

The Administrative Tribunal,

Considering the complaint filed by Ms G.E. J. against the International Labour Organization (ILO) on 7 September 2004, the Organization's reply of 27 October 2004, the complainant's rejoinder filed on 7 April 2005 and the ILO's surrejoinder of 5 May 2005;

Considering Article II, paragraph 1, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

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

A. The complainant, a Salvadorean national born in 1950, was recruited by the International Labour Office, the secretariat of the ILO, on 3 June 1998 as a text processing operator for the 86th International Labour Conference. From 23 June 1998 she worked as a secretary at grade G.3, step 6, in the Bureau for Workers' Activities (ACTRAV) under a series of short-term contracts. On 22 June 2000 she was assigned to work on the project "Action against child labour through education and training" as a secretary at grade G.4, step 7. From 1 March 2001 she worked as secretary for the Forced Labour Unit of the InFocus Programme on Promoting the Declaration (DECLARATION) under a one-year fixed-term contract, which specified that she would be considered as assigned to a technical cooperation project.

In an e-mail of 20 November 2001 from the Director of DECLARATION, the complainant was informed that her contract would not be renewed after 28 February 2002, owing to a lack of funds.

On 10 December 2001 the complainant was placed on sick leave until 28 February 2002. Her performance appraisal for the period 1 March to 30 November 2001 was drawn up on 8 February 2002. As the complainant contested the appraisal, the matter was referred to the Reports Board, which, in a note of 13 December 2002, found that the appraisal was fair and should stand as submitted.

Meanwhile, the complainant's contract had been extended by six months, during which time she was assigned first to the Human Resources Development Department and then, from 8 May 2002, to the Reprography Unit. Her appointment ended on 31 August 2002 and on 17 October 2002 she received an indemnity equivalent to three months' remuneration.

Starting in December 2001, the complainant had initiated a series of proceedings. On 12 December 2001 she submitted a grievance to the Ombudsperson seeking resolution by dialogue process under Article 13.2.1 of the Staff Regulations. On 10 January and 30 September 2002 respectively she lodged two harassment-related grievances. On 16 October 2002 she submitted a claim for an invalidity pension to the Pensions Committee. On 25 November 2002 she lodged a grievance with the Joint Panel alleging irregularities in the non-renewal of her contract. On the same day she also submitted a formal request to the Compensation Committee for recognition of the fact that her illness was work-related.

On 22 January 2003 the complainant's counsel requested that the Joint Panel suspend the proceedings in view of his client's medical and financial situation. The Human Resources Development Department (HRD) agreed but considered that the complainant should be asked to show that she was under a disability which prevented her from pursuing her grievance. In a letter of 5 May 2003 to the Joint Panel, the Director of HRD, noting that the complainant was actively pursuing the claims she had submitted to the Pensions Committee and the Compensation Committee, wrote that her request for suspension of the time limits did not appear to be well founded, insofar as she could not be "selectively incapacitated", pursuing one claim but not another. The Director requested that the complainant produce evidence of her incapacity. In the absence of such evidence, the Joint Panel was asked to dismiss her grievance on the grounds that the limitation period had expired.

In its report dated 7 May 2004 the Joint Panel concluded that there was a lack of transparency in the decision not to renew the complainant's contract and that she had not been notified of the actual reasons for the decision. It recommended that the Office pay the complainant compensation equivalent to three months' remuneration "for the improper non-renewal of her contract" and 3,000 Swiss francs in costs.

The complainant was informed in a letter dated 17 June 2004 that the Director-General rejected the Joint Panel's recommendations. She was reminded firstly, that when her contract had expired the Office had paid her three months' remuneration – thus taking into account her previous status as a precarious official even though she was no longer employed under the short-term conditions contemplated in ILO Circular Series 6/630* – and secondly, that the Joint Panel was not authorised under the Staff Regulations to make an award of fees to cover the costs of external legal representation. That is the impugned decision.

B. The complainant argues that the fact that the Joint Panel accepted her requests for the proceedings before it to be first suspended and then resumed "should not adversely affect the receivability of her case".

On the merits, she contends that the impugned decision is unlawful for two reasons.

Firstly, she considers that the defendant put forward a "false" reason to justify the non-renewal of her contract. She emphasises that the only reason she was given in that respect was that the funding for the technical cooperation project had run out. Yet she asserts, in the course of the proceedings before the Joint Panel, that she had proved that the funds were available. To this end, she produces a copy of an e-mail dated 29 June 2001, which she had shown to the Joint Panel, in which the Director of DECLARATION indicated that the funds were available and would be sufficient to finance her post. She points out that the defendant at no point contested the content of the e-mail and that the Joint Panel concluded that, failing any evidence to the contrary, it could be assumed that the project funds were in fact available.

The complainant also produces a copy of an organigramme drawn up by the Director of DECLARATION that she allegedly found on her desk in January 2002. She submits that this organigramme, a copy of which she also transmitted to the Joint Panel, clearly shows that she was replaced in her post by another secretary. According to her, that fact, which has not been disputed by the Organization, constitutes further evidence that the funding for her post was never discontinued.

Secondly, the arguments put forward by the Organization in support of the decision of non-renewal are based in her view on a misinterpretation of the Joint Panel's recommendation and an error of law concerning the Staff Regulations. With regard to the fact that the Director-General considered that the compensation recommended by the Joint Panel had already been paid to her, she explains that the sum she received when her appointment ended was the lump sum payable to those who have been employed under "precarious" contracts stipulated in Circular Series 6/630, whereas the compensation recommended by the Joint Panel was to have been paid to her "for the improper non-renewal of her contract". She further maintains that the Director-General was wrong in considering that the Staff Regulations do not allow the Joint Panel to make an award to cover the costs of her defence.

The complainant requests the quashing of the decision not to renew her contract, her retroactive reinstatement and 200,000 United States dollars in damages as compensation for the material and moral injury she experienced.

C. In its reply the ILO contends that the complaint is irreceivable on the grounds that the internal appeals body should not have agreed to examine the case, since the statutory time limits had expired long before.

On the merits, the Organization observes that the complainant is creating a certain amount of confusion with regard to the non-renewal of her contract by omitting to draw a distinction between her contract (which expired on 31 August 2002) and her assignment to the Forced Labour Unit (which ended on 28 February 2002). It recalls that the decision not to renew a fixed-term appointment lies at the Office's discretion and can be reviewed by the Tribunal only on limited grounds. Regarding the complainant's assignment to the Forced Labour Unit, the ILO explains that the complainant's post was financed with a combination of insufficient technical cooperation funds (which covered only eight months out of twelve) and funds from the regular budget which were left over from the last months of the 2000-2001 exercise. This financial arrangement had to be altered in August and again in November 2001, in view of the financial difficulties which arose on account of the fact that the complainant's contract was financed with funds left over from a project nearly at its end.

The Organization denies that the e-mail sent by the Director of DECLARATION constitutes evidence that funds were available at the time when they were required. The funds in fact were not available in the first half of 2002, so that resources had to be borrowed from other sub-programmes.

Regarding the organigramme produced by the complainant, the defendant explains that in order to deal with the problems arising from the shortage of available funds, it had been “necessary to seek a solution within the InFocus Programme as a whole, which led to a redeployment of staff”. The decision to assign another of DECLARATION’s secretaries to the complainant’s post was a discretionary decision taken in the best interests of the Organization.

The ILO denies that the non-renewal of the complainant’s contract was improper. Furthermore, it rejects the view that in her contractual situation “she might have been entitled to the end-of-contract indemnity” provided for in Circular Series 6/630.

Lastly, the Organization notes that under Article 13.2.2 of the Staff Regulations, the Joint Panel should “make a proposal to the Director-General concerning any suitable action or remedy, which may include reinstatement of the official and/or compensation as well as provision for costs, provided however that all expenses arising from hearings decided by the Panel in accordance with the relevant rules shall be borne by the Office, with the exception of those associated with external representation”. In its view, the Director-General rejected the Joint Panel’s proposal to award costs to the complainant, which would have been granted to cover the expenses of external legal representation, because that proposal was not substantiated.

D. In her rejoinder the complainant asserts that when she was offered a post in DECLARATION, ACTRAV had just renewed her contract for a further period of eight months and, since the quality of her work was appreciated in that section, she would probably still be there today had she not accepted the other offer, which showed better prospects.

She considers that, while the contradictory indications the Director of DECLARATION gave her regarding the possibility of renewing her contract might be explained by the uncertain availability of funds, the “dubious” manner in which he dealt with the matter seriously harmed her psychological stability. Moreover, the state of insecurity in which she was kept prevented her from seeking other employment. She adds that she was harassed by her colleagues in DECLARATION.

Referring to the Tribunal’s case law, she contends that she was not informed of the real reasons for the non-renewal of her contract nor of those which led to her being replaced by another official, and that her performance appraisal was drawn up only after the decision not to renew her contract had been taken.

Lastly, the complainant points out that if the reason for not renewing her contract was the lack of funds, she should have been given priority over a “newly recruited official”.

She puts forward a new claim to have her performance appraisal set aside.

E. In its surrejoinder the ILO emphasises that it was as a result of information supplied to the Human Resources Development Department by the complainant, according to which there was no possibility of renewing her contract with the project implemented by ACTRAV, that she was helped to find a post in DECLARATION.

The Organization points out that the performance appraisal report was sent to the complainant early in December 2001 but, owing to her absence on sick leave from 10 December 2001 to 28 February 2002, the report could not be completed and signed by the complainant until February 2002. The defendant contends that it cannot therefore be blamed for the delay in completing the appraisal.

The Organization rejects the accusations made by the complainant against the Director of DECLARATION. There is no evidence to support the complainant’s statements regarding an allegedly hostile working environment and her supervisor kept her informed as early as September 2001 of the uncertainty surrounding the renewal of her contract due to financial difficulties.

Lastly, according to the ILO, if the real reason for not renewing the complainant’s contract had been to give her post to another official, the complainant’s allegation that her supervisor prevented or dissuaded her from seeking another job would not make sense.

CONSIDERATIONS

1. The complainant began working for the ILO in 1998 under a short-term contract. On 1 March 2001 she obtained a one-year fixed-term contract to work as a secretary with the Forced Labour Unit of the InFocus Programme on Promoting the Declaration (DECLARATION).

On 20 November 2001 she was informed by the Director of DECLARATION that her contract would not be renewed after 28 February 2002 because no more funds were available for the sub-programme to which she was assigned. On 10 December 2001 she was placed on sick leave until 28 February 2002. Her contract was later extended to 31 August 2002, when her appointment with the Organization ended. On 17 October 2002 she was paid an indemnity equivalent to three months' remuneration.

2. On 25 November 2002 the complainant lodged a grievance with the Joint Panel, alleging that the reason for the non-renewal of her contract was invalid. A few weeks later, the complainant's counsel asked for those proceedings to be suspended. After rejecting the Organization's objections, the Joint Panel acceded to this request in view of the complainant's state of health.

On 7 May 2004 the Joint Panel adopted a report in which it concluded that there had been a lack of transparency in the decision not to renew the complainant's contract and that she had not been notified of the actual reasons for the decision. It recommended that the Organization pay the complainant compensation equivalent to three months' remuneration and 3,000 Swiss francs in costs. In a letter of 17 June 2004 received on 18 June, which constitutes the impugned decision, the complainant was informed that the Director-General rejected the Joint Panel's recommendations.

3. The complainant asks the Tribunal to quash the decision not to renew her contract, to award her 200,000 United States dollars in damages as compensation for the injury, material and moral, she incurred and to reinstate her in her previous post.

In support of her complaint, she argues that the decision not to renew her contract is unlawful insofar as, firstly, the Organization based its decision on a false reason and, secondly, it misinterpreted the conclusions of the Joint Panel and committed an error of law regarding Chapter XIII of the Staff Regulations.

Receivability

4. The Organization submits that, as far as the procedure leading to the Joint Panel's recommendation is concerned, the time limits stipulated in the Staff Regulations were exceeded. In its view, the internal appeal body was wrong to examine the grievance considering that the applicable time limits were long past, in that the complainant's request for suspension had been accepted despite its objections.

The Tribunal's view is that the grievance was filed within the time allowed under Article 13.2 of the Staff Regulations. Consequently, the mere fact that the Joint Panel agreed to suspend the proceedings at the complainant's request, despite the Organization's objections, cannot make the complaint before the Tribunal irreceivable, since the impugned decision was taken after consideration of the Joint Panel's recommendations.

The merits

5. The complainant contends that the reason for the non-renewal of her contract is invalid. According to her, the only reason put forward by the defendant is that the funds for the technical cooperation project ran out. This was confirmed by the Director of DECLARATION before the Joint Panel, whereas in an e-mail dated 29 June 2001, which she submitted to the Panel, that same director according to her indicated that the funds would be available and would be sufficient to finance her post. She also comments that an organigramme drawn up by the Director of DECLARATION (left on her desk in January 2002) showed that her post in the Forced Labour Unit had been given to another secretary.

According to the defendant, the complainant is creating confusion regarding the non-renewal of her contract by omitting to draw a distinction between her contract and her assignment: her contract expired on 31 August 2002, whereas her assignment to the sub-programme concerned ended on 28 February 2002. Her contract was extended

by six months from this latter date and eventually she was assigned to the Reprography Unit from May onwards. The head of that unit recommended not renewing the complainant's contract because her training and interests were more of a linguistic and administrative nature, whereas the unit's work demanded graphic skills.

The Organization maintains that the complainant's assignment to the Forced Labour Unit ended owing to a lack of secure funding.

The Tribunal considers that what matters is that the complainant was bound to the Organization by a one-year fixed-term contract, that the contract was extended for a period of six months ending on 31 August 2002 and that subsequently it was not renewed. The only real question, therefore, is whether the decision not to renew the complainant's contract, though lying at the Director-General's discretion, was taken for a valid reason.

6. According to firm precedent "there must be a valid reason for any decision not to renew a fixed-term contract [which] must be given to the staff member", who "must be told the true grounds for non-renewal" (see Judgments 1911, under 6, and 1544, under 11, respectively).

In this case, as the Joint Panel rightly pointed out, the only reason put forward by the Organization which it notified to the complainant to explain the non-renewal of her contract, notwithstanding the distinction it insists on drawing between the complainant's contract and her assignment, is the lack of funding for the technical cooperation project. Yet in its report the Panel noted firstly that the complainant had produced documentary evidence, in the form of the e-mail sent by the Director of DECLARATION dated 29 June 2001, indicating that funds would be available for the following biennium and referring specifically to the funds earmarked for her post, and secondly that no evidence had been put forward to refute that fact, whereas, since the issue was a purely budgetary one, it would not have been difficult for the defendant to produce the necessary documents to prove its case. This allegation regarding the availability of funds is supported by the fact that the complainant's post was immediately given to another secretary, as reported by the Joint Panel, which pointed out that the Office had not attempted to refute that statement. The defendant, moreover, has produced no evidence before the Tribunal to show that the allegation was false.

It follows from the foregoing that the reason given by the defendant to justify its decision not to renew the complainant's contract, namely the insufficient funding of the technical cooperation project, is unfounded. This decision must therefore be set aside.

7. The complainant accuses the Organization of having misinterpreted the Joint Panel's recommendation and of having committed an error of law regarding the Staff Regulations.

As regards the misinterpretation of the Joint Panel's recommendation, the complainant contends that the Organization failed to draw a distinction between the compensation the Joint Panel recommended paying her for the unlawful non-renewal of her contract and the end-of-contract indemnity payable under Circular Series 6/630 in respect of "precarious" contracts. The defendant replies that the Director-General rejected the Joint Panel's recommendation to pay the complainant a sum equivalent to three months' remuneration "for the improper non-renewal of her contract". It again denies that the non-renewal was improper and rejects the allegation that the complainant's contractual situation might have given rise to an entitlement to the end-of-contract indemnity. It points out that on 17 October 2002 the complainant had received the equivalent of three months' remuneration.

The Tribunal notes that when the Joint Panel recommended the payment of compensation to the complainant, the latter had already received the three months' salary granted by the defendant. The mere fact that that sum had been paid did not allow the Organization to reject the Joint Panel's recommendation without a valid reason.

8. The complainant contends that the Organization committed an error of law by refusing to cover costs related to external representation on the grounds that the Office could not be considered automatically liable to refund such costs in the same way as expenses arising from hearings.

The Organization points out that under the terms of Article 13.2.2, paragraph 1, of the Staff Regulations, the costs of external representation are not borne by the Office.

The Tribunal concurs. The above-mentioned article states that provision will be made by the Office for costs "with the exception of those associated with external representation".

9. The complainant asks to be reinstated. The Tribunal considers that this would not be appropriate in view of the circumstances of the case and of the terms on which the complainant was recruited. However, it considers that it would be fair to award her a sum equivalent to six months' salary including all benefits and allowances in compensation for all injuries incurred.

DECISION

For the above reasons,

1. The impugned decision is set aside.
2. The Organization shall pay the complainant a sum equivalent to six months' salary including all benefits and allowances in compensation for all injuries.
3. All other claims are dismissed.

In witness of this judgment, adopted on 4 November 2005, Mr Michel Gentot, President of the Tribunal, Mr Seydou Ba, Judge, and Mr Claude Rouiller, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 1 February 2006.

Michel Gentot

Seydou Ba

Claude Rouiller

Catherine Comtet

* Paragraph 21 of that circular, entitled "Inappropriate use of employment contracts in the Office", reads as follows: "A person who has been engaged for a period of at least 24 out of the past 36 months on temporary contracts and who cannot secure a further contract within one month of the expiry of his/her current contract will, at that time, be granted a lump-sum payment calculated on the basis of his/her length of service, consistent with Article 11.4 of the Staff Regulations. [...]"