

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

**M.**  
**v.**  
**IAEA**

**124th Session**

**Judgment No. 3830**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs E. M. against the International Atomic Energy Agency (IAEA) on 17 October 2014 and corrected on 5 December 2014, the IAEA's reply of 22 April 2015, the complainant's rejoinder of 2 July and the IAEA's surrejoinder of 19 October 2015;

Considering Article II, paragraph 5, 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 reassign her to her previous grade in the General Service category upon the expiry of her fixed-term appointment to a position in the Professional category.

The complainant joined the IAEA in February 1985 at grade G2 in the General Service category. In the years that followed she held various positions in the General Service category and advanced to grade G6. In January 2007 she was appointed to a Professional category position as an administrative officer at grade P3 on a three-year fixed-term contract expiring on 2 January 2010. According to Staff Rule 3.03.1(C)(2), the normal tour of service for Professional category staff is five years. The complainant's fixed-term contract was extended twice. The first extension was for a two-year period ending on 2 January 2012. By a letter

of 2 December 2010, which she signed on 4 March 2011, she was offered a second extension, again for a period of two years. At that juncture, her attention was drawn to Staff Rule 3.03.1(C)(3), according to which exceptional extensions of appointments beyond the normal five-year tour of service may be offered for up to two years, normally without any further possibility of extension. She was informed that if the Director General decided to make an exception and offer her a further extension, she would be informed at least one year prior to the expiry of her contract. At the time of that second extension she held grade P4, as her post had been reclassified.

On 6 June 2013 the complainant was informed that her fixed-term appointment would expire on 2 January 2014, but that she was entitled to return to a position in the General Service category as she had held a five-year contract in the General Service category immediately prior to being appointed to the Professional category. She was asked to inform the Director of the Division of Human Resources of her intentions by 31 August.

At the beginning of August 2013 she requested the Director General to review that decision and to grant her a long-term fixed-term contract at the P4 level until she reached the statutory retirement age. She contended that she was being discriminated against, as other staff members in the same situation as her had been granted an extension of their contract at the Professional level, or at least had been allowed to retain their grade until retirement age. In her view, the contested decision amounted to a “non-disciplinary demotion” and was contrary to the IAEA’s promotion policy and its practice with respect to career and staff development. She added that, contrary to the terms of her last letter of extension, she had not been given one year’s notice of the expiry of her appointment. She nevertheless accepted the offer to return to a post at grade G6.

On 28 August 2013 the Director General notified the complainant that he had found no errors of law, fact or procedure that would necessitate a reconsideration of the contested decision and therefore rejected her request. On 27 September 2013 she filed an appeal with the Joint Appeals Board (JAB) against that decision.

After having heard the parties, the JAB issued its report on 25 June 2014 recommending that the complainant be granted a long-term contract in the Professional category, that she be retroactively “reintroduced at her P4 level grade”, and that an adequate P4 position be offered to her until she reached retirement age. The JAB noted that this was the only case in the IAEA where a staff member in the Professional category, with continuous excellent performance, had been obliged to return to the G6 level. It found that the IAEA had not treated her fairly and had not abided by its duty of care, in particular as no actions had been taken to provide her with “job security”, or to assist her in finding a suitable position. Lastly, it held that the fact that she had not been given one year’s notice of the decision not to extend her appointment was not an error, as this was required only in exceptional cases.

The Director General notified the complainant on 25 July 2014 that he had decided to reject her appeal for the reasons already provided in his letter of 28 August 2013 and in the letter of 6 June 2013. That is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision and to draw all legal consequences. She also asks the Tribunal to order the IAEA to grant her a long-term fixed-term contract at grade P4 as from 3 January 2014, and to extend such contract until she reaches retirement age. She further seeks to be granted an amount equivalent to the remuneration she would have been entitled to as a P4 staff member, less the remuneration she has received since 3 January 2014. Lastly, she claims moral damages and costs.

The IAEA asks the Tribunal to dismiss the complaint in its entirety.

## CONSIDERATIONS

1. The complainant impugns the decision of the Director General, dated 25 July 2014, maintaining his decision of 28 August 2013 not to exceptionally extend her appointment at grade P4 beyond the seven-year maximum tenure when her appointment at that grade expired on 2 January 2014. She was informed that after this latter date she would have to return to a post in the General Service category, which she had held

immediately prior to her appointment to the Professional category post. She was offered a five-year contract extension at grade G6, step 12, effective 3 January 2014, pending the identification of a suitable position in the General Service category for redeployment within the Secretariat.

2. The applicable provisions for exceptional extension in the Professional category are contained in Staff Regulation 3.03. Under Staff Regulation 3.03(d), “[a] fixed-term appointment may be extended or renewed at the discretion of the Director General [...]. At no time, however, shall such an appointment be deemed to carry any expectation of or right to extension, renewal or conversion to another type of appointment.” Staff Rule 3.03.1(C)(1) provides that a fixed-term appointment may be granted for periods each not exceeding five years to a person recruited for service of a prescribed duration. Staff Rule 3.03.1(C)(2) states that for Professional and higher categories staff, “[a] total of five years shall constitute the normal tour of service with the Agency”. Under Staff Rule 3.03.1(C)(3), extension of appointment for a person in these categories post beyond five years “may be granted exceptionally for programmatic or other compelling reasons in the interest of the Agency, for up to two years, normally without any possibility of extension”. The letter of 2 December 2010, by which the complainant’s employment was extended in the Professional category post for a further two years to 2 January 2014 pursuant to this provision, drew the complainant’s attention to Staff Regulation 3.03(d) and Staff Rule 3.03.1(C)(3) under which the Director General had exercised his discretion to extend her appointment to the total of seven years “normally without any further possibility of extension”. It also stated that “[sh]ould the Director General decide to make an exception and offer [her] a further extension, [she would] be informed at least one year prior to the date of expiry specified in this Letter of Extension”.

3. Staff Rule 3.03.1(C)(4) states as follows:

“Notwithstanding subparagraph (3) above, extensions of Fixed-term appointments in the Professional and higher categories beyond the normal five year tour of service referred to in subparagraph (2) above may be granted for a period of five years (‘Long-term fixed term appointments’) if there is a need for continuity in essential functions or for other compelling

reasons, in the interest of the Agency. Such 'Long-term fixed term appointments' shall be subject to further extension until retirement age. Submission of proposals for extensions under this subparagraph, should address the following technical considerations:

- (a) The need to provide continuity in the specific function assigned to the staff member's post;
- (b) The conduct and performance of the staff member, which must be of the highest degree of excellence; and
- (c) The usefulness of the staff member's technical qualifications and expertise for the total duration of his/her expected service with the Agency."

According to Staff Rule 3.03.1(C)(6), extensions under Staff Rule 3.03.1(C)(3) and Staff Rule 3.03.1(C)(4) "are at the discretion of the Director General who will assess whether the [specified] criteria [...] are met and who will ensure that the requirements of the Statute to keep permanent staff to a minimum are implemented".

4. Staff Rule 3.03.1(C)(7) applies where, as in this case, a staff member was in the General Service category prior to assuming a Professional category post and the proposal is that she or he returns to the General Service category. It states as follows:

"(7) The provisions of subparagraphs (2) through (6) above shall also apply to staff members appointed to the Professional category who were previously employed in the General Service category. Staff members who held a five-year contract in the General Service category immediately prior to their appointment to the Professional category shall be entitled, upon the expiration of their Professional appointment, to return to a post in the General Service category:

- (a) with a five-year contract, or a contract until their age of retirement, whichever is the shorter;
- (b) at the same personal grade that they held immediately prior to appointment to the Professional or higher categories;
- (c) with an additional step for each salary increment granted during the staff member's tenure in the Professional or higher categories or, if applicable, recognition for service for the purposes of Staff Rule 5.01.1(A)(2)."

5. The complainant argues that the impugned decision is tainted by errors of law or by clearly mistaken conclusions. In her brief, she advances six principal arguments on which she relies in seeking to set aside the decision and to obtain consequential relief:

- (1) The Director General breached the requirement to adequately state the reasons for departing from the recommendations of the JAB.
- (2) The IAEA breached the principle of equal treatment.
- (3) The IAEA breached the principle of good faith.
- (4) The IAEA breached its duty of care and its duty to respect her dignity and reputation during the process.
- (5) The decision is tainted by misuse of power.
- (6) She (the complainant) has suffered “material and moral prejudice”.

6. In relation to the adequacy of the Director General’s reasons for rejecting the JAB’s conclusions and its recommendation “that the [complainant] be granted a long-term contract at the P level, that she be retroactively reintroduced at her P4 level grade, and that an adequate P4 level position be offered to her to bring her to retirement”, consistent precedent has it that when an executive head takes a decision which is at variance with a recommendation of the internal appeals body, she or he must provide adequate reasons for doing so. Accordingly, the Tribunal stated, for example, as follows in Judgment 3208, consideration 11:

“As the Tribunal has noted, the right to an internal appeal is a safeguard enjoyed by international civil servants (see Judgment 2781). If the ultimate decision-maker rejects the conclusions and recommendations of the internal appeal body, the decision-maker is obliged to provide adequate reasons (see Judgments 2278, 2355, 2699, 2807 and 3042). The value of the safeguard is significantly eroded if the ultimate decision-making authority can reject conclusions and recommendations of the internal appeal body without explaining why. If adequate reasons are not required, then room emerges for arbitrary, unprincipled or even irrational decision-making. In the present case, the Secretary General has not provided adequate reasons for rejecting the conclusions and the first recommendation of the Joint Appeals Commission.”

7. The first paragraph of the impugned decision sets the case into context. The second paragraph addresses the aspect of the complainant's appeal which the Director General accepted, that it was not necessary to give one-year advanced notification of the decision not to exceptionally extend the complainant's appointment in the Professional category. The fifth and final paragraph of the impugned decision states the formality that the complainant had the right to appeal it to this Tribunal. The other two paragraphs (two and three), which are fully reproduced, purport to explain why the Director General rejected the JAB's recommendation to exceptionally extend the complainant's employment. They state:

"I have carefully studied the report of the [JAB], however, I am unable to accept the [JAB's] conclusions and recommendations in this matter. Accordingly, I have decided to dismiss your appeal, and to maintain the decision that your appointment in the Professional category shall expire on 2 January 2014, for the reasons already provided in both my letter of 28 August 2013, and the letter from the former [Director of the Division of Human Resources] dated 6 June 2013.

In this connection, I wish to emphasise that, having carefully considered all of the information before me, including the [JAB's] report, I have found no errors of law, fact or procedure which would warrant reversal of my decision in this matter. In addition, I remain of the view that the decision to let your fixed-term appointment expire without extension beyond the seven year maximum tenure was tainted by neither bias nor discrimination."

8. It is clear from these statements that the Director General has not provided adequate reasons for rejecting the conclusions and the first recommendation of the JAB. His duty was to adequately motivate the reasons for departing from its recommendation to exceptionally extend her appointment in the Professional category. That required an adequate explanation as to why the reasons for the JAB's recommendation were rejected and this could not be done merely by maintaining the reasons given in the letters of 28 August 2013 and 6 June 2013. In the circumstances of this case, the Tribunal does not consider it advisable to set aside the impugned decision, but because of the failure to provide adequate explanation it will award compensation to the complainant.

Additionally, it is clear that based on the facts and its reasoning, the JAB found on good grounds that the IAEA had not abided by its duty of care to the complainant. The circumstances of the case do not

show that the IAEA abided by its duty to respect the complainant's dignity and reputation during the process, as she contends. However, the complainant has not substantiated her allegations of breach of the principle of unequal treatment or that the impugned decision is tainted by misuse of power or breach of the principle of good faith. The complainant will be awarded a total of 40,000 euros. She will also be awarded costs in the amount of 7,000 euros.

#### DECISION

For the above reasons,

1. The IAEA shall pay the complainant the total amount of 40,000 euros in compensation.
2. The IAEA shall also pay the complainant costs in the amount of 7,000 euros.
3. All other claims are dismissed.

In witness of this judgment, adopted on 11 May 2017, 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 28 June 2017.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

HUGH A. RAWLINS

DRAŽEN PETROVIĆ