

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

K.

v.

Global Fund to fight AIDS, Tuberculosis and Malaria

123rd Session

Judgment No. 3797

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs M. J. S. K. against the Global Fund to fight AIDS, Tuberculosis and Malaria (hereinafter “the Global Fund”) on 30 March 2016;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal and Article 7 of its Rules;

Having examined the written submissions;

CONSIDERATIONS

1. According to the complaint form, the complainant impugns an implied decision rejecting her claim notified on 31 March 2013 regarding the evaluation of her performance for the year 2012, although her brief and annexes contain several statements and documents indicating that there were some exchanges between the Administration and the complainant relating to her request for review of her performance appraisal. The complainant also indicated in her brief that in July 2015 she had attempted to file an appeal with the Global Fund’s Appeal Board, but that it was not accepted as being clearly out of time.

2. Article VII, paragraph 3, of the Tribunal's Statute permits a complainant to have recourse to the Tribunal "[w]here the Administration fails to take a decision upon any claim of an official within sixty days from the notification of the claim to it". However, the same paragraph sets forth a deadline for filing a complaint with the Tribunal. Once the sixty days allowed for the taking of the decision by the Administration have expired, the complaint must be filed within the period of ninety days. As the Tribunal clarified in Judgments 456 and 2901,

"the purpose of [the] provisions [of Article VII, paragraph 3, of its Statute] is twofold. Their first aim is to enable an official to defend his or her interests by going to the Tribunal when the Administration has failed to take a decision. Their second aim is to prevent a dispute from dragging on indefinitely, which would undermine the necessary stability of the parties' legal relations. It follows from these twin purposes that, if the Administration fails to take a decision on a claim within sixty days, the person submitting it not only can, but must refer the matter to the Tribunal within the following ninety days, i.e. within 150 days of his or her claim being received by the organisation, otherwise his or her complaint will be irreceivable."

3. As the complainant made her claim contesting the performance appraisal in March 2013, the period of time provided for in Article VII, paragraph 3, of the Statute ended three years before she filed the complaint with the Tribunal. Accordingly, her complaint filed on 30 March 2016 is time-barred and clearly irreceivable. It must therefore be summarily dismissed in accordance with the procedure provided for in Article 7 of the Rules of the Tribunal.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 27 October 2016, Mr Claude Rouiller, President of the Tribunal, Mr Giuseppe Barbagallo, Vice-President, and Ms Dolores M. Hansen, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 8 February 2017.

CLAUDE ROUILLER

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

DRAŽEN PETROVIĆ