

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

S. (No. 2)

v.

WHO

131st Session

Judgment No. 4386

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Ms P. S. against the World Health Organization (WHO) on 6 November 2019;

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. After a long series of events that the complainant considered as harassment, she filed on 28 August 2015 an informal complaint of harassment with the Administration. Having been invited to submit a formal complaint to the Internal Oversight Services (IOS), she did so on 17 February 2016. On 1 March 2016, following its initial screening of the complaint, IOS asked the complainant to provide further information, which she did.

2. On 16 January 2018 the complainant asked IOS for an update on the outcome of her complaint. On 13 February 2018 IOS replied that it could not conduct an investigation, as the alleged perpetrator had left the Organization on 31 October 2016, and that IOS considered the matter closed. IOS stated that it would refer the matter back to the Regional Director for consideration of further managerial action, if any, and asked the complainant to provide her comments on the proposed course of

action at her earliest convenience. Almost a year and a half later, on 6 November 2019, the complainant filed her complaint with the Tribunal.

3. The complainant specified in the complaint form her intention to file a complaint under Article VII, paragraph 3, of the Tribunal's Statute, alleging that WHO failed to take a decision on her formal harassment complaint of 17 February 2016 within the sixty-day period provided for in that provision.

4. The complainant's reliance on Article VII, paragraph 3, is misplaced because it is clear from the case law that where the Administration takes any action to deal with a claim, by forwarding it to the competent advisory appeal body for example, this step in itself constitutes "a decision upon [the] claim" within the meaning of Article VII, paragraph 3, which forestalls an implied rejection that could be referred to the Tribunal (see, for example, Judgment 3714, considerations 6 and 7, and the case law cited therein). In this case, WHO responded to the complaint of harassment within the prescribed sixty-day period, so that Article VII, paragraph 3, does not apply.

5. Furthermore, even if, as the complainant argues, no decision had been taken within sixty days of the notification of her claim of 17 February 2016, her complaint filed on 6 November 2019 would clearly have been time-barred. Indeed, Article VII, paragraph 3, of the Tribunal's Statute, which 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", sets a time limit for filing a complaint with the Tribunal. Once the sixty-day period allowed for the taking of the decision by the Administration has expired, the complaint must be filed within the following 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 [her or his] 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 [her or his] claim being received by the organisation, otherwise his or her complaint will be irreceivable.”

6. In her brief, however, the complainant states that her complaint was filed under Article VII, paragraph 1, of the Tribunal’s Statute, that is, after she had exhausted all internal remedies available to her. Even under this hypothesis, the complaint is time-barred, as the complainant would have had to file a complaint within ninety days from the day she received the decision taken by IOS to close the matter, communicated to her on 13 February 2018. Her complaint was filed on 6 November 2019, long after the deadline set forth in Article VII, paragraph 2, had expired.

7. It follows that the complaint is clearly irreceivable and must be summarily dismissed in accordance with the procedure set out 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 16 December 2020, Mr Patrick Frydman, President of the Tribunal, Ms Dolores M. Hansen, Vice-President of the Tribunal, and Mr Giuseppe Barbagallo, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 18 February 2021 by video recording posted on the Tribunal’s Internet page.

PATRICK FRYDMAN

DOLORES M. HANSEN

GIUSEPPE BARBAGALLO

DRAŽEN PETROVIĆ