Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

J. (A.K.)

v.

WHO

127th Session **Judgment No. 4095**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr A. K. J. against the World Health Organization (WHO) on 6 September 2017, WHO's reply of 21 December 2017, the complainant's rejoinder of 19 February 2018 and WHO's surrejoinder of 16 May 2018;

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

Having examined the written submissions and disallowed the complainant's application for oral proceedings;

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

The complainant contests the decision to abolish his post and to terminate his fixed-term contract.

In 2002 the complainant commenced work under temporary appointments at the WHO Regional Office for South-East Asia (SEARO) in New Delhi (India). In November 2014, following his successful application for the post of Finance Officer/African Programme for Onchocerciasis Control (APOC), at grade P.3, in Ouagadougou (Burkina Faso), his temporary appointment was converted to a one-year fixed-term appointment running from 15 November 2014 to 14 November 2015. The vacancy notice for the subject post, issued on 14 June 2013, indicated that the duration of the fixed-term appointment was one year, renewable.

By a letter of 20 March 2015, the complainant was informed that a decision had been taken to close APOC by 31 December 2015 and that all posts in APOC, including his, would be abolished. His appointment would accordingly be terminated on 30 June 2015.

In May 2015 the complainant commenced internal appeal proceedings before the Regional Board of Appeal (RBA), but he requested permission to submit his appeal directly to the Headquarters Board of Appeal (HBA). The Director-General agreed to waive the requirement of an appeal to the RBA, and the complainant thus lodged an appeal with the HBA in October 2015. He requested the setting aside of the 20 March decision, his reassignment to a similar post within WHO, payment of all salaries and emoluments for a full year together with interest, moral damages and costs.

In its report of 27 April 2017, the HBA concluded that the decision to abolish the complainant's post was in accordance with the Staff Regulations and Staff Rules, that the complainant was not entitled to have WHO make reasonable efforts to reassign him to another position but that WHO had failed to meet its obligation to provide sufficient grounds as to why the abolition and subsequent termination of the complainant's appointment had taken effect six months before the scheduled closure of APOC. It recommended that the Director-General award him moral damages in the amount of three months' net salary for WHO's failure to provide reasons for the abolition of his post six months before the scheduled closure of APOC. By a letter of 26 June 2017, the Director-General informed the complainant that she had decided to accept the HBA's recommendation. That is the impugned decision.

The complainant asks the Tribunal to set aside the Director-General's decision, as contained in the termination letter of 20 March 2015, and to reinstate him in a position within WHO similar to the one he held in APOC. He claims an amount equal to the salary and allowances to which he would have been entitled had he served in the post of Finance Officer/APOC for one full year, as foreseen in his contract, together with interest until the date of payment. He seeks 500,000 United States dollars in moral and material damages and 2,000 dollars in costs.

He asks the Tribunal to award him such other relief as it may deem just and fair.

WHO asks the Tribunal to dismiss the complaint as being partly irreceivable and entirely devoid of merit.

CONSIDERATIONS

1. The complainant commenced working at SEARO in India in 2002. From then until November 2014 he worked under temporary appointments. In November 2014 he was given a one-year fixed-term appointment to work with the Organization on the APOC programme in Burkina Faso. His contract was to run from 15 November 2014 to 14 November 2015.

2. By a letter dated 20 March 2015, the complainant was informed that a decision had been taken to close APOC by 31 December 2015 and to abolish all posts in APOC, including his post, and also that his appointment would be terminated on 30 June 2015. This occurred. The complainant challenged the decision to terminate his appointment and, in due course, his appeal was addressed in a report of the HBA dated 27 April 2017. It recommended that the complainant be paid three months' net salary as moral damages because no reasons were given to him for abolishing his post and terminating his appointment six months before the scheduled closure of APOC, but that all other claims be dismissed. This recommendation was accepted by the Director-General, who informed the complainant of her decision by a letter dated 26 June 2017. This is the decision impugned in the present proceedings.

3. Before considering the various arguments on the substance of the complaint, it is necessary to address a preliminary question arising from the relief sought by the complainant in these proceedings. The relief includes, centrally, a claim for moral and material damages of 500,000 United States dollars. WHO points out that in the internal appeal the relief sought by the complainant was 50,000 dollars. This was the amount claimed as moral damages. It should be noted that, in

addition, the redress sought in the internal appeal, specifically the Notification of Intention to Appeal to the HBA, dated 3 October 2015, and an earlier "Full statement of appeal" to the RBA, dated 28 July 2015, included, in effect, a claim for material damages equivalent to the salary and emoluments the complainant would have earned had his one-year contract run its full term. In its submissions to the Tribunal, WHO, under a general heading of "Receivability", points to this anomaly and argues that "[t]he complainant's financial claims for compensation should only be admitted before the Tribunal to the extent of the earlier amount sought". In some cases the discrepancy between the amount claimed in an internal appeal and the amount claimed in the proceedings before the Tribunal sustains a conclusion that what is claimed in the latter proceedings is a new claim and irreceivable (see, for example, Judgment 3997, considerations 3 to 6). In other cases it might be difficult to characterise the claim for a larger amount in the Tribunal as a new claim. Nonetheless, in the absence of an explanation for the increased amount, the Tribunal has set its face against a complainant pursuing the larger amount (see, for example, Judgment 3419, consideration 7).

4. In the present case, the complainant seeks to explain the discrepancy on the basis that the lower amount specified in his Notification of Intention to Appeal to the HBA (and, it appears, in the earlier "Full statement of appeal" to the RBA) was a typographical error. He provides no evidence to support this contention. Indeed, that amount was recited by WHO in a summary of the case in its statement to the HBA responding to the case advanced by the complainant. No doubt the complainant read that statement and saw the reference to the amount of 50,000 dollars. If the specification of that original amount by the complainant was a typographical error, one would have expected the complainant to take steps to rectify the "typographical" error in the original Notification of Intention to Appeal certainly after WHO's statement was read by him. No evidence is provided that this happened and, indeed, the HBA repeated, in its report, the relief sought by the complainant, which included the claim for 50,000 dollars. The Tribunal is not satisfied that the identification of the amount of 50,000 dollars

was a typographical error. In the result, the Tribunal will limit the complainant's claim in relation to moral damages to 50,000 dollars.

5. The complainant advances several arguments in support of his case. They can be summarised in the following way. Firstly, the Director-General gave no reasons for the abolition of his post and, to the extent she did, they were not provided in a timely way. The second is that the complainant was misled when applying for the job about its duration. He was, in his words, "duped into accepting the job". The third is that the termination "cost him loss of valuable expectations".

6. The first argument reflects a measure of common ground. As noted earlier, the HBA concluded that adequate reasons for the abolition of his post were not given and recommended compensation by way of moral damages. This was accepted by the Director-General in the impugned decision. The real issue is whether the amount of compensation awarded to him by way of moral damages equivalent to three months' net salary (amounting to 22,084 United States dollars) was adequate, or whether material damages should have been awarded as well. It is unusual to assess moral damages by reference to months of salary. That is a measure normally used to assess material damages, that is to say the material loss arising from, in this case, the premature termination of the contract and the loss of income and emoluments arising as a result. However, and understandably, WHO does not put in issue what in fact occurred, namely the awarding of moral damages for lack of providing adequate reasons. The Tribunal is not satisfied that the quantum of those moral damages was inappropriate and, in any event, it is not suggested in the pleadings that this amount should be disturbed.

7. But the complainant's contract came to a premature end for reasons that remain unclear to the Tribunal. There was a period of four and a half months (the remainder of the contract) in which the complainant would have received income from WHO but, because of the termination of his contract, he did not. The premature termination of the complainant's contract gave rise to a financial loss for which he is entitled to material damages in an amount equal to the salary,

emoluments and allowances he would have received had his contract run its full course, subject to the deduction of any earnings he may have gained from other employment in the period from 1 July to 14 November 2015.

8. The second argument of the complainant is unsustainable. He applied for the position in APOC in June 2013. He was offered and accepted the position in the latter part of October 2014. In a detailed account of events leading to the decision to wind up APOC, it is clear the decision, and the events leading directly to that decision, occurred after the complainant was offered and accepted the position. Events prior to that would not have led the Administration to conclude there was a real risk APOC would be wound up, as occurred.

9. In the event, the complainant is entitled to material damages in an amount equal to four and a half months' salary, including all emoluments and allowances, less any earnings he may have received from other employment in the period from 1 July to 14 November 2015. All other claims will be dismissed. The complainant did not retain a lawyer but is entitled to a modest amount of costs, assessed in the sum of 700 United States dollars.

DECISION

For the above reasons,

1. WHO shall pay the complainant an amount equal to four and a half months' salary, including all emoluments and allowances, as material damages, less any earnings he may have received from other employment in the period from 1 July to 14 November 2015.
2. WHO shall pay him 700 United States dollars in costs.
3. All other claims are dismissed.

In witness of this judgment, adopted on 25 October 2018, Ms Dolores M. Hansen, Judge presiding the meeting, Mr Michael F. Moore, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 6 February 2019.

DOLORES M. HANSEN

MICHAEL F. MOORE

HUGH A. RAWLINS

DRAŽEN PETROVIĆ