

The Administrative Tribunal,

Considering the third complaint filed by Mrs M.P. V. N.-d.-S. against the International Labour Organization (ILO) on 18 August 2006, the Organization's reply of 21 November, the complainant's rejoinder of 21 December 2006 and the ILO's surrejoinder of 1 February 2007;

Considering Articles II, paragraph 1, and VII 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 is a former official of the International Labour Office, the ILO's secretariat. Facts relevant to this dispute are set out in Judgment 2287, delivered on 4 February 2004, concerning the complainant's first complaint. It should be recalled that the competition following the publication on 23 May 2001 of Vacancy Announcement No. 2001/4, which was opened to fill the post of senior translator/reviser (Head of the Spanish Unit) at grade P.5, led to the appointment of Mr P. In April 2003 the Administration cancelled this competition on the grounds, in particular, that it had not been held with the degree of "transparency and objectivity" which candidates were entitled to expect.

Because she was suffering from an eye condition, the complainant was granted several months' sick leave starting on 4 November 2002. On exhausting her entitlement to sick leave she was granted special leave with full salary for three weeks. As from 2 February 2004 she worked at home as a translator/reviser. In order to obtain additional information about her state of health, the Office asked her to undergo an independent medical examination, which was conducted in September 2004 at the Institute of Occupational Health Sciences. On 24 May 2005, in light of the results of that examination, the Office instructed the complainant to report for duty on 1 July 2005 in order to occupy a part-time post on account of her health problems. The complainant challenged that decision and the Administration ultimately agreed to reintegrate her full time as from 1 July 2005.

In the meantime, on 18 April 2005, the complainant had filed a grievance under Article 13.2 of the Staff Regulations contesting her "forced confinement to her home". Having received no reply, on 5 August she referred the matter to the Joint Advisory Appeals Board. She asked the Board to recommend that the Director-General award her compensation for the moral injury which she claimed to have suffered as a result of "forced confinement to her home", and that he "[r]ehabilitate" her and assign her to a post suiting her qualifications and compatible with her health problems. In the course of the proceedings she also asked the Board to recommend that she be provided with a copy of the report drawn up by the Institute of Occupational Health Sciences.

In the report which it issued on 8 May 2006 the Board recommended that the Director-General reject the grievance as unfounded, but stated that the Office should forward the Institute's report to the complainant. By a letter of 22 May 2006, which constitutes the impugned decision, the Executive Director of the Management and Administration Sector informed the complainant that the Director-General had decided to endorse the Joint Advisory Appeals Board's recommendations.

B. The complainant considers that the cancellation of competition 2001/4, which she had denounced as being flawed, led to her unlawful "assignment" to work at home, the purpose of which was to retain Mr P. as acting Head of the Spanish Unit. In her opinion this situation damaged her career and her reputation, since it was she who had previously occupied the post of Head of that unit on an ad interim basis; it also constituted unfair treatment violating her terms and conditions of employment and her statutory rights. She adds that her unlawful "assignment" to work at home gave "the whole department" the impression that she had done something wrong.

The complainant finds it regrettable that the Board ignored the fact that she had worked at home "without her consent", although this supposedly temporary situation had lasted for almost a year and a half and was not

compatible with her health problems.

She submits that it would have been possible to end her unlawful “assignment” to work at home by appointing her as acting Head of the Spanish Unit, which, in her view, would have been “much more compatible with her disability”. Instead, Mr P., who in her opinion did not have the requisite qualifications for the post, was appointed to it. She takes the view that this decision reflects personal prejudice against her.

The complainant requests the setting aside of the impugned decision, a copy of the report drawn up by the Institute of Occupational Health Sciences, 50,000 Swiss francs in compensation for the moral injury she suffered on account of her unlawful “assignment” to work at home and costs in the sum of 5,000 francs.

C. In its reply the ILO states that the complaint is time-barred. The complainant, who now maintains that the Office treated her unfairly and unlawfully solely in order to retain Mr P. as acting Head of the Spanish Unit, has entered pleas before the Tribunal which were not raised in internal proceedings. The Organization contends that if there had been any bias in favour of Mr P., the decision to keep him in that post would have been taken at the beginning of what the complainant describes as her “forced confinement”, that is to say in January 2004. Given that she did not file her grievance until 18 April 2005, it was time-barred because she did not observe the six-month deadline stipulated in Article 13.2 of the Staff Regulations.

On the merits the Organization points out that the “arrangement” whereby the complainant could work at home was adapted in light of her categorical refusal to accept any post other than that of Head of the Spanish Unit. It therefore considers that the complaint is really directed against the decision to appoint a person other than the complainant as acting Head of the Unit. It asserts that this decision was taken in order to protect the interests of the official whose appointment had been cancelled and to ensure the smooth running of the service.

The Organization also observes that the complainant has no cause of action. Relying on the Tribunal’s case law, it states that a decision of the Administration is challengeable only if it causes the complainant injury. The complainant has not, however, furnished the slightest evidence that she was injured by the decision to appoint Mr P. as acting Head of the Unit.

Lastly, with regard to the complainant’s request for a copy of the report of the Institute of Occupational Health Sciences, the Organization points out that it decided to provide her with the report, even though she never asked for this in writing.

D. In her rejoinder the complainant asserts that her complaint is receivable because she filed her grievance on 18 April 2005, in other words while she was still assigned to work at home.

On the merits she submits that the Administration ignored all the medical certificates she presented after her eye condition became apparent in October 2002 and that it took no steps to safeguard her health.

She emphasises with respect to the Organization’s bias that an interim appointment should not last for long. In this case, however, Mr P. remained acting Head of the Spanish Unit for more than two years, even though in her view he did not possess the required qualifications. She adds that many ILO officials who have held vacant posts temporarily have subsequently been appointed to these posts.

E. In its surrejoinder the Organization maintains its position.

## CONSIDERATIONS

1. In her third complaint the complainant asks the Tribunal to set aside the decision of 22 May 2006 informing her that the Director-General had rejected the grievance she had filed on 5 August 2005 with the Joint Advisory Appeals Board and in which she requested compensation for the moral injury which she claimed to have suffered as a result of her “forced confinement to her home” for a year and a half, her rehabilitation and her assignment to a post suiting her qualifications and compatible with her health problems. She also asks the Tribunal to award her compensation for the moral injury suffered, to ensure that she obtains a copy of the report drawn up by the Institute of Occupational Health Sciences and to award her 5,000 Swiss francs in costs.

2. She submits that the situation she experienced constitutes unfair treatment violating her terms and

conditions of employment and her statutory rights.

She maintains that the Administration completely ignored her state of health when assigning her to translation and revision duties at home; this “assignment” was unlawful, since it was unjustified, and it was contrary to the Organization’s obligation to assign officials to duties which are reasonably compatible with their skills, grade and seniority. In her opinion, it would have been possible to end this situation by appointing her as acting Head of the Spanish Unit.

She also claims that she has been the victim of personal prejudice.

Lastly, she considers that the Director-General took a flawed decision in accepting the Joint Advisory Appeals Board’s recommendation.

3. The Organization argues that the complaint is irreceivable because the complainant’s grievance was filed out of time. It submits that if the Administration had harboured personal prejudice against the complainant, this prejudice would necessarily have materialised in a decision taken at the beginning of what the complainant calls her “forced confinement”, i.e. in January 2004. However, it was not until 18 April 2005 that she filed a grievance with the Administration under Article 13.2, paragraph 1, of the Staff Regulations in order to raise the issue which is now before the Tribunal, that is to say long after the six-month period allowed to this end in the above-mentioned paragraph. In the Organization’s opinion, the complaint is therefore time-barred and should be declared irreceivable in accordance with the Tribunal’s case law.

The ILO further contends that the complaint is in any case without merit.

4. The Tribunal considers that the request for a copy of the report of the Institute of Occupational Health Sciences is now redundant as the complainant acknowledges that she received this report on 20 November 2006.

5. The Tribunal draws attention to the fact that the relevant version of Article 13.2, paragraph 1, of the Staff Regulations specified that “[a]n official who wishes to file a grievance on the grounds that s/he has been treated in a manner incompatible with her/his terms and conditions of employment shall [...] request the Human Resources Development Department to review the matter within six months of the treatment complained of”.

The complainant herself indicates in her submissions that her unlawful “assignment” began on 2 February 2004 and that she did not file a grievance until 18 April 2005. As this grievance was filed more than six months after the complainant was assigned to work at home, it was time- barred and the Joint Advisory Appeals Board should have declared it irreceivable.

6. According to Article VII, paragraph 1, of the Statute of the Tribunal a complaint is receivable only if the person concerned has, within the prescribed time limits, exhausted such other means of resisting the impugned decision as are open to him or her under the Staff Regulations of the organisation for which he or she works. In accordance with its case law, the Tribunal will rule *proprio motu* on the application of this article. Thus, if it considers that an internal appeal was time-barred and the internal appeals body was wrong to hear it, the Tribunal will not entertain a complaint challenging the decision taken on a recommendation by that body. *A fortiori*, if the organisation succeeds in showing before the Tribunal that the internal appeal was out of time, the complaint must be dismissed as irreceivable (see Judgment 775, under 1, and, more recently Judgment 2297, under 13).

In the present case, since the Organization has expressly raised before the Tribunal the fact that the grievance was filed late, it is necessary to take account of the foregoing and, notwithstanding the Joint Advisory Appeals Board’s recommendation, to dismiss the complaint on the grounds that it is irreceivable.

## DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 15 November 2007, Mr Seydou Ba, President of the Tribunal, Mr Claude

Rouiller, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 6 February 2008.

Seydou Ba

Claude Rouiller

Patrick Frydman

Catherine Comtet

Updated by SD. Approved by CC. Last update: 27 February 2008.