

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

E. D. S.

v.

Global Fund to Fight AIDS, Tuberculosis and Malaria

123rd Session

Judgment No. 3749

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms A. E. D. S. against the Global Fund to Fight AIDS, Tuberculosis and Malaria (hereinafter “the Global Fund”) on 25 August 2014 and corrected on 17 September 2014, the Global Fund’s reply of 15 January 2015, the complainant’s rejoinder of 30 March, the Global Fund’s surrejoinder of 8 July, the complainant’s further submissions of 18 September 2015 and the Global Fund’s final observations thereon of 11 February 2016;

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 seeks reimbursement of additional income tax paid by her husband.

On 1 January 2009 the Global Fund Human Resources Policy Framework entered into force, Part 4 of which covers tax equalisation policy. The Policy Framework provides that the Global Fund will reimburse eligible employees for any national income tax paid on their Global Fund employment income.

The complainant is a Portuguese national who entered the Global Fund’s service in January 2009. Complaining that her Global Fund

employment income was added to the income of her husband, who was not an international civil servant, for the purpose of assessing the rate of income tax applied by the Genevan tax authorities to the couple's combined income for 2011, she took steps to have the resulting additional income tax paid by the couple reimbursed. In an e-mail of 8 February 2013, an official from the Human Resources Department informed her that the tax equalisation policy did not apply to cases such as hers. In an e-mail of 26 August 2013, he told the complainant that at its meeting on 23 July, the Management Executive Committee had determined that the Global Fund could not reimburse employees for additional income tax paid in circumstances where their salary had been taken into account when assessing the tax rate applicable to income from sources other than the Global Fund.

On 13 January 2014 the complainant submitted a Request for Resolution to the Head of the Human Resources Department. On 14 March the latter informed the complainant that in her view the complainant's request was irreceivable because she had not filed it within the 90-day time limit beginning from the date on which she had been notified of the Management Executive Committee's "decision", that is, 26 August 2013. The complainant then referred the matter to the Appeal Board. By an e-mail of 27 May 2014, she was advised that the Chair of the Appeal Board had found that since her request of 13 January 2014 was irreceivable, so was her appeal. That is the impugned decision.

The complainant asks the Tribunal to order the Global Fund to pay her a sum – with interest of 5 per cent per annum – equivalent to the additional income tax paid since 2011 and to award her costs.

The Global Fund submits that the complaint is irreceivable and unfounded.

In her rejoinder the complainant maintains her claims.

In its surrejoinder the Global Fund explains that in 2015 it realised there had been a mistake in the application of the tax equalisation policy and, for the sake of fairness and of its own accord, it paid the complainant a sum of 14,438 Swiss francs, which it states was equivalent to the additional income tax paid by the couple for the years 2009 to 2014.

In her further submissions, the complainant asserts that the Global Fund did not reimburse the additional tax paid for 2014.

In its final observations, the Global Fund clarifies that the sum paid to the complainant covered the years 2011 to 2013 in particular, and that in January 2016 it paid her an additional sum to cover the 2014 tax year. In total, the complainant received a sum of 17,441 francs, “including [...] the tax impact of [that sum] in 2015 and 2016”.

CONSIDERATIONS

1. The complaint raises the question of whether and to what extent the Global Fund must reimburse or compensate its employees for the additional tax levied on a couple’s combined income by the tax authorities of the Republic and Canton of Geneva. This tax results from the fact that when assessing the rate applicable to a couple’s income, which progresses by tax bracket, the Genevan tax authorities take into account the tax-exempt income of a partner who is an international civil servant. The Tribunal ruled on a similar case in Judgment 3020 involving the World Trade Organization (WTO). After considering whether the WTO had correctly applied a provision of its Staff Regulations concerning tax, the Tribunal ordered the defendant, in accordance with the principle of equality between officials, to reimburse the official in question for the additional amounts paid to the Genevan tax authorities for 2007 and 2008 resulting from the fact that her income as an international civil servant had been taken into consideration when assessing the rate of income tax to be paid by her partner.

Before considering whether such a ruling is appropriate here, the complaint’s receivability, disputed by the Global Fund, must be examined.

2. Article VII, paragraph 1, of the Statute of the Tribunal provides that a complaint is not receivable unless the decision impugned is a final decision and the person concerned has exhausted such other means of redress as are open to her or him under the applicable Staff Regulations. In accordance with the Tribunal’s case law, to satisfy this requirement the complainant must not only follow the prescribed internal procedure

for appeal but must follow it properly and in particular observe any time limit that may be set for the purpose of that procedure (see, for example, Judgment 3296, under 10).

3. The Grievance and Dispute Resolution Procedure is set out in Annex X to the Global Fund Employee Handbook.

According to this annex, employees must first take up any grievances with their managers with a view to resolving the matter informally within the department. Where the matter cannot be resolved in this manner, a Human Resources Business Partner may intervene. Under Annex X, the latter is responsible *inter alia* for ensuring consistency in the application of relevant policies and regulations. If this informal resolution procedure fails, the employee may, under point 2 of the Annex, submit a Request for Resolution to the Human Resources Department in order to obtain a formal decision. Point 3 of the Annex reads as follows:

“A Request for Resolution is only receivable after the employee has demonstrably taken reasonable steps to resolve the matter [informally].

A Request for Resolution must be lodged by no later than 90 days after:

- the employee was notified of the decision giving rise to the Request for Resolution;

[...].”

Point 4 of Annex X to the Employee Handbook provides that if the matter is still not resolved at the end of this procedure, the employee may submit an appeal to the Appeal Board. The Board investigates the facts then drafts a report on the basis of which the Executive Director issues her or his final decision.

4. In this case, an official from the Human Resources Department notified the complainant in an e-mail of 8 February 2013 that her claim for reimbursement of additional tax paid to the Genevan tax authorities could not be granted under the tax equalisation policy that was then in force. This policy was set forth in Part 4 of the Human Resources Policy Framework which, according to the Global Fund, was different from the WTO’s internal regulations that were examined in the aforementioned Judgment 3020.

After a meeting of the Management Executive Committee (the highest decision-making authority of the Global Fund's secretariat) on 23 July 2013, this official confirmed his negative reply in an e-mail of 26 August 2013, stating that the Committee had refused to amend the rules under which her request had been denied.

5. Although the complainant was notified of the refusals of 8 February and 26 August 2013 only by e-mail, these refusals plainly constituted decisions that put an end to the informal resolution process and that could form the basis of a Request for Resolution under point 2 of Annex X. Indeed, according to the Tribunal's case law, an administrative decision may take any form if its existence may be inferred from a factual context demonstrating that it was indeed taken by an officer of the organisation, as is the case here (see, in particular Judgments 2573, under 8, 2629, under 6, and 3141, under 21).

However, the complainant did not challenge these decisions by means of a Request for Resolution until 13 January 2014, i.e. after the 90-day time limit stipulated by the provisions cited above had expired.

The Request for Resolution was hence rightly dismissed on the grounds that it was time-barred.

The Tribunal further observes that in the decision of 14 March 2014, the Head of the Human Resources Department explained to the complainant why her claim for reimbursement of additional tax levied by the Genevan tax authorities could not be granted.

6. It follows that the complaint must be dismissed, without there being any need to ascertain whether the subsequent payments that the Global Fund claims to have effected of its own accord have rendered it moot.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 9 November 2016, Mr Claude Rouiller, President of the Tribunal, Mr Patrick Frydman, Judge, and Ms Fatoumata Diakité, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 8 February 2017.

(Signed)

CLAUDE ROUILLER PATRICK FRYDMAN FATOUMATA DIAKITÉ

DRAŽEN PETROVIĆ