as "ROP 2022". Rule 4, sub 1, of the ROP 2022, determines that the Mission Appeals Tribunal has been established.

47. The acceptance of the jurisdiction of the MAT by EUFOR is evident from EUFOR's adherence to the CSR 2012 in the labour contract with the appellant in 2012 and 2019 while these CSR 2012 were superseded by the CSR 2021 that implied the jurisdiction of the MAT. Neither party disputes the Tribunal's jurisdiction in this case. Considering all that needs to be considered according to Rule 2 of the ROP, the Tribunal finds itself competent to hear the case and pass judgment.

48. Article 34.2.1 sub a of the CSR 2021 determines that an appeal against a final decision must be filed within 15 working days, while both Rule 6 of the ROP 2021 and Rule 14 of the ROP refer to different actions to be undertaken within 20 working days.

49. When the disputed final decision was taken by COS EUFOR on behalf of COM EUFOR on 14 February 2022, the necessary infrastructure including the so-called Communities of Interest Portal was not fully operational yet, while the system of filing the appeal through the COI Portal itself was introduced in the ROP 2022, valid per 1 July 2022. Unaware of the exact circumstances, the Tribunal presumes that the appellant had to wait to upload his appeal to the COI Portal until the COI Portal was legally and practically functioning. The judges assigned to this Panel of the Tribunal in August 2022 have experienced difficulties to access the COI Portal until sometime in November 2022.

50. So, although the disputed final decision dates from 14 February 2022, and the appeal was filed on 27 July 2022, this does not imply that the appellant sat idle and filed his appeal late. Moreover, the appellant has claimed that he filed his appeal within 20 days. This has not been disputed by the respondent.

51. Considering all of the above, the Tribunal finds the appeal admissible.

Considerations

52. The appellant has requested the production of medical records, documents regarding activities that he was involved in and other documents and records that he assumes to be in the possession of the respondent, some dating back over 20 years.

53. In the light of what the appellant already possesses and has submitted to the Tribunal, and without a proper explanation that could have led to a different conclusion, the request doesn't follow the need-to-know principle. Therefore, in accordance with Rule 34 of the ROP, the Tribunal has decided not to require the production of documents as requested by the appellant.

Not being heard contrary to article 34.2.1a CSR 2021

54. With regard to the first complaint, acting against article 34.2.1a of the CSR 2021 by not having been heard by the COS EUFOR in the formal complaint procedure, the Tribunal notes that article 34.2.1a of the CSR 2021 establishes no obligation to hear parties (as it uses the word "may"). This complaint has no merit and must be dismissed.

Extra duty allowance, salary increase, overtime, compensation, promotion

55. With regard to the appellant's contention that he had to perform many jobs next to his own and wasn't compensated for performing these jobs, which entitles him to an extra duty allowance based on article 32.4.1 of the CSR 2021, the Tribunal notes that the CSR 2012 do not have a similar provision. And the CSR 2021 are not retroactively effective. In other words, any such claim to an extra duty allowance must be related to work done after 1 January 2021. So, the contended circumstance that the appellant had requested during 15 years to be promoted to sound technician and escort, but that these requests were never forwarded to HRM (whatever may be true of this), cannot add weight to his claim regarding the extra allowance, as this allowance could only be awarded for work performed after 1 January 2021. Also, as the respondent rightly points out, the wording of article 32.4.1 of the CSR 2021 demands the formal designation of a staff member carrying a post that is unfilled due to recruitment difficulties or due to the prolonged absence of the incumbent staff member. The conclusion is that this article has been invoked without merit, since the appellant was not formally designated to carry an unfilled post after 1 January 2021.

56. The Tribunal is not convinced by the unsubstantiated contention made by the appellant – disputed by the respondent – that his salary was not increased by yearly advances until he reached the maximum salary possible in his grade. If this extraordinary situation would be at hand, it would have been extremely easy for the appellant to provide evidence to support his contention by submitting his salary slips of the relevant years. The appellant has not supported his claim with any evidence.

57. With regard to the claimed right to a promotion, based on CSR or local law, the Tribunal considers that both CSR 2012 and CSR 2021 do not attribute a right to promotion to any LCH. With regard to the claim that local law does, the Tribunal finds that the appellant has failed to substantiate his claim. Also the Tribunal finds that the appellant was not barred from promotion. The Tribunal considers that the appellant did also respond to job openings for jobs graded at a higher level. This is evident from the reference made by both parties to the job interviews that the appellant had for at least two other jobs.

58. With regard to the contention that he had to perform more overtime work than allowed by the law of Republika Srpska, the respondent has disputed this claim, quoting labour law that supposedly does allow the overtime performed. The appellant has not contested this and the Tribunal qualifies this as an agreement to the respondent's argument that the law was not violated. Moreover, the appellant has not submitted an overview of the days and hours of overtime over the course of the past 15 or more years that, according to him, constitute a violation of the law. Without such overview, the Tribunal cannot establish if the law was violated by the overtime actually performed. The compensation sought with reference to performing too much overtime work is therefore unfounded.

59. The appellant also seems to claim compensation for performance in other jobs than his own, without stating on what ground he bases such claim if it is based on any other ground than article 32.4.1. of the CSR 2021. Whatever this ground may be, the Tribunal concurs with the respondent that the tasks that the appellant performed can be seen as part of the job of labourer in grade LCH-2. His job description mentions a great variety of activities on the premises of the EUFOR compound that require little or no education or training besides having a driver's license. The great variety of specified tasks, including the transport of people and materials, landscaping, waste material removal, setting up sound equipment, etcetera, makes clear that the list is not meant to be exhaustive. This is underlined by the last duty mentioned in the job description: perform all other related duties as required. With regard to the task of escorting people across the compound, the Tribunal fails to understand why it is a really a different job, if transporting people across the compound is explicitly mentioned in the job description. Why would escorting people entitle the appellant a right to a compensation if he was doing this during his normal working hours or during overtime that he, as he agrees, was already compensated for?

60. It may be true that especially the use of sound equipment as a DJ may have required at least some extra knowledge or experience above the expected level. But the appellant has admitted that this activity was only performed sometimes. Also, the appellant's reference to the award's (half) citation of course does not prove that he was having a different job than labourer, as stated in his contract. And the appellant has not contended anywhere in these proceedings that the performance of sound equipment related work was not acceptable for him without extra payment. The Tribunal further considers that the mentioned weight of occasionally lifted sound equipment (just over 20 kg, say the weight of a full tourist's suitcase) does not exceed the weights to be lifted according to his job description.

61. Based on the appellant's own description of pretended different tasks, such as escorting, and based on the statements referred to in paragraph 43, the Tribunal considers that, although some of the tasks explicitly mentioned in the job description required lifting or unloading heavy materials, the appellant was often given lighter tasks, while his colleagues remained with the heavier tasks. But the Tribunal finds it convincingly substantiated by the respondent that this different treatment was favourable to the appellant, not at all negative, and the appellant never complained about it either, and it was done for good reasons, demonstrating compassion for the appellant's health issues, allowing him opportunity to keep his job. Considering that he was treated favourably compared to his colleagues, there is no disadvantage that he could be compensated for.

Alleged work-related damage to the appellant's health

62. With regard to the contentions that the appellant suffered from work-related injury, accident or events or that exposures in the work environment contributed to or significantly aggravated the appellant's poor health, the Tribunal considers as follows.

63. It is undisputed that the appellant has suffered from several different health issues throughout the past 20 years. The question is only if there is a causal relationship between the tasks performed in the appellant's work and his health problems throughout the years. The respondent denies this categorically.

64. In this situation, the burden of proof is on the appellant.

65. The Tribunal considers that in the proceedings, many documents have been submitted, on which the medical examiner stated "no" to the question if the health issue was result of an accident at work. Also, the variety of health issues that the appellant has documented is

large. The respondent has argued that some of these health issues are clearly not work-related. In this respect, for example, the respiratory problems may be related to being a heavy smoker of cigarettes. For several of the substantiated health problems, the doctor only prescribes three weeks of therapy before the appellant can return to work. In all so many submitted medical documents, the Tribunal has not found any medically substantiated conclusion or even a substantiated observation by a physician that any of the appellant's health issues is directly or indirectly a result of the work or work environment (apart from one single anamnesis - which is a reflection of what the patient brings forward when he tells his physician what he suffers from). On the contrary, the physicians in these medical documents often only prescribe some days or weeks rest before continuing to returning to work.

66. The Tribunal observes, too, that the appellant has claimed several times that he will soon get a final evaluation that will provide just that evidence of a causal relationship between his job and his health. But even though the proceedings have taken much longer than anticipated, the appellant has not brought forward any new supporting evidence. His most recent message, that he has retired "with 100% disability", of course, does not substantiate the claim that his job prejudiced his health in any relevant way. The Tribunal therefore finds that the appellant has not submitted any evidence that supports his claim, while the respondent has pointed to several different sources and arguments why this claim is unfounded.

67. Therefore, the appellant's complaints about suffering from work-related health issues are unfounded and the appeal on this point will be dismissed.

Disciplinary actions

68. With regard to the appeal against the dismissal of the appellants request to start disciplinary actions, the Tribunal observes in the first place that the instigation of disciplinary actions against a staff member in the case at hand is, as it is the case in many international organizations, the privilege of the organization itself. The employee has no inherent right to claim a disciplinary action to be instigated against his co-worker.

69. In articles 33.1.1. and 33.2.1 of the CSR 2021, the privilege of starting a disciplinary action lays with the supervisor of the relevant staff member or with the CRO CHRM – depending the severity of the alleged misconduct of the staff member. In the more severe cases, a Disciplinary Board is established and a well-defined procedure is followed, that involves the accused staff member and fact-finding activities.

70. The Tribunal will restrict its judicial review to a review of how the respondent has responded to the claims of misconduct that should lead to an investigation and disciplinary action.

71. With regard to the allegations against the DPW and HRM, these are as extreme in nature as they are unsubstantiated. The requests for investigations and disciplinary action are rightly found without merit.

72. With regard to the allegations against his supervisor, the appellant claims violation of article 16.2.6 of the CSR 2021 *(A staff member shall not violate an individual's dignity or create an intimidating, humiliating or offensive environment.)* In this context he claims that *his supervisor was using, manipulating, and humiliating him, never acknowledged him as a colleague or a human being but as a slave, who had to do every job there is for the least amount of compensation.* He claims that *he expressed himself many times in front of his supervisor, telling him that he is sick, that his body hurts, but his supervisor just laughed*

and made fun of him in front of other people that work there. He also claims that *there are many witnesses to these facts*. He also mentions the violation of his *"human rights"* and *"the NATO Code of Conduct"* referred to in article 16.2 of the CSR 2021. The appellant requested that disciplinary procedures be started against his supervisor for serious misconduct as mentioned in article 33.1.2 of the CSR. He now appeals from the decision that COM EUFOR does not see a reason to do so.

73. The Tribunal notes that for the applicability of article 33.1.2 of the CSR 2021, the accused must be an LCH. The respondent, answering to Order No. 1, has submitted evidence of the fact that the appellant's supervisor is and has been for a long time an LCH. The Tribunal concludes that article 33.1.2 of the CSR 2021 can be applicable with regard to the appellant's supervisor.

74. With regard to *"violation of the appellant's human rights"*, the Tribunal simply finds this allegation too undefined, so in as far as the dismissal of the claim refers to this violation, the appeal against it is unfounded.

75. The Tribunal notes that the NATO Code of Conduct, Annex L to the CSR 2021, referred to in article 16.2 of the CSR 2021, itself dates back to the agreement by the North Atlantic Council on 2 December 2013. It was not incorporated in the CSR 2012. Although the appellant did not specify what paragraph in the Code of Conduct was violated, the Tribunal establishes that the appellant can only reasonably have referred to the prohibition to harass in the workplace.

76. In order to know if the alleged behaviour of the supervisor is also covered by other applicable regulations and/or policies, the Tribunal has ordered the production of regulations and/or policies of EUFOR with regard to bullying, discrimination, harassment, and intimidation in the working environment. The respondent has submitted three paragraphs, 13-15, of a Chapter "Respect and Unfair Treatment" that, according to the respondent, are part of an operational order that also contains classified information. The Tribunal understands that these three paragraphs are unclassified and that it may quote them.

77. Among other things, paragraph 13 determines that *all people must be treated with dignity and respect, regardless of sex, age, ethnic origin, religion, sexual orientation, disability, social or economic status or political views*. Paragraph 14 establishes that

    all personnel have the right to live and work in an environment free from harassment, abuse, unlawful discrimination and bullying.[…] The use of physical force or the abuse of authority to intimidate or victimise others, or to give unlawful punishments, is unacceptable behaviour which will undermine trust and respect. Any behaviour resulting in personnel being discriminated against, abused, harassed, intimidated, bullied, subjected to verbal or physical unwelcome sexual attention or unfair treatment is not to be tolerated. The standard determining harassment is not the intent of the alleged harasser, but the effect of the behaviour on the victim.

78. Also submitted is an unclassified brochure published in the Human Resources area on the internal unclassified portal of EUFOR in the English and Bosnian language on harassment and discrimination. Of particular interest for this case is paragraph 3, Abuse of Authority:

    Harassment also includes abuse of authority, which means a person's improper use of power and authority to endanger another individual's job, undermine the performance of

that job, threaten the economic livelihood of that individual [...] It includes such acts or misuses of power as intimidation, threats, blackmail or coercion.

The document goes on to say:

However, the above-enlisted is not limiting the forms of harassment that one can experience at the place of work. To widen the harassment term slightly we can recognize it as any improper behaviour directed at and offensive to another individual and which the person knew, or ought reasonably to have known, is unwelcome. It comprises objectionable conduct, remarks, gestures and displays – occurring on either a one time or continuous basis – that demean, belittle, or cause personal humiliation or embarrassment to an individual.

79. The Tribunal is not aware when EUFOR adopted these regulations and policies.

80. The Tribunal has considered if European Union laws and policies on harassment are applicable. The Tribunal has concluded that this is not the case. It considers that EUFOR is not a body of the European Union, but an international organization *sui generis* based upon the Council Joint Action 2004/570/CSFP of 12 July 2004, and, according to UN Security Council Resolution 1575 (2004) adopted on 22 November 2002, being a multinational stabilization force (EUFOR) formed by UN member states acting through or in cooperation with the EU, as a successor to SFOR, together with a NATO Headquarters. The Tribunal concludes that EU law and policies don't directly apply to EUFOR and they need no consideration in this case.

81. The Tribunal establishes that the respondent has not limited his review but instead he has done a *de novo* investigation into the veracity of the allegations.

82. Also, the Tribunal establishes that the respondent, like J1-CHRM, has not incorporated the three paragraphs of the operational order and the policy on harassment and discrimination in his considerations.

83. The Tribunal considers that it is an omission on the part of J1-CHRM that he did not incorporate these three paragraphs of the operational order and the policy in his considerations, because these paragraphs and policies provide standards that play a role in the determination of whether there was misconduct or not, as mentioned in article 33.1 of the CSR 2021.

84. An allegation of harassment must, as recalled by the Administrative Tribunal of the International Labour Organization (cases no. 20637, Annabi (No. 2) of 12 July 2001 and no. 2100, Guastavi (No. 2) of 30 January 2002) and as already ruled by the NATO Appeals Board (decisions no. 690 of 29 June 2006, no. 762 of 12 March 2010, no. 824 of 9 March 2012 and nos. 839-863-864 of February 2013), be borne out by specific facts, the burden of proof being on the person who pleads it, and an accumulation of events over time may be cited to support an allegation of harassment. The Tribunal considers that all of this is also true with regard to other behaviour that could qualify as misconduct that can give rise to disciplinary actions as meant by article 33.1 of the CSR 2021.

85. The Tribunal considers that the appellant has not brought forward any statement of any witness and he has not provided any evidence that substantiates his numerous accusations, which is striking considering the very offensive nature of the pretended behaviour of his supervisor, the pretended reoccurrence and the pretended presence of many witnesses. He has not given a convincing explanation why he was unable to provide a statement of any

witness. This absence of evidence is important, considering that the burden to provide sufficient evidence of harassment or other misconduct is on the appellant, as considered in the previous paragraph.

86. The Tribunal establishes that in this light, J1-CHRM needed little to argue that the appellant's request is unfounded. In this case, J1-CHRM has gone through records and he through communication with supervisors past and present, to identify witnesses of any incidents of wrongdoing by the appellant's supervisor. On the contrary J1-CHRM found that the supervisor's performance evaluations consistently commend his positive support to the Department of Public Works and the staff through excellent communication, commitment, loyalty and trust.

87. The Tribunal establishes that the given arguments show that J1-CHRM has substantially prepared and motivated his decision.

88. The Tribunal establishes that the complete lack of evidence of misconduct on the appellant's side *vis-à-vis* the substantiated arguments from the respondent, lead to the conclusion that the incorporation into J1-CHRM's considerations of EUFOR's three paragraphs and the policy on harassment and discrimination could not have led to a different decision. In other words, J1-CHRM's decision could only have been the same. Therefore, J1-CHRM's omission in his considerations does not have a consequence. The conclusion is that J1-CHRM's decision, to reject to start disciplinary action or an investigation, is not wrong. The same can be said for the respondent's final decision that the formal complaint was dismissed.

89. The conclusion is that the appeal on this issue is unfounded.

90. In the circumstances of the case, all submissions in the appeal having been found to have no merit, the request for compensation of legal and medical expenses was rightly rejected. The appeal against the final decision of 14 February 2022 will be dismissed.

Conclusion

91. In view of the foregoing, the Tribunal DECIDES:

The appeal is dismissed;

The deposit of € 65,52 paid by the appellant in accordance with Rule 14 sub b of the ROP 2022 shall be returned to him.

Baghdad, 30 September 2023,

Chairperson

Judge Erik Berg

The Registrar

Patrizio Raimondi

Panel Members

Judge Marco Fasciglione
Judge Anne Verhelst

In compliance with Rules 46 of the MAT Rules of Procedures for publication purposes, identity of the parties and representatives has been omitted in connection with ACO Directive 015-026.

Avv. Patrizio Maria Raimondi
MAT Registrar