

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

B.

v.

ITER Organization

123rd Session

Judgment No. 3766

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms A. B. against the ITER International Fusion Energy Organization (ITER Organization) on 7 June 2014, the ITER Organization's reply of 25 September, the complainant's rejoinder of 8 December 2014 and the ITER Organization's surrejoinder of 18 March 2015;

Considering Article II, paragraph 5, 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 contract during her extended probationary period.

The complainant entered the ITER Organization's employ on 1 August 2013 on a five-year employment contract with a six-month probationary period. She was assigned to a position of Section Leader at grade P5 in the Human Resources Division. She had previously worked for the Organization on the basis of a three-month temporary employment contract with an interim management company under which she assumed, on an interim basis, the duties for which she would later be recruited.

On 15 January 2014 the complainant signed her probationary period follow-up report. In that report, her supervisor, who had identified several

areas in which the complainant's performance had proved unsatisfactory during the first three months of the probationary period, proposed that, in view of the slight improvements observed in the second half of the probationary period, its duration be extended by three months pursuant to Article 6.2(e) [recte (d)] of the Staff Regulations. The complainant was advised by a letter of the same day that the Director-General had decided to accept this proposal and to extend her probationary period until 30 April 2014.

On 10 February 2014 the complainant had a meeting with her supervisor that took place in a strained atmosphere and during which she accused the latter of harassment. That same day, she was placed on sick leave from 11 to 25 February. This period was subsequently extended to 25 March. By a letter dated 10 February 2014, which was sent to the complainant by e-mail the following day, the Director-General informed her that since her performance had deteriorated instead of improving, he had decided to terminate her contract with effect from 11 March 2014 and that she had been placed on leave with immediate effect so as to facilitate her efforts to find another job.

On 24 February 2014 the complainant wrote to the Director-General asking him to withdraw the decision of 10 February and contacted the Organization's Ethics Committee and Committee for Health and Safety to request an investigation into the harassment to which she claimed to have been subjected by her supervisor.

By a letter dated 10 March 2014, which constitutes the impugned decision, the Legal Advisor, who stated that she was acting on behalf of the Director-General, informed the complainant that her appeal of 24 February had been rejected. On 21 March 2014 the complainant was advised that the investigation into her charges of harassment had been completed, that there was no evidence to support her allegations and that the case had been closed.

The complainant requests the Tribunal to set aside the impugned decision and restore her entitlements, to order the payment of the entire remuneration that would have been due to her up until 31 July 2018, the date on which her contract should have expired, or, failing that, to award her the one month's salary in lieu of notice to which she was, in her view,

entitled under Article 6.2(b) of the Staff Regulations. She also claims 20,000 euros in damages for the moral injury she considers she has suffered and 5,000 euros in costs.

The ITER Organization requests that the Tribunal dismiss the complaint as unfounded on the merits.

CONSIDERATIONS

1. The complainant has filed a complaint with the Tribunal to request the setting aside of the impugned decision and the restoration of her entitlements, the payment of the entire remuneration that would have been due to her had her contract expired according to its terms on 31 July 2018, less any statutory deductions, or, failing that, the payment of one month's salary in lieu of notice to which she considers she is entitled under Article 6.2(b) of the Staff Regulations, an award of 20,000 euros in damages for the moral injury caused by the failure to respect her dignity and the breach of the principle of mutual trust, and 5,000 euros in costs.

2. In support of her various claims, the complainant advances three pleas: the lack of authority of the official who took the impugned decision; abuse of authority; and breach of the right to be heard, the principle of mutual trust and the duty of care.

3. The Organization requests the Tribunal to dismiss all of the complainant's claims as unfounded.

4. The complainant submits that the real reason for the decision to terminate her contract, which was taken almost immediately after her probationary period had been extended by three months, was not her performance but the fact that she had accused her supervisor of engaging in harassment.

5. On the basis of the evidence, the Tribunal notes that although the complainant's probationary period had been extended for a three-month period ending on 30 April 2014 pursuant to a decision of 15 January 2014,

that extension was suddenly curtailed by the decision of 10 February 2014, i.e. only 26 days after it had been put in place. Furthermore, it is clear that the abrupt termination of the complainant's contract, which was decided on the same day that a stormy meeting took place between the complainant and her supervisor, was a consequence of that meeting. Even supposing that the termination was solely motivated by the complainant's unsatisfactory performance, as the Organization maintains, and not by a desire to punish her behaviour, the Tribunal observes that it was plainly unlawful to terminate her contract before the end of the extension period that had just been granted to her without having first conducted a proper appraisal of her work. The decision of 10 March 2014, confirming the decision of 10 February, must therefore be set aside for this reason alone, without there being any need to examine the other pleas pertaining to it.

6. The unlawfulness of that decision also caused the complainant material and moral injury, which may be fairly redressed by an award of 12,000 euros in compensation under all heads.

7. The complainant further takes issue with the conditions in which her complaint of harassment against her supervisor was examined.

8. In Judgment 2552 the Tribunal observed that an accusation of harassment "requires that an international organisation both investigate the matter thoroughly and accord full due process and protection to the person accused". The organisation's duty to a person who makes a claim of harassment requires that the claim be investigated both promptly and thoroughly, that the facts be determined objectively and in their overall context, that the law be applied correctly, that due process be observed and that the person claiming, in good faith, to have been harassed not be stigmatised or victimised on that account (see Judgment 2642 and the case law cited therein).

The Tribunal notes that the complainant, who in her complaint of 24 February 2014 set out the facts supporting her allegations of harassment in detail, fails to show that the procedure to be followed within the Organization when a complaint of harassment is made was not observed or that her allegations were not examined sufficiently thoroughly before her complaint was rejected by a decision of 21 March 2014.

9. As she succeeds in part, the complainant is entitled to costs, which the Tribunal sets at 4,000 euros.

10. All other claims must be dismissed.

DECISION

For the above reasons,

1. The decision of 10 March 2014 is set aside.
2. The ITER Organization shall pay the complainant 12,000 euros in compensation for the injury suffered.
3. It shall also pay her 4,000 euros in costs.
4. All other claims are dismissed.

In witness of this judgment, adopted on 9 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