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

111th Session **Judgment No. 3008**

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Ms P.-M. H. against the International Labour Organization (ILO) on 12 June 2009 and corrected on 4 August, the Organization's reply of 2 November 2009, the complainant's rejoinder of 4 February 2010 and the ILO's surrejoinder of 7 May 2010;

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. Facts relevant to this case are to be found in Judgment 2922, delivered on 8 July 2010, which dealt with the complainant's first complaint. Suffice it to recall that on 13 February 2007 the Director of the Human Resources Development Department of the International Labour Office, the secretariat of the ILO, informed the complainant that, following the decision to close down the Regional Office of the International Social Security Association (ISSA) in Paris, to which she was assigned, her contract would not be renewed when it expired on 31 December 2007. On 27 July the complainant filed a grievance with the

Department, requesting a review of the decision not to renew her contract "with a view to the payment of indemnities". The Administration decided that her grievance was unfounded, and in November 2007 the complainant referred the matter to the Joint Advisory Appeals Board. In its report of 12 June 2008 the Board stated inter alia that it had declined to consider certain pleas on the grounds that they had not been raised in the initial grievance. Those pleas were that the Office had made no effort to find an alternative solution and, contrary to the Joint Negotiating Committee's Guidelines on Managing Change and Restructuring Processes, had failed to explore fully and actively all training and/or redeployment opportunities, even though posts corresponding to the complainant's qualifications had been advertised during the same period in Geneva. By a letter of 11 August 2008 the complainant was informed that the Director-General had decided to dismiss this grievance as groundless. That was the decision impugned in her first complaint.

On 25 June 2008 the complainant submitted a second grievance to the Joint Advisory Appeals Board, repeating the same pleas. She also claimed to have been treated unfairly because one of her colleagues at the ILO Office in Paris, Mrs D., had received an indemnity when her contract was not renewed. In its report of 13 January 2009 the Board recommended that this grievance should likewise be dismissed as being unfounded. By a letter of 16 March 2009, which constitutes the decision impugned in the present complaint, the complainant was informed that the Director-General had decided to accept this recommendation.

B. The complainant contends that, although she was assigned to the Regional Office of the ISSA in Paris, she was an official of the ILO with a contract for "regular staff", like Mrs D., and that, consequently, there was no reason to treat her differently from that colleague, who had received a "departure indemnity" equivalent to three months' salary. She also contends that the ILO violated a practice originating in paragraph 7(b) of a 1952 document of the Governing Body of the ILO, consisting in the payment of such an indemnity in the event of non-renewal of a fixed-term contract. She states that she does not agree

with the view expressed by the members of the Joint Advisory Appeals Board that, for reasons including the fact that she was employed by the ISSA, it was "not for the Office to act on her behalf" by fully and actively exploring all training and/or redeployment opportunities. In her view, only the Organization "has the technical resources to support the staff member in the course of a restructuring process, in accordance with the Guidelines [of the Joint Negotiating Committee], and to endeavour, where appropriate, to redeploy him or her".

The complainant requests the setting aside of the impugned decision. She also claims compensation for moral and material injury, and costs.

C. In its reply the ILO states that the Tribunal's ruling on the receivability of the first complaint will determine whether the second is receivable. Its own view is that the second complaint should be treated as irreceivable, "according to the principle of *res judicata*", if the Tribunal decides not to uphold its objection to the receivability of the first complaint and to examine that complaint on its merits.

As for the merits of the present complaint, the defendant's argument concerning the allegation of unfair treatment is that the complainant, who was given ten months' notice, is not in the same factual and legal situation as Mrs D., who was notified on 20 December 2007 of the decision not to renew her contract, which was to take effect at the end of the year. As the practice was to give two months' notice in the event of non-renewal of a contract, she was therefore paid two months' salary in lieu of notice. Moreover, as the end-of-year festive period was an unfavourable time for job-seeking and job opportunities, it was decided to pay her an additional month's salary. As this is the only example provided by the complainant of the award of an indemnity following non-renewal of a contract, there can be no question of the existence of any kind of practice. On this point, the Organization adds that paragraph 7(b) of the 1952 document, which was a discussion document, reproduced recommendations made by the Consultative Committee on Administrative Questions, and that

the recommendation in question was never adopted, nor does it feature in any document approved by the Governing Body.

The ILO also submits that it was under no obligation to redeploy the complainant, particularly because she had been recruited locally. It points out that the Guidelines cited by the complainant are not binding but are intended to provide "guidance to managers, staff representatives and officials on managing change in a positive and constructive way". Moreover, the Guidelines specify that "[s]olutions to any problems that may arise during a change or restructuring process, such as training or transfers or redeployment, should be sought […] as required by the staff member". The complainant does not, however, appear to have requested such measures when she was informed of the closure of the Regional Office of the ISSA in Paris.

D. In her rejoinder the complainant reiterates her pleas and seeks to prove that her situation was no different from that of Mrs D.

She points out that in the case which led to Judgment 2871 the complainant had received from the ILO an indemnity equal to nine months' salary following the non-renewal of his contract. In that judgment the Tribunal held that the Organization, although not bound to redeploy the complainant, must nevertheless "make efforts to identify a position for which he was qualified". The complainant in these proceedings states that, whereas the Office attempted to find an alternative solution to non-renewal of the contract of Mrs D., no such steps were taken in her case.

E. In its surrejoinder the ILO maintains its position. It explains that Mrs D. had a fixed-term contract financed from the regular budget of the Organization, whereas the complainant had a contract wholly financed by the ISSA. From this it concludes that the two were not in the same legal situation. It states, however, that the complainant was in the same factual and legal situation as the Director of the ISSA Regional Office in Paris, who did not receive any indemnity following the non-renewal of her contract because of the closure of that Office.

CONSIDERATIONS

1. In July 2007 the complainant filed a grievance with the Human Resources Development Department of the International Labour Office against the non-renewal of her fixed-term contract. The Joint Advisory Appeals Board, to which the case was referred, expressed the view that this non-renewal was "in conformity with the applicable rules". The Director-General, endorsing the Board's recommendation, dismissed the grievance by a decision of 11 August 2008, which was the subject of the complainant's first complaint to the Tribunal.

2. In the meantime, since the Board had stated that it had not considered some of the complainant's pleas because they had not been raised in the initial grievance, she filed a new grievance with that body. The Director-General, endorsing the Board's recommendation of 13 January 2009, decided to dismiss this grievance. The complainant was informed of that decision by a letter of 16 March 2009, which she impugns before the Tribunal in her second complaint.

3. The complainant requests the setting aside of the impugned decision. She also claims compensation for moral and material injury, and costs.

She contends that she was treated unfairly in that, unlike one of her colleagues at the ILO Office in Paris, she did not receive any "departure indemnity" when her contract was not renewed. She asserts that the defendant failed, in her case, to observe the practice of paying such an indemnity when an appointment was cancelled or a contract not renewed. She also argues that the defendant breached its obligation under the Joint Negotiating Committee's Guidelines on Managing Change and Restructuring Processes because it did not support her in a restructuring process and did not endeavour to "reclassify" her.

4. The defendant submits that this second complaint should be dismissed, "according to the principle of *res judicata*", if the Tribunal

decides not to uphold its objection to the receivability of the first complaint.

5. In Judgment 2922 the Tribunal held that none of the complainant's pleas in her first complaint was well founded, and dismissed the complaint without having to rule on the objection raised by the defendant.

The question therefore arises whether, in these proceedings, the objection based on the principle of *res judicata* can properly be raised to the complaint.

6. According to the Tribunal's case law, for an objection based on the *res judicata* rule to be sustainable the parties, the purpose of the suit and the cause of action must be the same as in the earlier case (see, inter alia, Judgment 1216, under 3).

7. In this case, the parties are clearly the same, and this is also true of the purpose of the suit, since the purpose of both the first and the second complaint is to obtain indemnities to which the complainant believes she is entitled as a result of the non-renewal of her contract and the failure to comply with the Joint Negotiating Committee's Guidelines.

8. As for the cause of action, the Tribunal finds that the claim for compensation for moral and material injury now before it is based on the same legal foundation as the complaint which was the subject of Judgment 2922.

9. In that judgment, the Tribunal considered that the complainant did not have the status of an established official within the meaning of Article 2.1 of the ILO's Staff Regulations and that, accordingly, she could not justifiably claim that there had been a violation of the formal and procedural rules applicable to the termination of the appointment of an established official, including those laid down in the Joint Negotiating Committee's Guidelines mentioned above. For the same reason, there was no merit in her claim

for payment of the indemnities due in the event of termination of the appointment of an established official pursuant to Articles 11.5 and 11.6 of the Staff Regulations.

The Tribunal also held that the complainant's legal and factual situation was neither identical nor comparable to that of her colleague who had received a "departure indemnity".

Lastly, as regards the supposed practice of paying an indemnity in the event of non-renewal of a fixed-term contract, the Tribunal found that the complainant had produced no evidence of the existence of such a practice within the Office.

10. Since therefore the complainant has presented the same claims based on the same legal arguments in a dispute with the same party, the Tribunal considers that the *res judicata* objection raised by the defendant must be admitted.

The complaint must therefore be dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 6 May 2011, 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 6 July 2011.

Seydou Ba
Claude Rouiller
Patrick Frydman
Catherine Comtet