

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**M.**  
**v.**  
**ICC**

**137th Session**

**Judgment No. 4750**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms M. R. O. M. against the International Criminal Court (ICC) on 14 June 2022 and corrected on 13 July, and the ICC's reply of 31 October 2022, the complainant not having filed a rejoinder;

Considering Articles II, paragraph 5, 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 challenges the decision to terminate her appointment for unauthorised absence and abandonment of post.

At the material time, the complainant, a staff member of the ICC's Registry since 1 September 2009, was employed in The Hague, the Netherlands, under an appointment lasting until October 2025. Owing to an illness diagnosed in 2017-2018, the complainant, according to what she states in her complaint, was placed on special leave without pay in 2018 after having returned to her family in Canada in September 2017 to receive appropriate medical treatment. After the COVID-19 pandemic broke out, ICC staff members were informed on 15 April 2020 that they could, as an exception, request to work from outside their duty station because of the pandemic. The complainant received such

exceptional authorisation for the period from 15 April until 31 August 2020. On 7 August 2020 the ICC informed all staff members that they could not continue to work from outside their duty station beyond 31 August 2020 and that they should return by 1 September 2020. However, they were told that if for personal reasons they could not return to their duty station by the stated date, they could request annual leave, special leave without pay or sick leave depending on their individual circumstances.

On 22 September 2020 the complainant informed by email the Human Resources Section that she was unable to return to The Hague for medical reasons. She attached to the email a letter from her physician stating that travel abroad was not recommended on account of her state of health and of the fact that she was a person at risk.

From 1 September to 9 October 2020 the complainant took annual leave. On 20 October 2020 she was informed that an exceptional authorisation to work outside of her duty station following her annual leave could only be granted should the ICC Medical Officer issue a travel restriction and that the letter from her physician was not enough to allow a decision to be taken on that question. The complainant was requested to provide the ICC Medical Officer with the following medical information: “1) a diagnosis; 2) para-clinical findings to support the diagnosis (blood test, urine tests and other relevant tests); 3) a prognosis; 4) a treatment plan including suggested check-up dates; and 5) relevant medical reports from other doctors if additional [diagnoses] are addressed”.

By email of 1 December 2020, the complainant was advised that, as the requested medical information had not been received, the ICC Medical Officer had been unable to decide whether to issue a travel restriction and that she would therefore be placed on special leave without pay from 7 to 31 December 2020. The email encouraged her to submit the medical reports requested and added that if a travel restriction could not be approved by 31 December 2020, she would have to return to her duty station by 2 January 2021 or consider submitting her resignation. On 22 December 2020 the complainant requested an extension

of her special leave, which the Human Resources Section refused on 31 December 2020 after consulting her supervisors.

On 12 January 2021 the ICC Medical Officer invited the complainant to submit a report dated and signed by her physician, including a diagnosis, a treatment plan, a prognosis backed up by para-clinical tests and a precise explanation of the reason why she could not fly.

By email of 24 January 2021, the complainant was informed that her request for special leave had after all been approved by the Registrar of the Court until 31 March 2021, but that no extension of that special leave would be granted and that, unless she reported for duty on 1 April 2021 in The Hague, her absence would be considered as an unauthorised absence under Staff Rule 105.5. She was again asked to provide the ICC Medical Officer with a medical report dated and signed by her physician. In reply to that email, the complainant submitted a report from her physician explaining the nature of her illness, but did not attach a recent medical certificate confirming a travel restriction. On 11 March 2021 the Human Resources Section told the complainant that the medical documents she had provided would not allow her to receive a recommendation for a travel restriction and reminded her that she should report for duty in The Hague on 1 April 2021.

On 29 March 2021 the complainant wrote to the Human Resources Section stating that after much thought she had decided not to return to The Hague on 1 April 2021 and that she deferred to the decision of the Registrar of the Court. The same day, the Human Resources Section replied that her decision not to return to The Hague on 1 April 2021 would be considered as an unauthorised absence liable to lead to dismissal, although it was possible for her to resign.

On 13 April 2021 the Registrar of the Court informed the complainant that, since she had decided not to return to her duty station, her absence from 1 April 2021 was to be regarded as an unauthorised absence under Staff Rule 105.5. He gave the complainant one week to justify her absence, after which it would be considered as an abandonment of post liable to result in her dismissal pursuant to Staff Rule 109.4. The complainant replied on 18 April 2021, stating, *inter alia*, that the ICC Medical Officer had not explained what specific

documentation she had to submit. She also provided additional medical documents, which were forwarded to the Medical Officer on 30 April 2021.

On 18 May 2021 the ICC Medical Officer informed the Human Resources Section that some of the medical information requested was still missing, including a medical report certifying that the complainant was not fit to travel, a precise prognostic timeline indicating what diagnostic steps would be taken and when, and a treatment plan, which made it impossible to decide whether to issue a travel restriction.

On 27 May 2021 the Registrar of the Court decided to terminate the complainant's appointment for unauthorised absence constituting an abandonment of post, on the grounds that she had not provided the documents requested by the ICC Medical Officer and that her continued absence from 1 April 2021 could not be justified. Due to the nature of that decision, the complainant was not paid a termination indemnity.

On 9 July 2021 the complainant submitted a request for review of the decision of 27 May 2021 to terminate her appointment, which was rejected on 29 July 2021.

The complainant referred the matter to the Appeals Board on 30 August 2021.

On 6 December 2021 the Appeals Board submitted its report to the Registrar of the Court. It found that an abandonment of post could not be established on the basis of the evidence and unanimously recommended that the complainant's appeal be granted. In its report, the Board also recommended that the complainant be given the opportunity to provide the necessary medical documents to justify her absence and that a policy be introduced at the level of the organization listing the documents to be provided by staff members to receive a travel restriction for medical reasons.

By a letter of 20 December 2021, the Registrar of the Court informed the complainant that he had decided to disregard the recommendations of the Appeals Board and to dismiss her appeal for the reasons he outlined. This decision was notified to the complainant on 22 March 2022. That is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision and the decision of 27 May 2021 to dismiss her, and to order her reinstatement. She also claims the payment of all the allowances due to her from April 2021 until the date of her reinstatement, as well as an award of 500,000 euros for the moral and material injury she considers she has suffered. Lastly, she seeks a written apology.

The ICC asks the Tribunal to dismiss the complaint as unfounded.

### CONSIDERATIONS

1. Beyond compensation for the material and moral injury she submits she has suffered, the complainant seeks an order setting aside the impugned decision and the decisions of the Registrar of the Court of 27 May and 20 December 2021, as well as her reinstatement in the ICC. In this connection, she asserts that there has been an error of law, an error of fact and a breach of the ICC Staff Rules and Staff Regulations.

2. The Tribunal notes that the parties agree in considering that their dispute mainly hinges on the question of whether the complainant's absence from her duty station in The Hague should be considered, on the basis of the medical documents that she provided, as an absence owing to circumstances beyond her control and, if not, whether it may be regarded as an abandonment of post.

3. On this point, the following provisions of the ICC Staff Rules should be taken into account:

– Rule 105.5: Unauthorized absence

“If a staff member is absent from work without authorization, payment of salary and allowances shall cease for the period of unauthorized absence and such absence may be deemed to be an abandonment of post pursuant to staff rule 109.4. However, if, in the opinion of the Registrar or the Prosecutor, as appropriate, the absence was caused by reasons beyond the staff member's control, the period of absence may be treated as annual leave or special leave without pay, depending on the circumstances.”

– Rule 109.4: Abandonment of post

- “(a) A staff member who is absent from duty without authorization may be subject to disciplinary measures under staff regulation 10.2(a).
- (b) A staff member who is absent from duty without authorization for more than 15 calendar days shall be considered to have abandoned his or her post, and the staff member’s service with the Court shall be deemed to cease on the day preceding the first day of his or her absence.”

– Rule 109.1: General provisions

“[...]

- (b) The appointment [of a staff member] may be ended prior to [the] expiration date [specified in the letter of appointment] as a result of:
- [...]
- (vi) Abandonment of post;
- [...]”

4. It must firstly be recalled that, according to the Tribunal’s established case law, there can be no question of abandonment of post unless the staff member shows her or his intention not to return (see Judgments 4243, consideration 18, 3853, consideration 21, 1834, consideration 7, and 392, consideration 4).

The evidence makes plain that the ICC repeatedly (on 20 October and 1 December 2020 and on 12 January, 24 January, 11 March and 13 April 2021) asked the complainant to provide a report dated and signed by her physician and containing specific details that would allow the ICC Medical Officer to determine whether it was impossible for her to fly back to her official duty station. On the strength of the two medical certificates that the complainant has produced in support of her submissions, the Tribunal takes the view that it was legitimate for the Registrar of the Court, on the basis of the ICC Medical Officer’s assessment that the information provided by the complainant did not allow her to decide whether a travel restriction should be approved, to find that the complainant had not established that her absence from her duty station in The Hague was, within the meaning of the second sentence of aforementioned ICC Staff Rule 105.5, “caused by reasons

beyond [her] control”. More specifically, the Tribunal observes that although the complainant did submit a medical certificate dated 27 August 2020 in support of such a restriction, she did not provide a medical certificate stating that the restriction on air travel was still valid in April 2021, even though she was explicitly requested to do so. The Tribunal notes in particular that the medical certificate of 26 February 2021 did not confirm that it would be impossible for the complainant to fly back to her duty station in The Hague on 31 March 2021.

In a similar case in that regard, the Tribunal found that “[a complainant’s] refusal, without persuasive justification, to submit the requested [medical] information [...] [was] ample indication of her intent to abandon her post” (see Judgment 1834, consideration 7).

5. In support of her assertions that her health did not permit her to return to The Hague, the complainant refers to the unanimous opinion of the Appeals Board, whose findings were favourable to her.

However, the Tribunal observes that the Board did not take a view on that matter, despite the way the complainant presents its opinion. It merely considered that it was not convinced that the complainant had indicated her intention not to return to her post.

Moreover, the Appeals Board noted that the complainant had only provided part of the medical information requested by the ICC Medical Officer. Although it is true that the Board further recommended that the complainant be given additional time to enable her to better justify the circumstances outside her control that had made it impossible to return to her duty station and that the ICC issue clearer rules in this area, such suggestions do not in themselves call into question the lawfulness of the various decisions taken by the Registrar of the Court. This is all the more so since his final decision of 20 December 2021 rests on a lengthy explanation why he considers himself unable to endorse the Appeals Board’s findings. The Tribunal finds these reasons cogent, and the complainant does not seriously dispute them in her complaint.

6. Lastly, the complainant states in her brief that she is still under medical treatment with her specialists in Canada. However, besides the fact that this statement is not corroborated by any recent certificates issued by such specialists, the Tribunal notes that the complainant has clearly expressed her intention not to return to The Hague, despite the various requests that she do so. Indeed, in an email of 29 March 2021, the complainant put her position in the following terms: “I was facing a huge dilemma, either returning to The Hague or remaining in state of stagnation by staying here until I am vaccinated [understood: against COVID-19]. After much thoughts, I choose not to return to The Hague on 1st April 2021.” In her observations dated 18 April 2021 on the organisation’s internal memorandum of 13 April 2021, the complainant declared that she was just about to return to The Hague when the COVID-19 pandemic started, “which prompted [her] doctors to suggest that [she] remained under their supervision given that [she belonged] to the category of people at risk according to the criteria established by the [ICC medical service]”. However, in the absence of any supporting medical certificates, the existence of this advice from her doctors cannot be regarded as established.

7. It ensues from the foregoing that the Registrar of the Court correctly considered that the complainant had failed to submit the medical information requested with a view to establishing whether it was impossible for her to return to her usual duty station by air without being able to provide proof of “circumstances outside [her] control” and that her absence ought therefore to be regarded as an abandonment of post. It follows that the impugned decision and the decision of 27 May 2021 to dismiss the complainant, insofar as they concern the abandonment of post, are not tainted by an error of law, an error of fact, or a breach of the applicable rules.

8. Irrespective of the ICC’s adherence to the abovementioned provisions of the Staff Rules, the Tribunal further considers that the complainant has not established that the decisions in question, as she asserts, constitute harassment or discrimination based on her state of health or reflect the ICC’s lack of care, compassion or humanity



towards her. On the contrary, it is clear from the evidence that the ICC treated the complainant with great care, as is obvious from the various approaches it made to her. Suffice it to recall in this respect that the complainant had been absent from her duty station in The Hague since September 2017 and that the organisation had afforded her numerous opportunities to provide the information requested by the ICC Medical Officer, unfortunately in vain.

This plea is likewise unfounded.

9. The complainant also alleges that the second sentence of aforementioned Staff Rule 105.5 was breached in that her days of absence could have been treated as special leave without pay owing to circumstances outside her control, but the Registrar of the Court only agreed to grant her one month of special leave without pay.

In addition to the aforementioned provision, it is also appropriate to take into account the following relevant passages from Staff Rule 105.3 (“Special leave without pay”):

- “(a) Special leave without pay may, at the discretion of the Registrar or the Prosecutor, as appropriate, be granted for a continuous period of up to two years at the request of a staff member. Periods of special leave without pay shall not affect the staff member’s continuity of service.
- (b) Special leave without pay may be granted for the following reasons:
  - [...]
  - (ii) Extended illness or injury;
  - [...]

Although, as she observes, the complainant was therefore entitled to request special leave without pay, she did not have an automatic right to receive it; it was to be granted at the discretion of the Registrar of the Court. Given an international organisation’s discretionary authority to take such a decision, it is subject to only limited review by the Tribunal and may be set aside only if it was taken without authority or in breach of a rule of form or of procedure, or if it was based on a mistake of law or of fact, or if some material fact was overlooked, or if a clearly wrong conclusion was drawn from the evidence, or if there was

abuse of authority (see, in particular, Judgment 4101, consideration 8, and the case law cited therein).

Firstly, it is plain from the second sentence of aforementioned Staff Rule 105.5 that, in order for a staff member's unauthorised absence owing to an extended illness to be treated as special leave without pay, that absence must have been recognised as caused by circumstances beyond the staff member's control. However, in the complainant's case it clearly was not, without the refusal to recognise those circumstances being unlawful, as follows from considerations 3 to 7, above.

Secondly, contrary to what the complainant submits, the Registrar of the Court finally agreed to put her on special leave without pay not just for one month but for the entire period from 7 December 2020 to 31 March 2021. That extension was expressly decided by the Registrar after the complainant had stated that this extra time would allow her to consult her specialists, to receive the requested laboratory test results, to print out her medical reports and to obtain prescriptions for an extended period of treatment. It should also be noted that the complainant had already been on special leave without pay at least from 2018 and until 15 April 2020, the date on which she was authorised to continue working from outside her duty station during the COVID-19 pandemic.

Thirdly, the Tribunal finds that the Registrar of the Court, who has discretionary authority in this area, duly provided reasons, in the impugned decision and the dismissal decision of 27 May 2021, for his refusal to grant the complainant special leave without pay beyond 31 March 2021.

It follows that the plea must also be dismissed.

10. In the complainant's view, the ICC has also breached Staff Rule 106.11, which provides as follows:

**“Rule 106.11: Appeals of medical decisions**

A staff member may appeal against a medi[c]al decision made by the Court's Medical Officer to a medical referee, who shall be nominated jointly by the Registrar or the Prosecutor, as appropriate, and the staff member. The decision of the medical referee shall be final.”

However, as the organisation points out, this rule does not apply unless a “medical decision” has been taken by the ICC Medical Officer. But that was plainly not the case here, since the Medical Officer had stated that it was impossible to issue a medical opinion given the inadequacy of the documents submitted by the complainant in view of those that had been specifically requested on various occasions.

This plea is also unfounded.

11. Lastly, the complainant submits that Staff Rule 109.2(m)(v) was wrongly applied to her instead of Staff Rule 109.2(g).

The provisions referred to state the following:

**“Rule 109.2: Termination**

[...]

Termination indemnity

(g) Except as provided in paragraphs (j), (k) and (l), a staff member whose appointment exceeds six months, and whose appointment is terminated, shall be paid a termination indemnity as follows:

[...]

(m) No termination indemnity is paid to:

[...]

(v) A staff member who abandons his or her post;

[...]”

Given that all the foregoing considerations show that the decision to terminate the complainant’s appointment for “abandonment of post” under Staff Rules 105.5 and 109.4 was not unlawful, the organisation was correct to apply aforementioned Staff Rule 109.2(m)(v).

This last plea must also be dismissed.

12. As a consequence, the impugned decision and the decision of 27 May 2021 to dismiss the complainant are not unlawful in any respect and there is therefore no reason to order their setting aside.

13. It follows from the foregoing that the complaint must be dismissed in its entirety.

DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 8 November 2023, Mr Patrick Frydman, President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Mirka Dreger, Registrar.

Delivered on 31 January 2024 by video recording posted on the Tribunal's Internet page.

*(Signed)*

PATRICK FRYDMAN    JACQUES JAUMOTTE    CLÉMENT GASCON

MIRKA DREGER