Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

114th Session **Judgment No. 3164**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms M.-M. B. against the International Labour Organization (ILO) on 12 November 2010 and corrected on 5 January 2011, the Organization's reply of 12 April and the complainant's e-mail of 28 April 2011 informing the Registrar of the Tribunal that she did not wish to file a rejoinder;

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, a French national born in 1951, entered the service of the International Labour Office, the secretariat of the ILO, in 1987 at grade G.3. In January 2001 she was given an appointment without limit of time. In the course of the same year she was promoted to grade G.5 with retroactive effect from 1 January 2000. On 2 June 2003 she was transferred in the same grade to the position of Documentalist and Information Management Assistant in the ILO Programme on HIV/AIDS and the World of Work, which is financed from technical cooperation funds. A minute of 18 June 2003

confirming her transfer specified that her conditions of employment would remain unchanged. As a result of this transfer the complainant was offered a technical cooperation contract covering the second half of 2003. This contract was then extended every year until her retirement on 31 March 2011.

On 13 March 2009 the complainant expressed her dissatisfaction on a number of grounds in a grievance filed with the Director of the Human Resources Development Department. She explained inter alia that, although she was responsible for coordinating the document production process and organising the translation of documents, she had been informed in February 2007 that a new procedure had been adopted which, in her view, reduced her role in that area to an "absolute minimum". When she had protested, she had been relieved of her duty of obtaining translations, which had been taken over by her line manager and a colleague. A meeting between the mediator and the persons concerned had taken place the following month. The complainant also stated that since December 2006 she had been trying to find out why she was being offered annual contracts, despite the fact that she had been given an appointment without limit of time in January 2001. She alleged that she had broached the matter with the Director of the Programme, but that the latter had refused to discuss it. She also complained of a deterioration in working relations within the Programme and of a lack of transparency which had given rise to several incidents and "[m]alfunctioning due to communication difficulties". In addition, she referred to an incident where her line manager had displayed bad faith towards her, and she said that she had been faced with a "[r]efusal to put [her] name back on the list of persons eligible for a merit increment". In conclusion, she asked for a transfer to another service until her retirement.

As the complainant received no response to this grievance, she referred the matter to the Joint Advisory Appeals Board in September 2009. An exchange of correspondence with the Administration ensued. The complainant was informed by a minute of 21 December 2009 that, since she had been transferred to a post financed from technical cooperation funds with no change in grade, she had retained

the contractual entitlements attaching to the status of an official appointed without limit of time, including that of being considered for a merit increment. Following a meeting of 27 January 2010 during which she allegedly stated that she might abandon the appeal procedure because her administrative problems had been resolved, she received an e-mail from the Administration on 4 February, inviting her to clarify her position in that respect. A follow-up e-mail was sent to her a few days later. On 12 February she replied that she was maintaining her grievance because, in her opinion, "the Administration's efforts d[id] not address the substance of [her] request, namely that she should be redeployed in another service, which had been prompted by the great lack of transparency in the management of the Programme, the constant coming and going of [its] staff, the Director's lack of concern […] and the latter's insistence that [she should] sort out [her] problems of acquired rights with the [Human Resources Development Department]". On 2 March the Director of that department submitted the Administration's comments in response to the grievance. On 29 March the complainant submitted some further observations insisting that she had been "badly treated" by several colleagues and saying that, "in view of the nature of [her] allegations", she hoped that the above-mentioned department would hold an "independent investigation of the situation which [she had] experienced within the Programme". The Administration's additional comments were forwarded to the Board on 16 April. On 26 May, at her hearing before the Board, the complainant stated that a thorough, independent examination of her case by its members would be enough to satisfy her request for an investigation.

On 14 June 2010 the Board issued its report in which it said that, in view of staffing changes within the Programme, the practical difficulties that a transfer of the complainant at that stage of the proceedings would entail and her uncertainty as to her rights, it recommended that the Director-General should give the necessary instructions to ensure that all the complainant's entitlements stemming from her status as an official holding an appointment without limit of time were duly respected and that he should take all appropriate steps to minimise tensions between staff members of the Programme. By a

letter of 16 August 2010 the Executive Director of the Management and Administration Sector informed the complainant that the Director-General had decided to follow those recommendations. That is the impugned decision.

B. The complainant contends that the Joint Advisory Appeals Board "completely ignored the harassment which [she had] reported" and that its recommendations have not been implemented. She emphasises that, although she had held an appointment without limit of time since 2001, she was asked to sign a one-year contract for 2010 and then a three-month contract to cover the period until 31 March 2011. In her opinion, the Organization "seem[ed] determined to ignore [her] grievances" pending her retirement, an attitude which she regards as a total lack of respect for her dignity. She reiterates all the grounds for dissatisfaction listed in her grievance of 13 March 2009 and explains that the harassment to which she was subjected was reflected in the violation of her rights, "indifference […] to [her] repeated requests for a resolution of the tensions arising from the malfunctioning of the Programme", its Director's lack of concern and the attempts by the Human Resources Development Department to pressure her into withdrawing her grievance.

The complainant seeks the setting aside of the impugned decision, redress for the injury suffered as a result of that decision, the implementation of all the Board's recommendations, a finding that she suffered harassment for which the Organization is liable, redress for the moral injury caused by that harassment, and an award of costs.

C. In its reply the ILO draws attention to the fact that the claims that it should be found to have engaged in harassment and should redress the injury which the complainant allegedly suffered were not entered before the Joint Advisory Appeals Board and are therefore irreceivable, because internal remedies have not been exhausted. It says that it fails to understand how the complainant can simultaneously request the implementation of all the Board's recommendations and the setting aside of the Director-General's

decision to follow them. It adds that, insofar as the complainant "is seeking to submit an application for execution of [that] decision […], she should first exhaust internal remedies before entering such claims before the Tribunal".

On the merits, the Organization submits that the Office has not failed in any of its duties towards the complainant. It explains that, although she held an appointment without limit of time, her transfer to a technical cooperation project ought to have entailed the loss of certain entitlements reserved for officials holding posts funded from the regular budget. In order to encourage such officials to work for technical cooperation projects, the Office has therefore developed a practice whereby they maintain their rights if they do not change grade on being transferred; that is why the complainant was informed in June 2003 that her conditions of employment would remain unchanged. The Organization says, however, that this practice raises a number of "delicate legal issues", and that is probably why it was not until the minute of 21 December 2009 that the complainant received a plain answer to the questions she had raised at the end of 2006 regarding her entitlements. The ILO stresses that while she was assigned to the Programme the complainant did enjoy the conditions of employment of an official holding an appointment without limit of time, that the extension of her contract on a yearly basis was a "normal, mandatory" consequence of the fact that her post was financed by technical cooperation funds and that she suffered no injury on account of her administrative situation. In this connection, it states that the complainant was eligible for a merit increment as from 2006, but since the granting of that kind of increment is subject to a quota, she could not receive one until 2010.

As the ILO considers that the complainant withdrew her request for the opening of an investigation in the course of the proceedings before the Joint Advisory Appeals Board, it replies to the allegations of harassment subsidiarily. It takes the view that the facts as stated in the complaint do not support a finding of harassment; rather, they are indicative of tensions probably caused by the unsatisfactory organisation of work and poor communication. It reiterates that

changes to an official's duties may be made at any time provided that these changes do not undermine that person's dignity and that the new duties assigned to him or her are consistent with his or her qualifications. In the present case, since the complainant's duties relating to translation made up only a minute proportion of her work, their removal could not have caused her any injury. The ILO adds that the simplified procedure introduced in that area can be seen as a rational management decision taken for objective reasons and without any personal prejudice against the complainant. It denies that the Director of the Programme refused to discuss the matter of the complainant's contract with her; as this was an administrative problem, it was normal that the Director should suggest that the complainant contact officials in the Human Resources Development Department, who were better placed to answer her queries. It says that the incident where the complainant felt that her line manager had displayed bad faith towards her was simply a misunderstanding.

The ILO further explains that, faced with the real tensions within the Programme, it "relied on" mediation, that being *a priori* the best means of settling an interpersonal conflict. It explains that as from 2007 several possible transfers were considered, but that the search for a new position had been complicated by the fact that few services employed a documentalist and that the complainant had shown no interest in secretarial posts. Lastly, as the complainant's line manager retired on 30 September 2009, the Office had reason to believe that the situation had become calmer and that a transfer was no longer necessary.

CONSIDERATIONS

1. The complainant, who was recruited in 1987, was given an appointment without limit of time in January 2001. In June 2003 she was transferred to the ILO Programme on HIV/AIDS and the World of Work, which is financed from technical cooperation funds. Although at that point she was informed that her conditions of employment would remain unchanged, for the second half of 2003 she

was offered a technical cooperation contract which was subsequently renewed every year until her retirement on 31 March 2011.

2. In December 2006 the complainant asked the Administration to clarify her contractual status. She repeated this request in 2007 and, in the course of the same year, she requested a transfer because of a deterioration in working conditions and communication in the Programme to which she had been assigned. On 13 March 2009, since she had not received a satisfactory reply despite the steps she had taken and the involvement of the mediator, she filed a grievance with the Director of the Human Resources Development Department under Article 13.2.1 of the Staff Regulations, in which she set out several grounds for dissatisfaction and again asked to be transferred. As there was no response to this grievance within the prescribed time limits, the complainant referred the matter to the Joint Advisory Appeals Board.

3. However, in response to her queries regarding her contractual status, the complainant received a minute of 21 December 2009 which explained that, although she had been assigned to a post financed from technical cooperation funds, the conditions of employment which she had enjoyed before her transfer to the Programme had exceptionally been maintained.

4. On 29 March 2010 the complainant submitted further observations to the above-mentioned Board. She asserted that she had been "badly treated" by several of her colleagues and said that she hoped that the Human Resources Development Department would open an "independent investigation of the situation which [she had] experienced within the Programme". In view of the staff changes within the Programme and, inter alia, the "[complainant's] uncertainty […] as to her rights", the Board recommended, on the one hand, that the Director-General should instruct the above-mentioned department and the Director of the Programme to "ensure that all the complainant's entitlements stemming from her status as an official appointed without limit of time are duly respected" and, on the other,

that he should "take all appropriate steps to minimise the tensions which may exist between staff members of the Programme".

5. By a letter of 16 August 2010, which constitutes the impugned decision, the complainant was informed that the Director-General had decided to accept these recommendations.

6. On 12 November 2010 the complainant, who considered that no effect had been given to this decision, filed a complaint with the Tribunal in which she asked it to set aside this decision, to order redress for the injury which it had caused her and the implementation of all the Board's recommendations, to find that she had suffered harassment for which the ILO was liable and to award compensation for the moral injury caused by this harassment, as well as costs.

Receivability

7. In its preliminary comments the ILO raises objections to the complaint's receivability.

(a) First, it submits that the claims that it should be held liable for harassment and that it should redress the injury which this harassment allegedly caused the complainant are irreceivable because internal remedies have not been exhausted.

The Tribunal is of the opinion that the Organization's comments on this point do not support an objection to receivability, because precedent has it that an organisation must interpret a staff member's claims in good faith and read them as it might reasonably have been expected to do (see, in particular, Judgment 1768, under 3). In the instant case, in the grievance which she filed with the Joint Advisory Appeals Board, the complainant complained of her line manager's bad faith, of a deterioration in working relations and of a lack of transparency and communication within the Programme. Similarly, in the further observations which she presented to the Board, the complainant held that she had been "badly treated" by several colleagues and she asked for the opening of an "independent

investigation of the situation which [she had] experienced within the Programme". The Tribunal therefore considers that the harassment claims put forward in the complaint must be examined on the merits, for they are directly linked to a claim made before the Board. Moreover, the fact that the latter recommended that all appropriate steps should be taken to minimise the tensions which might exist within the Programme proves that the Board had fully understood the tenor of the complainant's claims. As for the claim for compensation, the Tribunal considers that it was necessarily encompassed in the complainant's submissions to the Board.

(b) The Organization also states that it fails to understand how the complainant can simultaneously request the implementation of all the Board's recommendations and the setting aside of the Director-General's decision to follow them.

On this point the Tribunal is of the opinion that the complainant is justified in requesting the setting aside of a decision accepting the Board's recommendations which has not been implemented.

(c) Lastly, the ILO adds that, insofar as the complainant "is seeking to submit an application for execution of the [above-mentioned] decision […], she should first exhaust internal remedies before entering such claims before the Tribunal".

The Tribunal notes with respect to the last comment that the complaint makes no mention of any application for execution.

The merits

8. The complainant first contends that the recommendations of the Joint Advisory Appeals Board were not implemented, although it is plain from the decision of 16 August 2010 that the Director-General accepted them.

9. The Tribunal observes that, by merely stating that he accepted the Board's recommendations without specifying the practical steps to be taken in order to implement them, the Director-

General issued a fundamentally flawed decision the execution of which was bound to be problematic.

10. Furthermore, the Tribunal notes that the Administration recognised that the complainant's "somewhat eclectic" administrative situation raised "delicate legal issues". However, by continuing to subject her to the rules governing staff assigned to a technical cooperation project, particularly by offering her a three-month contract in December 2010, notwithstanding the fact that when she had been transferred to the Programme she had been assured that her conditions of employment as an official holding an appointment without limit of time would remain unchanged, it failed to take account of the fact that the Director-General had accepted the Board's first recommendation that the complainant's entitlements stemming from her status as an official holding an appointment without limit of time should be duly respected. It must therefore be found that, as far as the Board's first recommendation is concerned, no effect was given to the decision of 16 August 2010.

11. The Board also recommended that the Director-General should ensure that all appropriate steps were taken to minimise the tensions which might exist within the Programme. However, the Organization, which merely states that "some of the complainant's colleagues mentioned in her complaint […] have left the Programme", does not offer any convincing evidence that any measure was ever adopted to put that recommendation into practice.

12. It may be concluded from the foregoing that the recommendations of the Joint Advisory Appeals Board, which were accepted by the Director-General, were never implemented, although no valid reason has been given for this. The Tribunal therefore finds that the complainant's entitlements stemming from her status as an official holding an appointment without limit of time were not respected and that she has therefore suffered injury which must be redressed.

13. Secondly, the complainant takes the Board to task for having "completely ignored the harassment which [she had] reported" in her grievance and in her further observations of 29 March 2010.

14. The ILO submits that, although during the internal appeal proceedings the complainant did ask for an "independent investigation of the situation which [she had] experienced within the Programme", she subsequently withdrew that request, because at her hearing before the Board she said that a thorough, independent examination of her case by its members was enough to satisfy her request for an investigation.

15. However, the Tribunal will not accept the Organization's line of argument in this respect. It is well established that an international organisation has a duty to its staff members to investigate claims of harassment. This duty is a duty to investigate such claims "promptly and thoroughly" (see, for example, Judgment 3071, under 36).

16. In the instant case, it is plain from the submissions that no investigation was ordered into the complainant's claims of harassment. The Organization therefore failed in its duty towards her. In view of the time which has passed since the disputed facts and the complainant's separation from the Organization's service, there is no occasion to order such an investigation. The complainant did, however, suffer moral injury on this account, which must be redressed.

17. In light of all the foregoing, the Tribunal considers that the complainant is entitled to 30,000 Swiss francs in compensation for the injury suffered under all heads.

18. As the complainant succeeds, she is entitled to costs, which the Tribunal sets at 3,000 francs.

DECISION

For the above reasons,

1. The impugned decision is set aside.
2. The ILO shall pay the complainant 30,000 Swiss francs in compensation for the injury suffered under all heads.
3. It shall also pay her costs in the amount of 3,000 francs.
4. All other claims are dismissed.

In witness of this judgment, adopted on 13 November 2012, Mr Seydou Ba, President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 6 February 2013.

Seydou Ba
Giuseppe Barbagallo
Patrick Frydman
Catherine Comtet