

The Administrative Tribunal,

Considering the complaint filed by Mrs B.L.M. F.-R. against the International Labour Organization (ILO) on 12 October 2006 and corrected on 15 December 2006, the Organization's reply of 14 March 2007, the complainant's rejoinder of 25 May and the ILO's surrejoinder of 23 July 2007;

Considering Articles II, paragraph 1, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

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

A. The complainant, a French national born in 1962, joined the International Labour Office, the ILO's secretariat, as an unpaid intern in April 2002 and was subsequently recruited by direct selection to carry out the functions of Deputy Ombudsperson at grade P.4 – in the Office of the Ombudsperson – as from 8 October 2002. This appointment, initially for a fixed term of one year, was renewed several times and ended on 30 September 2005. The complainant was then given a short-term contract for three months from October to December 2005.

On 28 February 2005 the complainant was informed by the Human Resources Development Department that her contract, which was due to expire on 31 March, could not be renewed owing to a lack of funding. Nevertheless on 31 March, following a reallocation of unused resources, she was offered a contract until 30 September, the date on which her line manager's mandate ended, in order to "ensur[e] a smooth transition to the new conflict prevention system". It was explained that for practical and administrative purposes only this contract would take the form of an extension of her contract, but that it carried no expectation of renewal. The complainant tried in vain to obtain another job in the Office. On 26 September 2005 the Human Resources Development Department made her an offer of a short-term contract, to which she replied that she was of the opinion that her fixed-term contract should be renewed in accordance with Circular No. 630, series 6, concerning the inappropriate use of employment contracts in the Office.

As the complainant considered that she had been treated in a manner incompatible with her terms and conditions of employment, she filed a grievance with the Human Resources Development Department on 30 September 2005. The Director of that Department replied to this grievance in a minute of 14 November 2005, in which she pointed out that the complainant had been recruited at the request of the former Ombudsperson, who had created the function of "Deputy Ombudsperson" which had never existed as a recognised post and which had been financed from the budget allocated to the Office of the Ombudsperson. The Director explained that the complainant's functions were dependent on the term of office of the former Ombudsperson and that once this came to an end the complainant's contract could not be renewed. Furthermore, the complainant had been warned about the budgetary constraints on the financing of her contract and she could not, under these circumstances, have had any legitimate expectations of a career within the Office. She was offered an indemnity equal to three months' salary.

On 15 December 2005 the complainant lodged a grievance with the Joint Advisory Appeals Board. In its report of 30 June 2006 the Board held that the decision not to renew her contract had been taken lawfully and it recommended that the Director-General dismiss the grievance as unfounded. By a letter of 13 July 2006 the complainant was informed of the Director-General's decision to follow the Board's recommendation. That is the impugned decision.

B. The complainant considers that the main reason put forward by the Office for not renewing her appointment, namely the lack of available funds, was specious. She endeavours to show, by means of examples, that there was no lack of funds and she claims that the decision stemmed more from "personal prejudice" prompted by the Organization's view that she was too close to the Ombudsperson, who had "particularly strained relations with the Administration". The complainant also stresses that the Office has produced no financial document to substantiate its argument. In addition she asserts that funds initially allocated to the Office of the Ombudsperson were

reallocated in order to finance another official's contract and she produces an exchange of e-mails to illustrate her point.

The complainant refutes the Organization's argument that she could not expect to make a career at the Office. She contends that Article 4.2(e) of the Staff Regulations provides for several types of recruitment which explicitly rule out any expectation of a career at the Office. *A contrario*, since she was not recruited under the terms of that article her job did, in her opinion, carry an expectation of a career at the Office. Furthermore, the complainant emphasises that the Joint Advisory Appeals Board found that the way in which she was recruited "could have had some bearing on [her] expectations regarding the renewal of her contract". Unlike the Board, however, the complainant does not feel that the offer to extend her appointment by means of a short-term contract shows that the Office had striven to find her a job matching her qualifications and she maintains that, apart from extension, the Office has not supplied evidence of all its efforts in that direction.

The complainant comments that since she received a short-term contract at the end of her appointment, the provisions of Rule 3.5 of the Rules governing conditions of service of short-term officials ought to have been complied with. According to this rule, "[w]henever the appointment of a short-term official is extended by a period of less than one year so that his total continuous contractual service amounts to one year or more, the terms and conditions of a fixed-term appointment [...] shall apply".

The complainant asks the Tribunal to set aside the Director-General's decision of 13 July 2006 and to order the Organization to reintegrate her or to award her an indemnity "based on the sum she would have received if her contract had been properly renewed". She claims 200,000 United States dollars in compensation for material and moral injury and 6,000 Swiss francs in costs.

C. In its reply the Organization argues that any claim for damages based on the alleged failure to apply Rule 3.5 is irreceivable, because it has never formed the subject of an internal appeal.

On the merits, it contends that the Director-General exercised his discretion correctly in deciding not to renew the complainant's appointment. It submits that there was nothing wrong in the Director-General predicating that decision on the lack of available funds, and that the fact that the Office was able to employ the complainant for almost three years was due to "special circumstances which permitted (and justified) the reallocation of funds from various sources to the successive renewals of her contract". It also asserts that it was up to the new Mediator to decide whether to re-employ the complainant, available funds permitting. According to the Organization, the complainant was fully informed "at all times" of the difficulty of funding her contracts, as is shown by the documents she produces in support of her submissions.

The Organization states that the complainant was fully aware of the special circumstances surrounding her appointment; she could not therefore claim to have a legitimate expectation that her appointment would be extended. The ILO recognises that her recruitment was not in conformity with regular procedures and constituted an "administrative error", insofar as she was recruited by direct selection which in accordance with Article 4.2(e) of the Staff Regulations is the normal method of filling vacancies "of a purely temporary nature, up to two years, of a specialist nature, not expected to lead to a career in the ILO". No reference had been made to that article. However, the Organization considers that the complainant's *a contrario* inference cannot be accepted, because Article 4.6(d) of the Staff Regulations, which provides that a fixed-term appointment "shall carry no expectation of renewal", does not distinguish between the various kinds of fixed-term appointment. Furthermore, the clauses of any fixed-term contract expressly state that it does not carry any guarantee of further employment. The ILO observes that even if the contract had been drawn up under the provisions governing appointments with career prospects, inasmuch as the refusal to renew the complainant's contract is lawful, so too is the hiatus in her career.

The Organization rebuts the allegation that the Director-General's decision was biased and points out that there is no evidence to support this. It submits that, on the contrary, it often showed "great flexibility" towards the complainant in order to meet her requests for a renewal of her contract. Furthermore, it offered her a three-month contract after 30 September 2005, thus demonstrating its trust in her.

It adds that since the impugned decision was not flawed in any way and the Office did not commit any error, the complainant cannot claim reintegration or the payment of an indemnity or damages, especially as the impugned decision does not infringe any contractual right and merely dashes her hope of further recruitment. In addition, it emphasises that the complainant has not specified the nature of her alleged injury and has not supplied any

evidence in this connection.

D. In her rejoinder the complainant contends that she raised the issue of the application of Rule 3.5 in her internal appeal, in that she underlined the unlawfulness of extending her appointment by means of a short-term contract. She also comments that since the concept of a post no longer exists at the ILO, the Ombudsperson “was perfectly entitled” to create the job of Deputy Ombudsperson using the resources allocated to her. She concludes that the non-renewal of her contract was decided mainly because of a reorganisation and that the defendant committed an error by not giving proper reasons for its decision. She claims that, under the Guidelines on Managing Change and Restructuring Processes, the Office should have “thoroughly explored” all the existing possibilities for a transfer or an appointment. She submits that the argument that she could not have any career expectations is unacceptable, because in good faith she went through a normal competition – although the competition only consisted of a single interview with the Ombudsperson – for a post financed from the regular budget and completed a period of probation in accordance with the Staff Regulations.

E. The Organization maintains its position in its surrejoinder. It points out that the complainant has formulated no specific request in connection with the non-application of Rule 3.5 and has not explained in what way it failed to apply the rule in question. It submits that its decision to grant a short-term contract for the period from October to December 2005 complies with the Staff Regulations, because that contract did not extend the complainant’s assignment as “Deputy to the Ombudsperson” but rather assigned her “different, one-off and more limited duties”. The Organization also points out that the complainant was not recruited through a competition, as she submits in her rejoinder, but by direct selection. While it does not wish to question the complainant’s good faith, it reiterates that she could not legitimately expect her employment to continue after September 2005. The ILO produces financial documents to demonstrate that she is mistaken in her allegation that funds used for her job were withdrawn from the Ombudsperson’s budget to finance the employment of another official. With regard to the efforts made to find the complainant another job, the Organization asserts that there has been no reorganisation and notes that, apart from one job for which the complainant did not apply, there were no vacant posts suitable for her during the period in question.

CONSIDERATIONS

1. The complainant, a French national born in 1962, joined the International Labour Office in April 2002 as an unpaid intern. On 8 October 2002 the Organization appointed her by direct selection as Deputy Ombudsperson. The complainant’s job was financed from the budget allocated to the Office of the Ombudsperson. Her initial one-year contract was renewed several times for periods of three or six months.

On 28 February 2005 the Organization informed the complainant that owing to a lack of funding it was unable to renew her contract ending on 31 March. Nevertheless, a reallocation of resources permitted a final extension of her contract until 30 September 2005, the date on which the term of office of the Ombudsperson was due to end.

2. The complainant tried in vain to obtain another job in the Office. The Organization did, however, offer her a three-month short-term contract in order to ensure a smooth transition between the end of the Ombudsperson’s term of office and the selection of the new Mediator. The complainant accepted this contract but challenged the decision not to extend her fixed-term appointment.

On 14 November 2005, in response to the grievance filed by the complainant on 30 September 2005, the Director of the Human Resources Development Department wrote to her to explain that her fixed-term contract could not be extended, particularly because of the fact that the duties it encompassed were tied to the functions of the former Ombudsperson, that no post of Deputy Ombudsperson was provided for in the regular budget and that her appointment carried no expectation of a career at the Office.

The complainant then filed a grievance with the Joint Advisory Appeals Board, which concluded in a report dated 30 June 2006 that the disputed decision had been taken lawfully and that sufficient reasons had been given for it. On the basis of that report, the Director-General rejected the grievance by a decision notified in writing on 13 July 2006, which forms the subject of the complaint.

3. The Organization submits that the complaint is irreceivable in part, insofar as the complainant relies on a breach of Rule 3.5 of the Rules governing conditions of service of short-term officials, quoted under B, above. It

contends that since this plea was entered for the first time in the complaint, internal means of redress have not been exhausted, contrary to the requirements of Article VII, paragraph 1, of the Statute of the Tribunal.

In point of fact the complainant did not allege a breach of the rights established by Rule 3.5 either in the grievance that she submitted on 30 September 2005 to the Human Resources Development Department or during the subsequent proceedings before the Joint Advisory Appeals Board. At that stage she complained of the unlawfulness of extending her appointment by a short-term contract, but did not infer that that had resulted in her being deprived of entitlement to further benefits. She merely endeavoured to show that her fixed-term contract should have been renewed, which moreover remains the true purpose of her complaint.

There is therefore no need to entertain the plea regarding a breach of the above-mentioned Rule 3.5.

4. The decision to renew a fixed-term contract lies at the discretion of the appointing authority. The Tribunal may therefore set it aside only if it is taken without authority or in breach of a rule of form or of procedure, or if it is based on a mistake of fact or of law, or if some essential fact was overlooked, or if clearly mistaken conclusions were drawn from the facts, or if there was an abuse of authority (see Judgments 1262, under 4, and 1418, under 6).

5. The main reasons given by the Organization for the non-renewal of the complainant's contract were the lack of available funds for a post for which no provision was made in the budget and the fact that the complainant had been taken on as the personal assistant of the former Ombudsperson, whose term of office was ending.

The complainant submits that these reasons are mere pretexts. In her opinion, the decision not to renew her contract was in fact prompted by a reorganisation of services and was influenced by her good professional relations with the former Ombudsperson who was engaged in a dispute with the Organization.

This criticism is groundless.

6. The evidence on file shows that at the end of her unpaid internship, the complainant had been appointed in unusual circumstances. Her task was to assist the former Ombudsperson temporarily. The position of Deputy Ombudsperson had not been planned when the Office of the Ombudsperson had been set up, nor was it created definitively by her taking up her duties. The complainant's salary was paid from the limited budget allocated specifically to the Office of the Ombudsperson. That is why her initial contract was granted for a fixed term of one year and why it was renewed only for successive short periods. These unusual circumstances alone explain the fact that the complainant could be recruited by direct selection and without reference to Article 4.2(e) of the Staff Regulations – the absence of such reference being unlawful, as was noted in the report of the Joint Advisory Appeals Board on which the impugned decision rests.

7. The complainant does not refer to any rule which would have required the Organization, in this unique situation, to renew her contract at the end of the period for which it had been concluded, which coincided with the end of the Ombudsperson's mandate to whom her job was linked.

Moreover, and contrary to her submissions, her job did not carry any legitimate expectation of a career within the Organization. It must be recalled that career prospects within an international organisation are not something that exists independently of all the rights and duties of its staff, that if the non-renewal of a contract is lawful, so is the career hiatus and that when a contract is concluded for a fixed term, the staff member's career ends lawfully on expiry of this period (see Judgment 1610, under 24).

Furthermore the complainant does not claim that the Organization gave her precise assurances – about the extension of her contract and hence about her career prospects – which, in some circumstances, the Administration cannot renege without breaching the rules of good faith.

8. In her rejoinder the complainant does not put forward any argument which would cast doubt upon the detailed explanations contained in the Organization's reply. These explanations convince the Tribunal that the funds used to pay the complainant could not be allocated indefinitely to that purpose and that, when the new Mediator arrived, they "had to be put to normal use".

9. While it is true that the budget of the Office of the Ombudsperson was discussed, particularly during the second half of 2004, the parties' respective submissions do not convince the Tribunal that the purpose of these discussions was clearly to maintain the functions of the complainant.

10. It follows from the foregoing considerations that the complaint must be dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 15 November 2007, Mr Seydou Ba, President of the Tribunal, Mr Claude Rouiller, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 6 February 2008.

Seydou Ba

Claude Rouiller

Patrick Frydman

Catherine Comtet