

H.
v.
UPU

122nd Session

Judgment No. 3672

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr F. H. against the Universal Postal Union (UPU) on 26 June 2013, the UPU's reply of 7 October 2013, the complainant's rejoinder of 19 January 2014 and the UPU's surrejoinder of 26 February 2014;

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 not to confirm his appointment at the end of his extended trial period.

The complainant was appointed as from 16 January 2012 under a three-year fixed-term contract, with a trial period of one year. He was assigned to a non-core post.

On 1 November 2012 the complainant had a mid-term review of objectives meeting with his supervisors. In December 2012 he attended two meetings during which the need to improve the quality of his work and his behaviour were discussed. In a letter of 13 December 2012 the Director-General informed the complainant that he had decided to extend his trial period by three months, i.e. to 15 April 2013, since "[t]he expectations

and standards set at the beginning of [his] employment ha[d] not been met in some areas, and additional development [wa]s required, as discussed with [his] managers”. On 14 January 2013 the complainant sent an email to the Human Resources Directorate requesting a review of the decision to extend his trial period. On 22 January his second-level supervisor sent an email to the same Directorate reporting specific issues with the complainant’s performance.

At a meeting on 12 February 2013 the complainant was handed a letter dated 11 February 2013 and signed by the Director-General informing him that his appointment would not be confirmed at the end of the extended trial period as his performance did not meet the required standards of the post he occupied. His contract would therefore expire on 15 April 2013. At the same meeting he was also informed orally that he would be released from his duties as from noon on 15 February to enable his job search. This was later confirmed by email as well as the fact that he should by then return all material belonging to the organisation including his badge, keys and IT equipment. On 21 March the complainant appealed to the Office of the Ombudsman and, on 8 April, he sent an email to the Director-General requesting a meeting with him. This request remained unanswered.

On 14 May 2013 the complainant sent a complaint to the Tribunal asking for an “extension of the receivability period”. He explained that the UPU had provided the “requested information and documentation” to the Ombudsman on 24 April 2013 only, that the Office of the Ombudsman was preparing its report and that he wanted to append it to his complaint. The Registrar of the Tribunal informed him that, due to the requirements of Article VII, paragraph 1, of the Tribunal’s Statute, he could not file a complaint until he had exhausted the internal means of redress and obtained a final decision, and his submissions were returned.

In its report of 22 May 2013, sent to the parties on 13 June 2013, the Office of the Ombudsman made some general recommendations to the UPU concerning inter alia the need to improve continuous evaluation of staff during trial periods and better use of management tools. It also recommended that the UPU send the complainant a report on his shortcomings between January and November 2012.

The complainant filed the present complaint on 26 June 2013, challenging the implied rejection of the request sent to the Director-General on 8 April and asking the Tribunal to quash the decision dated 11 February 2013, to confirm his contract until its end on 15 January 2015, to reinstate him or to pay him financial compensation for the full period of his contract and to award him moral damages.

In its reply, the UPU argues that the complaint is irreceivable on the grounds that the complainant does not impugn a final decision and has not exhausted the internal means of redress. Subsidiarily, it asks the Tribunal to dismiss the complaint in its entirety. It makes a counterclaim for the costs and expenses incurred.

In his rejoinder, the complainant reiterates his claims and asks the Tribunal to order the UPU to implement all of the recommendations contained in the report of the Office of the Ombudsman.

In its surrejoinder, the UPU maintains its position.

CONSIDERATIONS

1. The complainant started working with the UPU on a non-core post on 16 January 2012 under a three-year fixed-term contract, of which the first year was a trial period. By the Director-General's decision, communicated to the complainant in a letter dated 13 December 2012 (handed to him that same day), the complainant's trial period was extended by three months in accordance with the provisions of Regulation 4.14(3) of the Staff Regulations of the International Bureau of the UPU. The complainant was notified on 12 February 2013 of the Director-General's decision (dated 11 February 2013) not to confirm his appointment, and of the consequent expiration of his contractual relationship on 15 April 2013.

2. In an email to the Director-General dated 8 April 2013, referencing the Director-General's "non confirmation of appointment" decision of 11 February 2013, the complainant asked whether the email he had sent to the Human Resources Directorate on 14 January 2013, requesting a review of the 13 December 2012 decision to extend his trial period, had been addressed to the Director-General as he had heard no

response from the Human Resources Directorate. He also requested a meeting with the Director-General to discuss his situation. The complainant received no reply from the Director-General and, in the meantime, he had requested assistance from the Ombudsman by letter of 21 March 2013. The complainant filed the present complaint on 26 June 2013 challenging the Director-General's implied rejection of his 8 April request.

3. The complaint is irreceivable in accordance with Article VII, paragraph 1, of the Statute of the Tribunal as the impugned implied decision was not a final decision. As the complaint is irreceivable, the Tribunal shall not address the merits.

The relevant provisions read as follows:

- Article VII, paragraph 1, of the Statute of the Tribunal:
“A complaint shall not be receivable unless the decision impugned is a final decision and the person concerned has exhausted such other means of resisting it as are open to him under the applicable Staff Regulations.”
- Rule 1.2 of the Rules governing non-core staff of the International Bureau of the UPU:
“Where specific provisions are not contained in the present Rules, the Staff Regulations and Rules shall apply by analogy to non-core staff.”
- Rule 111.3(1) and (2) of the Staff Rules of the International Bureau of the UPU:
“Joint Appeals Committee procedure
1. Before appealing against an administrative decision a staff member shall, as a first step, address a letter to the Director General requesting that the administrative decision be reviewed. **Such letter must be sent within one month from the time the staff member received notification of the decision in writing.**
2. If the staff member wishes to make an appeal against the decision notified by the Director General in his reply to the request referred to in [paragraph] 1, he shall submit an application in writing to the Chairman of the Joint Appeals Committee within one month of the date of receipt of the Director General's decision. **If no reply has been received from the Director General within one month of the date the letter was sent to him, the staff member shall, within the following month, submit his application in writing to the Chairman of the Joint Appeals Committee.**”(Emphasis added.)

4. The wording of Rule 1.2 of the Rules governing non-core staff (as quoted above) clearly indicates that any lacuna in the said Rules is primarily filled by the Staff Regulations and Rules. According to the provisions of Staff Rule 111.3(1) quoted above, the email of 8 April 2013 requesting a review of the decision not to confirm the complainant's appointment was out of time as the complainant was notified of that decision on 12 February 2013. Moreover, the complainant never submitted an application in writing to the Chairman of the Joint Appeals Committee in accordance with Staff Rule 111.3(2). It can be added that the 14 January email, sent to the Human Resources Directorate, contesting the extension of the complainant's trial period, was also beyond the one-month time limit and that, by the time the complainant contacted the Ombudsman (on 21 March 2013), the 11 February decision not to confirm his appointment was already immune from challenge as the complainant had failed to request review of that decision within the one-month time limit. It should be noted that in any case, requesting assistance from the Ombudsman has no legal effect on the internal appeals procedure as, according to Administrative Instruction (DRH) No. 37, the Ombudsman, "as an informal resource, does not participate in any formal adjudicative or administrative procedure relating to concerns brought to his or her attention".

5. The arguments raised by the complainant are inconsistent and unfounded. The complainant claims that his complaint should be receivable in accordance with Article VII of the Statute of the Tribunal. Article VII presupposes that the complainant has gone through the internal appeal procedure and has not received a final decision within a reasonable time despite doing everything that can be expected to get the matter concluded, or that the complainant can show that the internal appeal proceedings are unlikely to end within a reasonable time. The complainant also relies on the claim that he was both not informed and misinformed of the procedures relating to internal appeals. At the start of his service with the UPU, the complainant was given a copy of the binder of all the Staff Regulations and Rules including the rules relating to internal appeals before the Joint Appeals Committee. He has not shown any evidence to substantiate any claims that he was misinformed regarding the procedure. The complainant claims that staff members were instructed

not to write to the Director-General, but the instruction clearly related to non-urgent matters and in fact included an email address to be used “in justified cases”.

6. The UPU has made a counterclaim for costs. Without ruling out, as a matter of principle, the possibility of making such an order against a complainant (see, for example, Judgments 1884, 1962, 2211 and 3043), the Tribunal will avail itself of that possibility only in exceptional situations. Indeed, it is essential that the Tribunal should be open and accessible to international civil servants without the dissuasive and chilling effect of possible adverse awards of that kind. In the present case, the complaint cannot be regarded as manifestly vexatious, even though it was irreceivable because internal remedies had not been exhausted (see Judgment 3506, under 4). The UPU’s counterclaim will therefore be dismissed.

DECISION

For the above reasons,

The complaint is dismissed, as is the UPU’s counterclaim.

In witness of this judgment, adopted on 3 May 2016, Mr Giuseppe Barbagallo, Vice-President of the Tribunal, Ms Dolores M. Hansen, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 6 July 2016.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

HUGH A. RAWLINS

DRAŽEN PETROVIĆ