Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

109th Session **Judgment No. 2912**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr B. E.-C. against the International Federation of Red Cross and Red Crescent Societies (hereinafter referred to as "the Federation") on 23 December 2008 and corrected on 22 January 2009, the Federation's reply of 6 May, the complainant's rejoinder of 26 June and the Federation's surrejoinder of 7 September 2009;

Considering Articles II, paragraph 5, 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, who has American and French nationality, was born in 1953. He entered the service of the Federation on 1 January 2004 as Head of the Health and Care Department on a three-year fixed-term appointment which, having been extended twice, ended on

30 June 2008. The second letter extending his appointment contained a clause specifying that the extension included a three-month notice period.

In April 2008 the complainant applied for the post of "Avian and Human Influenza Coordinator, Americas Zone", based in Panama, which had just been advertised. He was shortlisted on 16 May. On the same date he received an e-mail from the Secretary General informing him that no final decision had been taken, but that the recruitment process had started. However, by a decision of 12 June the outgoing Secretary General suspended the recruitment process for all posts connected with avian influenza at headquarters and in the field, until his successor – who was to take office on 1 July – could take a decision concerning these posts. The complainant was notified of this decision the following day. At the beginning of July the complainant, whose appointment had just expired, sought to ascertain what stage had been reached in the recruitment process for the post for which he had applied. On 7 July he was informed by the Head of the Cabinet of the Secretary General that, as far as avian influenza was concerned, a decision had been taken to focus on Africa and Asia, and that, for the time being, arrangements seemed to be "on standby".

The Head of the Human Resources Department informed the complainant by an e-mail of 14 July 2008 that it had been decided to discontinue recruitment for the post for which he had applied. On 8 August 2008 the complainant sent the Secretary General a letter in which he complained that he had not been informed officially of the "freeze" of the post and in which he requested compensation for all material injury suffered on account of the cancellation of the post to which, he had been "repeatedly and formally" assured, he would be appointed, and for moral injury on account of the Federation's "offhand treatment" of him. He added that he would quantify his claims in due course, which he did in an e-mail of 25 September. In a letter of 30 September 2008 the Secretary General replied that the Federation had never appointed or made a commitment to appoint either him or any other candidate to the post in question. That letter,

which the complainant considers to be a dismissal of his appeal, constitutes the impugned decision.

B. The complainant, who states that the dispute turns on the manner in which the Federation handled his case, first contends that the Federation had undertaken to appoint him to the post of "Avian and Human Influenza Coordinator, Americas Zone". He refers to certain events and to e-mails which, in his opinion, show that everyone thought that his posting to Panama was not an eventuality but a certainty which was openly adverted to by a number of senior officials. The complainant also submits that the Tribunal has defined the conditions to be fulfilled in order that a promise made by an international organisation to a member of its staff is binding: the promise must be substantive and must come from someone competent to make it; breach of the promise must cause injury to the person who relies on it; and the position in law must not have altered between the date of the promise and the date on which fulfilment is due. He claims that these conditions were met in the instant case, so that he legitimately believed, in good faith, that he would be appointed to the post in question.

Secondly, relying on the Tribunal's case law, the complainant submits that the Federation failed to discharge its duty to inform him. He received no clear information about the suspension of the post in question, despite the fact that he had "a major interest in knowing within a reasonable period of time whether he could count on the post", given that his appointment was coming to an end and would not be extended.

He also states that the Federation's failings and offhand attitude indisputably caused him material and moral injury.

The complainant asks the Tribunal to award him compensation for material injury suffered on account of the cancellation of the post to which, he had been repeatedly assured, he would be appointed and the Federation's "procrastination" in informing him thereof within a reasonable period of time, and compensation for moral injury suffered on account of the Federation's "offhand treatment" of him.

C. In its reply the Federation holds that the complaint is irreceivable, because the complainant has not exhausted the internal means of redress prescribed by the Staff Regulations of the Federation.

On the merits, the defendant explains that the decision to suspend the recruitment process was taken for perfectly objective and valid reasons and in exercise of its discretionary authority, which is recognised by the case law. It disputes the complainant's argument that he received a promise to appoint him to the post in question and points out that on 16 May 2008 he was advised by the Secretary General that the recruitment process was under way, but that he should not anticipate its outcome.

The Federation asserts that the complainant was duly informed of developments in the recruitment process, of its suspension and then of its cancellation. When he was notified on 13 June 2008 by the Head of the Cabinet of the Secretary General of the suspension of the process, he replied that he would wait until the new Secretary General took office before seeking further information. The defendant draws attention to the fact that the new Secretary General decided to cancel the recruitment process and the complainant was informed of this without delay. At that point he accepted this decision and acknowledged in an e-mail of 12 July that the Federation had no legal obligation towards him.

D. In his rejoinder the complainant submits that he did not follow the Federation's internal appeal procedure because, according to Article 12.2.1 of the Staff Regulations, internal means of redress are available only with regard to the terms of appointment or provisions of the Staff Rules or Staff Regulations. He points out that the dispute does not concern his appointment or the application of specific provisions of the Staff Rules or Staff Regulations, but the failure to apply general principles of law recognised by the Tribunal.

On the merits he presses his pleas. He maintains that owing to the vague information which he was given during the recruitment process, it was hard for him to ascertain whether the process had been cancelled. He finds this cancellation all the more "questionable"

because the Federation subsequently published a vacancy notice for a post with a different title, but also based in Panama and with a job description similar to that of the post for which he had applied.

E. In its surrejoinder the Federation considers that the provisions of the Staff Regulations did not in any way prevent the complainant from filing an appeal with the Joint Appeals Commission. In its opinion, he ought to have submitted his appeal to the Commission in order to find out whether it was receivable.

The defendant maintains its position on the merits and rejects the complainant's "insinuations" that the unfilled post was advertised again under a different title.

CONSIDERATIONS

1. The complainant entered the service of the Federation on 1 January 2004 as Head of the Health and Care Department. He was given a three-year fixed-term appointment, which was extended twice, ultimately until 30 June 2008.

2. The post of "Avian and Human Influenza Coordinator, Americas Zone" was advertised in April 2008. The complainant applied for it and was shortlisted. On 16 May he was informed that no final decision had been taken regarding an appointment to the post in question.

On 12 June 2008 the decision was taken to suspend the recruitment process for this post pending the arrival of the new Secretary General of the Federation. The complainant was informed of this on 13 June by the Head of the Cabinet of the Secretary General, to whom he replied that he would wait until the new Secretary General had taken up his duties before seeking more information.

On taking office on 1 July 2008 the new Secretary General decided to cancel the recruitment process for the post for which the complainant had applied. The latter was informed of this on 10 July. He signalled his disagreement first during a conversation with

the Acting Legal Counsel of the Federation and then by a letter to the Secretary General of 8 August 2008. In this letter he stated that the belated decision to "freeze the post and the Federation's procrastination in sending [him] clear, unambiguous information about the repercussions of this freeze on [his] situation in the future ha[d] had sizeable material and non-material consequences for [him] personally, over and above the fact that [he] had to look for a job very fast". He therefore requested compensation for all the material injury suffered on account of the cancellation of the post.

In an e-mail of 25 September 2008 to the Secretary General, the complainant evaluated the injuries which he had suffered and for which he requested compensation. On 30 September the Secretary General replied that, with regard to the post for which he had applied in April 2008, no appointment had ever been made and no commitment to appoint him or any other candidate had ever been given.

Since he considered that the Secretary General had rejected his appeal by this letter of 30 September 2008, the complainant filed a complaint with the Tribunal on 23 December 2008 seeking compensation for the material injury which he had suffered on account of the cancellation of the post in question and compensation for the moral injury which he had suffered on account of the Federation's "offhand treatment" of him.

3. The defendant submits that the complaint is irreceivable because the complainant has not exhausted the internal means of redress.

4. The complainant admits that he did not follow the internal appeal procedure. He says that his reason for bringing his case directly before the Tribunal is that access to internal means of redress is strictly limited to cases concerned with the terms of appointment or provisions of Staff Rules or Staff Regulations. He submits that his dispute with the defendant does not concern his appointment, which ended on 30 June 2008, or the application of specific provisions of the Staff Rules or Staff Regulations, but the Federation's failure

to apply general principles of law. In his opinion, Article 12.2.1 of the Staff Regulations, by requiring an express reference to terms of appointment or to the provisions of the Staff Rules or Staff Regulations, excludes disputes regarding general principles of law recognised by the Tribunal from the competence of the appeal body, notwithstanding an "ambiguous" provision of the Staff Regulations to the effect that these Regulations must be applied "in the light of general principles of law and equity, as well as general principles of international civil service law".

5. The Tribunal will not accept the complainant's argument.

The fact that the Staff Regulations of the Federation require express reference to terms of appointment, or to provisions of the Staff Rules or Staff Regulations for the filing of an internal appeal, does not exclude appeals based on a breach of general principles of law from the competence of the Joint Appeals Commission. An international organisation must comply with these principles, inter alia, in its relations with its staff and an internal appeal body is necessarily competent to review such compliance.

Moreover, the Tribunal must point out that were it to follow the complainant's argument, it would have to decline jurisdiction to hear the dispute, since Article II, paragraph 5, of its Statute similarly stipulates that the Tribunal is competent to hear "complaints alleging non-observance, in substance or in form, of the terms of appointment of officials [of the Federation] and of provisions of the Staff Regulations". But naturally these provisions have never prevented the Tribunal from ruling on breaches of general principles of law.

6. According to Article VII, paragraph 1, of the Statute, "[a] complaint shall not be receivable unless the decision impugned is a final decision and the person concerned has exhausted such other means of resisting it as are open to him under the applicable Staff Regulations". The only exceptions allowed under the Tribunal's case law to this requirement that internal means of redress must have been exhausted are cases where staff regulations provide that decisions taken by the executive head of an organisation are not subject to

the internal appeal procedure, where there is an inordinate and inexcusable delay in the internal appeal procedure, where for specific reasons connected with the personal status of the complainant he or she does not have access to the internal appeal body or, lastly, where the parties have mutually agreed to forgo this requirement that internal means of redress must have been exhausted (see, for example, Judgments 1491, 2232, 2443, 2511 and the case law cited therein, and 2582).

In the present case, since the complainant was in none of the situations where direct referral to the Tribunal would have been permissible, his complaint is irreceivable for failure to exhaust the internal means of redress and must be dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 7 May 2010, Mr Seydou Ba, Vice-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 2010.

Seydou Ba
Claude Rouiller
Patrick Frydman
Catherine Comtet