

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**R.**

**v.**

**WHO**

**123rd Session**

**Judgment No. 3759**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms V. T. A. R. against the World Health Organization (WHO) on 12 November 2014 and corrected on 29 December 2014, WHO's reply of 14 April 2015, the complainant's rejoinder of 17 August and WHO's surrejoinder of 23 November 2015;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

Considering that the facts of the case may be summed up as follows:

The complainant challenges the decision to terminate her fixed-term appointment following the abolition of her position.

The complainant joined the WHO office in the Comoros in November 2006 and was given a two-year fixed-term contract which was extended several times. In October 2009 she applied for a grade P.3 post in Brazzaville (Congo). She was selected, but was informed on 9 June 2010 that, for budgetary reasons, the post in question had been "frozen *sine die*" and that her reassignment could not therefore take place. On 30 September 2010 the complainant, who had been in Paris since August 2009 on home leave, then on sick leave, which had been converted retroactively into

special leave with full pay, and on maternity leave as from June 2010, was informed that the financial situation of the WHO Regional Office for Africa (AFRO) had deteriorated still further and that the Regional Director was considering post reductions at both regional and country level. On 15 October 2010 the complainant's maternity leave ended and she returned to the Comoros on 16 January 2011.

On 9 August 2011 the Regional Director sent a memorandum to the Director of Administration and Finance of AFRO notifying him of his decision immediately to abolish several positions, including that of the complainant. This memorandum was forwarded to the complainant by e-mail on 12 August. By a letter dated 19 August 2011 she was informed that, "owing to the financial crisis which the Organization [was] experiencing" and "changes in priorities in [...] the African region", her position had been abolished and her appointment would be terminated upon the expiry of a three-month notice period. The complainant separated from service on 22 November 2011.

In the meantime, on 5 October 2011, the complainant had lodged an appeal with the Regional Board of Appeal (RBA) against the decision of 9 August 2011. She asked to be promoted to grade P.3 with retroactive effect from April 2010, the month in which she had accepted reassignment to the position in Brazzaville, and she claimed damages for moral and financial injury. In its report of 24 February 2012, the RBA concluded that the decision to "cancel [the complainant's] selection" for the post in Brazzaville and the decision to abolish her position were warranted and that the appeal was unfounded. By a letter of 3 March 2012 the Regional Director informed the complainant that, in view of the RBA's findings, he had decided to maintain his decision to abolish her position.

The complainant elaborated on her claims in the appeal which she filed with the Headquarters Board of Appeal (HBA) on 25 April 2012. In its report the HBA identified the decision which was being challenged as that of 9 June 2010 and noted that the decision challenged before the RBA had been that of 9 August 2011. It held that internal means of redress had not been exhausted with respect to the decision of 9 June 2010 and that, in any event, if the appeal filed with the RBA had been directed against that decision, it would have been time-barred; the HBA

therefore recommended that the appeal be dismissed as irreceivable. The Director-General endorsed that recommendation in a letter of 15 August 2014, which constitutes the impugned decision.

On 12 November 2014 the complainant filed her complaint with the Tribunal, in which she seeks the setting aside of the impugned decision, her reinstatement, compensation for moral and material injury and an award of costs.

WHO asks the Tribunal to dismiss the complaint as irreceivable and, in any event, unfounded.

#### CONSIDERATIONS

1. In her decision of 15 August 2014 the Director-General, following the recommendation of the HBA, considered in substance that the complainant's appeal concerned two separate matters: the decision of 9 June 2010 to "freeze *sine die*" the position in Brazzaville to which the complainant was to be reassigned, and the decision of 9 August 2011 to abolish the position she held in the Comoros. The first decision had not been submitted initially for consideration by the RBA and the second, against which an appeal had been duly lodged with the RBA, had not been mentioned in her statement of intention to appeal to the HBA but only in her subsequent full statement. The Director-General therefore dismissed her appeal as irreceivable.

The Tribunal must consider solely this decision on irreceivability.

2. At the material time, the internal means of redress available to staff members who wished to challenge administrative measures or decisions affecting their appointment status were set forth in Staff Rules 1230.1 to 1230.9, which read in relevant part:

**"1230.1** Subject to the provisions of Rule 1230.8, a staff member may appeal against any administrative action or decision affecting his appointment status on the grounds that the action or decision complained of resulted from one or more of the following factors:

**1230.1.1** personal prejudice [...];

**1230.1.2** incomplete consideration of the facts;

- 1230.1.3** failure to observe or apply correctly the provisions of the Staff Regulations or Staff Rules, or the terms of his contract;
  - 1230.1.4** improper application of the WHO post classification standards.
- 1230.2** To hear appeals on these grounds there is at headquarters a Board of Appeal and, at each regional office, a regional Board of Appeal. A regional Board of Appeal shall have competence to hear appeals under Rule 1230.1.4 in respect of those posts for which the regional office has authority to apply the classification standards; otherwise, the headquarters Board shall hear the appeal. [...]
- 1230.3** The reporting procedure of these Boards shall be as follows:
- 1230.3.1** the headquarters Board of Appeal shall report its findings and recommendations to the Director-General, with whom the final decision shall rest. The Director-General shall inform the appellant of his decision within sixty calendar days of the date of the receipt by him of the findings and recommendations of the Board, and at the same time send him a copy of the report;
  - 1230.3.2** the regional Board of Appeal shall report its findings and recommendations to the Regional Director. The Regional Director shall inform the appellant of his decision within sixty calendar days of the date of the receipt by him of the findings and recommendations of the Board, and at the same time send him a copy of the report;
- [...]
- 1230.8** The following provisions shall govern the conditions of appeal:
- 1230.8.1** No staff member shall bring an appeal before a Board until all the existing administrative channels have been tried and the action complained of has become final. An action is to be considered as final when it has been taken by a duly authorized official and the staff member has received written notification of the action.
  - 1230.8.2** If the staff member has submitted a written request relating to his appointment status, the request shall be deemed to have been rejected and such rejection shall be subject to appeal as if final action had been taken on it as in Rule 1230.8.1 above if no definitive reply to that request has been made within:
    - (1) two months for staff at headquarters;
    - (2) three months for staff assigned to other duty stations.

- 1230.8.3** A staff member wishing to appeal against a final action must dispatch to the Board concerned, within sixty calendar days after receipt of such notification, a written statement of his intention to appeal specifying the action against which appeal is made and the subsection or sections of Rule 1230.1 under which the appeal is filed. [...]
- 1230.8.4** A staff member assigned to headquarters shall address his appeal to the headquarters Board of Appeal. A staff member who was assigned to a region at the time of the action complained of shall address his appeal to the regional Board of Appeal of the region concerned except as provided in Rule 1230.2 for classification standards.
- 1230.8.5** A staff member shall have the right to appeal to the Board of Appeal at headquarters against the decision of a Regional Director based upon the recommendation of a regional Board of Appeal. Notification of such appeal must be dispatched to the Board in writing within sixty calendar days after receipt by the appellants of the Regional Director's decision on the original appeal. [...]"

3. It is not disputed that each of the decisions of 9 June 2010 and 9 August 2011, which were independent of one another and which respectively cancelled the complainant's reassignment to Brazzaville and abolished her position in the Comoros, affected her appointment status. They could both therefore have formed the subject of successive appeals to the RBA and then to the HBA.

4. The complainant did not file an appeal with the RBA against the decision to "freeze *sine die*" the position in Brazzaville. It was, however, this decision that she specified as the decision against which the appeal was made in her written statement of intention to appeal which she submitted to the HBA on 25 April 2012. The HBA rightly found that, since the internal means of redress had not been exhausted as required by Staff Regulation 1230.8, this appeal was irreceivable insofar as it sought the setting aside of the said decision, which had not been challenged before the RBA. It also rightly found that the decision to "freeze *sine die*" the position in Brazzaville could not have been challenged in the appeal filed with the RBA on 5 October 2011, because by that time the 60-day time limit laid down in Staff Regulation 1230.8 had long since elapsed.

5. The issue of the receivability of the appeal filed against the abolition of the complainant's position in the Comoros is less straightforward. It is true that the statement of intention to appeal filed with the HBA on 25 April 2012 contains the following handwritten entry in the section "Details of the administrative action(s) or decision(s) the staff member wishes to appeal against":

"The cancellation of promotion and the opportunity lost a few days before childbirth are serious matters which cannot be ignored and must be ruled on."\*

The HBA inferred from this statement that the complainant was directing her appeal solely against the "freezing" of the position in Brazzaville, to the exclusion of the abolition of her position in the Comoros. This interpretation suggests that the complainant, an official who had successfully held a position of responsibility in the Organization for five years, was unable to understand the implications of the decision she was challenging. It also disregards the context in which the form was filled out by the complainant.

In her previous statement of intention to file an appeal, which she had lodged on 5 October 2011 with the RBA, the complainant had nevertheless clearly identified the only decision against which she intended to appeal as being that taken by the Regional Director on 9 August 2011 to abolish her position in the Comoros.

The sole explanation for the ostensible contradiction between the statements of intention to appeal of 5 October 2011 and 25 April 2012 is the confusion created by the RBA and the Regional Director, which was bound to mislead the complainant. Indeed, the report of the RBA and the Regional Director's decision might objectively give the complainant the wrong impression that the abolition of the position in the Comoros, which she had correctly challenged, and the "freezing" of the post in Brazzaville, which she could no longer challenge, had to form the subject of the same appeal. This confusion is particularly obvious in paragraphs 33 to 41 of the report of the RBA.

Any uncertainty should have been dispelled by the HBA and the Director-General in light of the full statement of appeal that followed

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\* Registry's translation.

the declaration of intention to appeal of 25 April 2012. This statement establishes without any shadow of doubt that the complainant, who had previously been misled by the wording of the decision of 3 March 2012, was correcting her mistake by declaring that her appeal concerned solely the abolition of her position in the Comoros, the only decision which she had challenged from the outset.

6. It follows from the foregoing that the impugned decision rests on an excessively formalistic approach in that it attaches more importance to the statement of intention to appeal, which was plainly clumsily drafted, than to the content of the subsequent full statement, and pays no heed to the particular circumstances of the case.

It must be recalled that, according to the case law, although rules of procedure should ordinarily be strictly complied with, they must not set traps for staff members who are trying to defend their rights (see Judgments 3592, under 3, 3424, under 8(d), 3423, under 9(d), and 3407, under 19). They must not therefore be construed with too much formalism, which is the case when an authority wrongly applies a rule of form and thus avoids addressing the merits, which is tantamount to refusing to take a decision.

7. Insofar as the impugned decision concerns the abolition of the complainant's position in the Comoros, it must be set aside on these grounds. The case must be remitted to the Organization for it to examine the internal appeal filed by the complainant against that measure.

8. The complainant is entitled to damages in compensation for the moral injury which she has suffered on account of the refusal to examine her internal appeal. Having regard to all the circumstances of the case, the Tribunal considers that this injury may be fairly redressed by the payment of compensation in the amount of 4,000 Swiss francs.

9. Although she brought her complaint to the Tribunal without the assistance of a lawyer, the complainant is also entitled to costs, which will be set at 800 Swiss francs.

10. The complainant's other claims must be dismissed.

DECISION

For the above reasons,

1. The decision of the Director-General of WHO of 15 August 2014 is set aside insofar as it concerns the abolition of the complainant's position in the Comoros.
2. The case is remitted to the Organization for action as indicated under 7, above.
3. The Organization shall pay the complainant 4,000 Swiss francs in compensation for the moral injury she has suffered.
4. It shall also pay her costs in the amount of 800 Swiss francs.
5. All other claims are dismissed.

In witness of this judgment, adopted on 1 November 2016, Mr Claude Rouiller, President of the Tribunal, Mr Patrick Frydman, Judge, and Ms Fatoumata Diakité, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 8 February 2017.

*(Signed)*

CLAUDE ROUILLER      PATRICK FRYDMAN      FATOUMATA DIAKITÉ

DRAŽEN PETROVIĆ