

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

A.
v.
ILO

134th Session

Judgment No. 4548

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms L. M. A. against the International Labour Organization (ILO) on 22 February 2019, the ILO's reply of 10 May, the complainant's rejoinder of 15 June, the ILO's surrejoinder of 4 July and the complainant's further submissions of 15 November 2019;

Considering Articles II, paragraph 1, and VII 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 claims compensation for the injury she considers she has suffered because she was not re-hired by the ILO.

The complainant joined the ILO Country Office for Madagascar in February 2002 as part of a labour-intensive public works (LIPW) project. She held a series of fixed-term appointments between 2002 and 2015. On 27 May 2015 the Director of the Country Office announced during a meeting that the contracts of all staff members assigned to the LIPW project would end on 30 June 2015 due to a lack of funding. According to the complainant, the Director stated that all staff members would be re-hired once the project started again. At the material time the complainant held the post of administrative assistant at grade G.6.

In a letter of 11 June 2015 she was informed of the decision not to extend her contract beyond 30 June 2015. The complainant asserts that she received telephone messages on 25 November and 2 December 2015 from the former National Project Coordinator (NPC), who allegedly told her that the LIPW project would recommence following the conclusion of a funding agreement and that he would initiate a discussion with the office to ensure that contracts would start in December. In the next message, the NPC allegedly stated that contracts might begin in February 2016 at the earliest.

On 3 February 2016 the complainant was informed by the NPC that the post she had held – administrative assistant – had been abolished and that a new post entitled “administrative and finance assistant” at grade G.6 was to be created in order to merge the posts of administrative assistant and finance assistant. Moreover, the contracts of all the other members working on the former project were renewed, apart from that of a national expert, who was then aged 64, and that of the complainant. On 13 February 2016 a vacancy announcement for the post of administrative clerk was published. The complainant subsequently learnt that Ms A., who had previously held the post of accounting and finance assistant, had been appointed to the new post of administrative and finance assistant by direct selection.

On 25 February the complainant sent an email to the Director of the Human Resources Development Department (HRD) to complain about the situation, which she described as unfair, since she considered she had been deliberately excluded from the team. As she did not receive a reply from the Administration, she sent two reminder emails in March and October 2016 respectively.

By an email of 23 January 2017 the complainant presented her situation directly to the Director-General. She repeated that she had been treated unfairly since she had not been re-employed whereas she considered herself the best qualified person for the new post. By a letter of 9 February 2017 HRD informed the complainant that her allegations were considered unfounded. In particular, HRD took the view that the non-renewal of her contract had taken place in compliance with the rules in force and that she had not been denied an opportunity to be re-

employed as the new phase of the project did not include the post of administrative assistant at grade G.6. On 23 May 2017, believing that she had been misunderstood, the complainant clarified her position with HRD.

On 7 August 2017 the complainant formally lodged a grievance pursuant to Article 13.2.1 of the Staff Regulations of the International Labour Office. On 8 November 2017, having received no reply to her grievance, she lodged an internal appeal with the Joint Advisory Appeals Board (JAAB).

In its report dated 11 December 2018 the JAAB concluded that the grievance was unfounded. However, it recommended to the Director-General that the complainant be awarded financial compensation for the injury caused by HRD's delay in responding to her grievance and the length of the internal procedure. It further recommended that the rules for recruiting staff for technical cooperation projects be reviewed and that any documents relating to the complainant's grievance be withdrawn from her personal file.

In a letter of 14 January 2019 the complainant was informed of the Director-General's decision to endorse the JAAB's conclusions and recommendations and to reject her grievance as unfounded. He decided to award her compensation solely for HRD's delay in responding. That is the impugned decision.

The complainant asks the Tribunal to grant her fair compensation for the moral injury she suffered on account of having been one of the only staff members employed on the former project who were not re-hired.

The ILO requests the Tribunal to dismiss the complaint in its entirety as unfounded. In its surrejoinder it asks the Tribunal to dismiss the complaint as irreceivable in view of the complainant's position that no promise of employment was made.

CONSIDERATIONS

1. The complainant, a former staff member employed by the ILO between 1 February 2002 and 30 June 2015, impugns the Director-General's decision of 14 January 2019 which rejected her grievance seeking compensation for the moral injury that she alleges she has suffered since February 2016 on account of having been excluded without good reason from a new post created after her appointment had ended.

2. It is established that on 11 June 2015 the Director of the ILO Country Office for Madagascar notified the complainant in writing that her fixed-term appointment would not be renewed when it expired on 30 June 2015 because the LIPW project on which she was employed was ending owing to a lack of funding. It is further established that a new phase of the LIPW project subsequently began in February 2016 and that, apart from two posts including the complainant's, the posts in the former project that had ended in June 2015 were re-incorporated in the new project structure. The complainant submits that she was deliberately excluded from the new post of finance and administrative assistant, which was eventually assigned to one of her former colleagues, and that an internal competition should have been organised to fill that post.

3. At the outset, the Tribunal notes that, in her rejoinder and further submissions, the complainant underscores the fact that she does not base her complaint on any promises of employment made to her at any point. The Tribunal further notes that the complainant's appointment ended in compliance with the procedural rules and the complainant was a former staff member at the time when the post of finance and administrative assistant was filled by direct selection.

4. It is firmly established in the case law that "although former officials may file complaints with the Tribunal, the Statute limits the Tribunal's jurisdiction to complaints alleging the non-observance of an official's terms of appointment and such provisions of the relevant Staff

Regulations applicable to the case” (see Judgment 2903, consideration 11; see also Judgments 4201, consideration 3, and 4219, consideration 17).

5. In this case, the complainant does not allege that there has been a breach of any provision of her terms of appointment or the Staff Regulations applicable to her while she was still a staff member. Essentially, her argument is that the applicable provisions of the Staff Regulations concerning direct selection are defective and incomplete.

However, in Judgment 1845, consideration 10, the Tribunal observed:

“[U]nder Article II(6) of its Statute the Tribunal is open to a former staff member.

However, Article II(5) restricts the competence of the Tribunal, *ratione materiae*, to complaints alleging the non-observance, in substance or in form, of the terms of appointment of a staff member or of the provisions of the applicable Staff Regulations.

On expiry of the complainant’s contract, he ceased to be a staff member. His complaint, concerning his non-selection [for the post of assistant to the head of Administration], does not involve any allegation of the violation of any rights which he enjoyed under his contract or the Staff Regulations insofar as they continued to apply to him. The Tribunal therefore can[not] [...] entertain the complaint [...]”

Therefore, for the same reasons as set out in that judgment, the Tribunal finds that it is not competent to rule on the present complaint.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 26 April 2022, Mr Patrick Frydman, Vice-President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 6 July 2022 by video recording posted on the Tribunal's Internet page.

(Signed)

PATRICK FRYDMAN JACQUES JAUMOTTE CLÉMENT GASCON

DRAŽEN PETROVIĆ