

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

H. (No. 5)

v.

WTO

132nd Session

Judgment No. 4439

THE ADMINISTRATIVE TRIBUNAL,

Considering the fifth complaint filed by Mr K. H. against the World Trade Organization (WTO) on 2 December 2020;

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. The complainant, a former official, impugns the decision taken on 22 October 2020 by the WTO's Deputy Directors-General – who together replaced the Director-General during the vacancy in that post – concerning the investigation carried out in respect of Dr J., a doctor in the Organization's Medical Service, for having breached medical confidentiality and her duty of confidentiality.

2. The facts giving rise to this investigation are as follows: on 27 October 2017, the complainant, who had been on full-time sick leave since 31 July, met Dr J. for an assessment of his state of health. Following that meeting, on 14 November 2017 Dr J. sent a memorandum to the Director of the Human Resources Division concerning the complainant's "medico-administrative" situation, reporting on what he had said and particular aspects of his private life and medical situation. An email from the complainant's doctor was reproduced in full. Three

other people working in the Human Resources Division were copied into the memorandum in question.

The complainant became aware of this document on 26 October 2019, in connection with another complaint he had filed with the Tribunal. On 11 December 2019, he filed a grievance against Dr J. for an alleged breach of confidentiality and medical confidentiality. In its investigation report of 24 September 2020, the Office of Internal Oversight recognised that these breaches had taken place and recommended that Dr J. receive a written censure and mandatory coaching.

By letter of 22 October 2020, addressed to Dr J. and copied to the complainant and several other people, the Deputy Directors-General agreed with the finding that there had been a breach of the duty of confidentiality and medical confidentiality, but decided not to impose a disciplinary sanction. Instead of issuing a written censure, they required Dr J. to enrol in training and coaching.

In his fifth complaint, the complainant impugns this decision. As he left the WTO on 31 October 2018, he relies on his status as a former staff member who does not have access to the internal means of redress to file a complaint directly with the Tribunal.

3. The complainant submits that the decision of 22 October 2020 does not comply with the principle of proportionality and is tainted by bias and lack of impartiality. He requests the Tribunal to set it aside, to order the WTO to issue a final decision reflecting all the recommendations made by the Office of Internal Oversight, including the imposition of a written censure on Dr J., and to award him costs.

4. The Tribunal notes that the decision impugned by the complainant – that is, the decision to take administrative action against Dr J. – does not concern him directly but is solely addressed to Dr J. Even if the complainant disagrees with that action, which he considers overly lenient having regard to the findings of the Office of Internal Oversight’s investigation, he has no cause of action to challenge that decision. As the Tribunal stated in Judgment 1899, consideration 3, “[d]isciplinary relations between an organisation and a staff member do not directly concern other members of staff or affect their position in law. Consequently, a decision regarding a disciplinary inquiry or a disciplinary measure relating to one staff member will not adversely

affect other staff, so the latter will have no cause of action for challenging a disciplinary sanction or a refusal to impose one”. Furthermore, it is firmly established in the case law that a request for the Tribunal to order that disciplinary action be taken against an official is, in any event, outside its jurisdiction (see Judgments 4313, consideration 11, 4291, consideration 10, 4241, consideration 4, 3318, consideration 12, 2811, consideration 15, 2636, consideration 13, and 2190, consideration 3).

5. It follows that the complaint is clearly irreceivable and must be summarily dismissed pursuant to 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 14 June 2021, 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 7 July 2021 by video recording posted on the Tribunal’s Internet page.

(Signed)

PATRICK FRYDMAN DOLORES M. HANSEN GIUSEPPE BARBAGALLO

DRAŽEN PETROVIĆ