Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

*Registry's translation,
the French text alone
being authoritative.*

107th Session **Judgment No. 2821**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr G. A. S against the International Labour Organization (ILO) on 24 January 2008 and corrected on 17 April, the ILO's reply of 8 August, the complainant's rejoinder of 25 November 2008 and the Organization's surrejoinder of 26 January 2009;

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, an Iraqi national, was recruited by the ILO to work on a technical cooperation project in Iraq under a Special Service Agreement (SSA) covering the period from 16 June 1995 to 15 June 1996. His contract was renewed until 31 October 1997 by means of a series of addenda. From 1 November 1997 to 31 October 1998 he was employed under a Service Agreement (SA) which was also extended several times, with the final extension running until 30 April 2004.

With effect from 1 May 2004 the complainant was granted a fixed-term contract, which has since been periodically extended, and he thus acquired the status of an official.

On 1 August 2006 the complainant filed a grievance with the Human Resources Development Department under Article 13.2 of the Staff Regulations of the International Labour Office, the ILO's secretariat. He claimed to have been treated "in a manner incompatible with [his] condition[s] of employment", implicitly challenged his entire contractual relationship during the period from 16 June 1995 to 30 April 2004 and asked more specifically for validation of this period for the purposes of affiliation to the United Nations Joint Staff Pension Fund. He was informed by a letter of 1 November 2006, signed by the Director of the above-mentioned Department, that his request could not be granted.

On 8 December 2006 the complainant filed a grievance with the Joint Advisory Appeals Board which, in its report to the Director-General of 31 August 2007, found that the grievance was time-barred and recommended that it be rejected as irreceivable. The Administration informed the complainant of its decision to reject his grievance as irreceivable by a letter of 26 October 2007, signed by the Executive Director of the Management and Administration Sector. That is the impugned decision.

B. The complainant considers that the receivability of his complaint is a thorny issue. He submits that, at first sight, his appeal was plainly time-barred, but that the Joint Advisory Appeals Board and the Organization, in their analysis of the matter, did not take account of the situation in Iraq during the period in question and of the Organization's persistent denial that SSA and SA contracts were unlawful. He accepted these contracts in good faith in the light of the information available at his duty station and of the ILO's official position. It was not until he visited the Organization's headquarters in Geneva in December 2005 that the Staff Union Committee informed him of the unlawful nature of his employment under the SSA and SA contracts. Since he lodged his grievance within six months after "becoming aware of the applicable law", his complaint is, in his view,

receivable. He asserts that on 19 July 2007, some time before he was notified of the impugned decision, the Director of the Human Resources Development Department sent a memorandum to all chiefs of branches asking them not to issue any more SSA or SA contracts.

The complainant submits that the provisions of Circular No. 630, series 6, concerning the inappropriate use of employment contracts in the Office were breached. He states that the Office recognises only two types of contract, namely "contracts with officials" (short-term contracts, fixed-term contracts and contracts without limit of time) and contracts with external collaborators, which can be granted only for the performance of a well-defined task. According to the complainant, it is clear from the file that he performed regular duties.

By way of redress, the complainant seeks the redefinition of his contractual relationship with the Organization for the period covered by his recruitment under "unlawful" contracts and compensation for the moral and material injury suffered.

C. In its reply the ILO submits that the complaint is manifestly irreceivable and could have been dismissed by the Tribunal in accordance with the procedure set out in Article 7 of its Rules. Noting that the contracts challenged by the complainant are those which he signed for the period from 16 June 1995 to 30 April 2004, and that he challenged them only on 1 August 2006, it explains that the issue of receivability may be approached from two angles. First, it is clear from the disputed contracts that the signatory's status is not that of an official, that disputes relating thereto must be settled through a special procedure consisting of written notification of one party by the other within six months of the date when the action constituting the subject of the dispute was taken or, in the case of an alleged omission, should have been taken, and that, failing such settlement, either party may refer the dispute to the Tribunal in accordance with Article II, paragraph 4, of its Statute. The complainant did not observe the above-mentioned time limit.

Secondly, although the complainant was "authorized" to use the procedure established by the Staff Regulations once he had acquired

the status of an official, his grievance was time-barred since it was not filed within the six-month time limit laid down by Article 13.2 of the Staff Regulations.

The Organization contends that the complainant, having realised that the time limit has passed, is trying to have his complaint declared receivable by claiming that he was unaware of the applicable rules owing to the special situation prevailing in Iraq and that he was only informed of the "unlawful" nature of his contractual relationship with the ILO when he came into contact with the Staff Union. This argument fails for two reasons: first, there is no legal basis for waiving the six-month time limit and, second, the complainant cannot plead his own ignorance in order to reopen a time limit that has already expired.

The ILO denies that the contracts signed by the complainant between 1995 and 2004 were contrary to Circular No. 630, series 6, and hence unlawful. The circular in question was published on 5 August 2002, in other words "after most of the disputed contracts", and it laid down rules that deal primarily with the employment of officials and only incidentally with the employment of persons other than officials. Moreover, it addressed the issue of the inappropriate use of external collaboration contracts, and not of other types of contract for persons who are not officials, and it explicitly excluded technical cooperation experts.

In conclusion the Organization states that the use of SSA and SA contracts is lawful and is a long-standing practice in contractual relations with collaborators who are not officials and who work in the field under technical cooperation projects. It contends that the fact that these two categories exist from a legal point of view is demonstrated by the decision taken in July 2007 to discontinue them.

D. In his rejoinder the complainant states that he signed his contracts in good faith, believing that they were lawful. He reiterates that it was only when he visited the ILO's headquarters in December 2005 that he was informed by the Staff Union that the contracts he had been offered between 1995 and 2004 were contrary to the law applicable at the

Office. He affirms that had he known of this unlawfulness at an earlier stage, he would have filed his grievance much sooner.

According to the complainant, the memorandum of 19 July 2007 demonstrates the predicament in which the Organization found itself when his grievance was filed. He adds that the memorandum clearly states that the External Office Manual authorises directors of such offices to recruit local staff only on the basis of "contracts with officials".

E. In its surrejoinder the ILO states that, inasmuch as the complainant has not contested its arguments regarding receivability, it maintains them in full.

According to the Organization, the fact that the External Office Manual authorises the recruitment of staff on fixed-term, short-term or special short-term contracts does not imply that recourse to other types of contract is excluded.

CONSIDERATIONS

1. The complainant was employed by the ILO from 16 June 1995 until the end of April 2004 under a series of contracts, most of which were for periods of one year, as National Project Manager of a technical cooperation project aimed at the vocational rehabilitation of people with disabilities in Iraq. On being granted a fixed-term contract as a National Programme Officer with effect from 1 May 2004, he acquired the status of an official of the Organization and he currently holds grade P.4.

2. When the complainant visited the ILO's headquarters in December 2005 he was informed by the Staff Union Committee of the unlawful nature, according to the latter, of his earlier employment on temporary contracts, which allegedly breached the rules governing contractual relations between the Organization and its staff.

On the strength of this information, the complainant filed a grievance on 1 August 2006 with the Human Resources Development

Department to challenge the conditions on which he had been employed from June 1995 to April 2004. Emphasising that his employment under the contracts in question had deprived him of a pension entitlement in respect of the corresponding periods, he requested, inter alia, that the periods in question be validated to that end.

This grievance, which implicitly sought to have the entire contractual relationship between the complainant and the Organization from June 1995 to April 2004 redefined, was dismissed on 1 November 2006.

3. The complainant then referred the matter to the Joint Advisory Appeals Board, which recommended unanimously that his claims be rejected as time-barred.

Although the Director-General considered that the Board was not competent to hear the case inasmuch as it concerns the signing of contracts which did not confer on their holder the status of a staff member of the ILO, he nevertheless decided on 26 October 2007 to dismiss the complainant's grievance in accordance with the Board's recommendation.

4. That is the decision which the complainant impugns before the Tribunal, asking that the disputed contractual relationship be redefined and that compensation be awarded for the moral and material injury he purportedly suffered.

5. The Organization argues that the complaint is irreceivable on the grounds that the complainant cannot now call for the redefinition of former contracts the terms of which he failed to challenge within the prescribed time limits.

Notwithstanding the arguments put forward by the complainant in an attempt to evade this time bar, which he himself terms the "thorniest issue" raised by the case, the Tribunal cannot but conclude that the objection to receivability is well founded.

6. The temporary employment contracts between the complainant and the ILO for the period 16 June 1995 to 30 April 2004 expressly stated that the signatory would not be considered to be a staff member of the ILO and that they did not provide for pension coverage. The complainant did not challenge the content of these contracts within the six-month time limit laid down for this purpose in the contracts themselves. It follows that he was manifestly no longer in a position, by the date on which he filed his grievance with the Organization, i.e. more than two years after the end of the period covered by his last contract, to challenge the provisions thereof.

7. In an attempt to persuade the Tribunal that this time limit is not applicable to him in the instant case, the complainant asserts that he only become aware of the alleged unlawfulness of his contracts in December 2005 under the circumstances described above, and that he had had no reason prior to that date to doubt their validity. In this connection he emphasises that his awareness of the unlawfulness was delayed by the international isolation of his duty station country, Iraq, which made it hard for him to obtain information about the law in force at the time, and by the attitude adopted by the Organization, which has consistently denied any such unlawfulness.

8. However, as the Tribunal has repeatedly stated, for example in Judgments 602, 1106, 1466 and 2722, time limits are an objective matter of fact and it should not entertain a complaint filed out of time, because any other conclusion, even if founded on considerations of equity, would impair the necessary stability of the parties' legal relations, which is the very justification for a time bar. In particular, the fact that a complainant may not have discovered the irregularity on which he or she purports to rely until after the expiry of the time limit is not in principle a reason to deem his or her complaint receivable (see, for example, Judgments 602, under 3, and 1466, under 5 and 6).

9. It is true that the Tribunal's case law as set forth in Judgments 1466 and 2722 allows exceptions to this rule where the complainant has been prevented by *vis major* from learning of the

impugned decision in good time (see Judgment 21), or where the organisation, by misleading the complainant or concealing some paper from him or her, has deprived that person of the possibility of exercising his or her right of appeal, in breach of the principle of good faith (see Judgment 752).

10. However, none of the circumstances on which the complainant relies suggests that either of those situations arose in the instant case.

The Tribunal is fully aware that Iraq's isolation during the period in question due to the international embargo imposed on the country and the wars in which it was involved might have made it difficult for the complainant to obtain information about the law applicable within the Organization.

Nevertheless, the complainant was by definition apprised of the content of the documents at issue since they were contracts that he had signed himself. The difficulties that he mentions are therefore immaterial in this regard.

The fact that the Organization has consistently maintained that the contracts in question were valid clearly cannot be deemed to have prevented the complainant from exercising his right of appeal, particularly since the Organization did not mislead him in any way with regard to the conditions for exercising that right.

11. As the Tribunal has frequently found in similar cases where holders of temporary contracts subsequently sought their redefinition (see, for example, Judgments 1034, 2181 or 2415), the complainant's claims must therefore be rejected as time-barred.

12. As the complaint is therefore irreceivable, it must be dismissed without there being any need for the Tribunal to rule on its merits.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 30 April 2009, 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 8 July 2009.

Seydou Ba
Claude Rouiller
Patrick Frydman
Catherine Comtet