Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

B.

v.

ILO

123rd Session **Judgment No. 3772**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr N. B. against the International Labour Organization (ILO) on 29 May 2014 and corrected on 18 June, the ILO's reply of 24 September 2014, the complainant's rejoinder of 27 January 2015 and the ILO's surrejoinder of 21 April 2015;

Considering the documents produced by the ILO at the Tribunal's request;

Considering Article II of the Statute of the Tribunal;

Having examined the written submissions;

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

The complainant challenges the decision not to award him a contract without limit of time.

The complainant entered the service of the ILO's International Training Centre in 1992. At the material time, he had been employed as an executive driver at grade G.4 since 2002.

As he was not listed among the officials to whom the Director of the Centre had decided to grant a contract without limit of time in the 2011 titularisation exercise, the complainant filed an internal complaint under Article 12.2 of the Centre's Staff Regulations on 15 January 2014. He asserted that he fulfilled all the criteria of good conduct, satisfactory

performance and capacity set out in paragraph 4 of Circular No. 91/44 on contracts without limit of time. He requested such a contract with retroactive effect from the date on which he had become eligible and compensation for the injury suffered. On 6 March 2014 he was informed that the Director of the Centre had decided to dismiss his internal complaint on the ground that the competent sub-committee of the Joint Negotiating Committee that had submitted a recommendation to her had "performed its task with diligence and care". This is the impugned decision.

The complainant asks the Tribunal to set aside that decision and to order the ILO to award him a contract without limit of time with retroactive effect from the date on which he became eligible for such a contract, to redress the injury that he considers he has suffered and to award him the sum of 2,000 Swiss francs in costs.

The ILO submits that the complaint should be dismissed.

CONSIDERATIONS

1. The complainant impugns the decision taken on 6 March 2014 to dismiss the internal complaint that he filed when he was not awarded a contract without limit of time in the 2011 titularisation exercise.

2. The complainant has applied for oral proceedings, but in view of the explicit briefs and documents submitted by the parties, the Tribunal considers that it has received sufficient information and such proceedings are hence unnecessary.

3. The complainant enters several pleas. In the first place, he submits that he should have received a contract without limit of time because he fulfilled all the criteria set out in paragraph 4 of Circular No. 91/44 on such contracts. He further considers that the titularisation process – in which the Joint Negotiating Committee's Sub-Committee on Human Resources Issues (hereinafter "the Sub-Committee") was involved – does not include any safeguards of transparency and objectivity. In particular he complains that he was not granted a hearing. He further takes issue with the ILO for not allowing his internal complaint to be considered by

an "internal body". Lastly, he criticises the fact that the Director of the Centre dismissed the internal complaint without providing "further explanation" of the reasons for her decision.

4. The Organization contends that the decision not to grant the complainant a contract without limit of time was taken at the end of a transparent process that complied with the applicable rules. It states that, notwithstanding that Article 12.2 of the Centre's Staff Regulations did not require the Director of the Centre to refer the complainant's internal complaint to an internal appeals body, both the form and substance of the complaint were examined in compliance with the applicable rules. Lastly, the ILO emphasises that the complainant never enquired as to why his internal complaint had been dismissed and submits that, in view of the reasons provided in its reply before the Tribunal, it has not violated the complainant's right to know the reasons for the decision.

5. The Tribunal recognises the wide discretion enjoyed by an organisation in deciding whether or not to convert a fixed-term appointment into an indefinite one (see Judgment 1349, under 11). Such a decision is subject to limited review and will be set 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 2694, under 4, and 3005, under 10). In particular, the Tribunal will not substitute its own opinion for that of the organisation assessing the merits of the various candidates for titularisation.

6. As regards the complainant's plea that he fulfilled all the criteria to be granted a contract without limit of time, the Tribunal considers that the Sub-Committee, whose report it has studied *in camera*, duly considered and appraised the criteria of good conduct, satisfactory performance and capacity in the officials eligible for titularisation in the 2011 exercise when recommending whether or not to offer them contracts without limit of time.

7. The Tribunal further observes that the process leading to the decision not to grant the complainant a contract without limit of time was lawful, particularly since the Director of the Centre reached her decision after considering the report of the Sub-Committee, a joint body composed of representatives of the Administration and of the Staff Union, in compliance with paragraph 5 of Circular No. 91/44. The Tribunal notes that Circular No. 91/44 does not make any provision for officials to be heard by the Sub-Committee. The complainant's plea in this regard must therefore be dismissed.

8. Furthermore, the ILO explains that in view of the reservations expressed by the Sub-Committee as to who should be the eighth official recommended for titularisation, the Director of the Centre decided to award only seven contracts without limit of time in the 2011 titularisation exercise. In his rejoinder, the complainant asks why the Director did not select the eighth official herself.

Paragraph 3 of Circular No. 91/44 provides that the maximum number of contracts without limit of time which may be awarded is to be determined by the Director of the Centre every two years. Under paragraph 5 of the Circular, the Sub-Committee's role is to draw up a list of officials eligible for titularisation. Neither of these provisions obliged the Director to award eight contracts without limit of time in the 2011 titularisation exercise. It thus lay within her discretion to decide – as she did in this case – to award only seven.

The Tribunal finds that the complainant has failed to establish that the Director's refusal to grant him a contract without limit of time was tainted with reviewable error.

9. The complainant also objects to the fact that his internal complaint was not examined by an "internal body".

Article 12.2 of the Centre's Staff Regulations, which governs the applicable internal appeals procedure, reads as follows:

> "Any complaint by an official that he has been treated inconsistently with the provisions of these Regulations or with the terms of the contract of employment, or that he has been subjected to unjustifiable or unfair treatment by a superior official shall, except as may be otherwise provided

> in these Regulations, be addressed to the Director through the official's responsible chief and through the Personnel Office within six months of the treatment complained of. The Director may refer any such complaint to the Staff Relations Committee for observations and report."

As the Tribunal found in Judgment 3703, under 2, the prior consultation envisaged in the last sentence of this provision is optional. The Director was hence under no obligation to refer the complainant's internal complaint to the competent internal appeals body. This plea must therefore be dismissed.

10. Lastly, the complainant criticises the Director for not explaining her reasons for dismissing his internal complaint in her decision of 6 March 2014.

According to the Tribunal's case law, the reasons for a decision must be sufficiently explicit to enable the staff member concerned to take an informed decision accordingly; they must also enable the competent review bodies to determine whether the decision is lawful and the Tribunal to exercise its power of review. How extensive those reasons need be will depend on the circumstances (see Judgments 1817, under 6, and 3617, under 5).

11. The Tribunal notes that the reason given to the complainant in the decision of 6 March 2014 for the dismissal of his internal complaint was that the Sub-Committee had "performed its task with diligence and care". However, this explanation was not sufficiently explicit, since it did not contain precise details that would allow the complainant, or indeed a judge, to understand the real grounds on which the decision was based.

In the present case, it was not until the complainant read the ILO's reply to his complaint before the Tribunal that he became fully aware of the reasons for which he had not been granted a contract without limit of time. That decision itself therefore furnished insufficient reasons. However, the Tribunal's case law has it that the reasons for a decision need not necessarily appear in the decision itself but can be contained in other documents communicated to the official concerned; they may even be set forth in briefs or submissions produced for the first time before the Tribunal, provided that the complainant's right of appeal is fully respected

(see, for example, Judgments 1289, under 9, 1817, under 6, 2112, under 5, or 2927, under 7).

In this case, the complainant's rejoinder provided an opportunity for him to express his opinion regarding the reasons for the impugned decision stated in the ILO's reply. As the lack of reasoning noted above was hence remedied during the proceedings before the Tribunal, this plea will be dismissed.

12. It ensues 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 3 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