

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

M.
v.
ILO

127th Session

Judgment No. 4104

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms V. E. M. against the International Labour Organization (ILO) on 15 July 2015 and corrected on 21 October 2015, the ILO's reply of 21 March 2016, the complainant's rejoinder of 10 May and the ILO's surrejoinder of 26 July 2016;

Considering Articles II, paragraph 1, 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 to deny her request for the issuance of a fixed-term project-based contract for a member of her team.

On 25 July 2012 the complainant, in her capacity as Head of the Multimedia Design and Production Unit (MDP) of the International Training Centre of the ILO, requested her hierarchy to create a fixed-term project-based position for a multimedia designer at grade G.3 within her team. The position was to be filled by Ms F., who had provided services as an external collaborator between 2000 and 2011 and under a series of service contracts since 2011. On 30 July 2012 the Human Resources Services (HRS) informed the complainant that the

Director of the Centre had decided not to approve her request and suggested that she use a service contract instead. That same day, the complainant sent an email to HRS asking, inter alia, to be given the reasons for the decision. HRS replied on 31 July 2012 that the complainant should raise the issue with her responsible chief if she was not satisfied with the Director's decision.

On 12 June 2013 the complainant sent a minute to her responsible chief requesting that a web designer fixed-term position at grade G.2 be created in the regular budget for 2014. No official answer was provided to the complainant.

On 2 July 2014 the complainant submitted a further request for a multimedia designer fixed-term project-based position at grade G.3 to be filled by Ms F. On 29 July 2014 HRS informed her that the Director had rejected this request and suggested that the work continue to be outsourced using external collaboration contracts, in accordance with the Centre's consultancy policies, in order to avoid inappropriate use of contracts.

On 18 December 2014 the complainant submitted an internal complaint to the Director of the Centre in accordance with Article 12.2 of the Staff Regulations of the International Training Centre, requesting that the issuance of the fixed-term project-based contract be authorized. She asserted that she had lost a total of 10.5 days of annual leave in 2013 and 2014 due to the increase of workload as a result of the refusal to grant her requests for additional staff, and she asked to be compensated for these days of leave or authorized to take them in 2015. Lastly, she claimed moral and material damages for herself and her team in respect of the stress generated by the systematic refusal to authorize the issuance of fixed-term project-based contracts.

By a minute of 24 April 2015, the Chief of HRS informed the complainant on behalf of the Director of the Centre that her internal complaint was dismissed as devoid of merit. He concluded that the complaint was time-barred insofar as it related to the requests made in 2012 and 2013, that the decision regarding the request of 2 July 2014 was taken within the statutory authority conferred on the Director of the Centre under the Statute of the Centre, and that compensation for annual

leave could not be granted since no request pursuant to the applicable rules had been made. That is the impugned decision.

The complainant asks the Tribunal to quash the Director's decisions of 29 July 2014 and 24 April 2015 and to order the Organization to authorize the issuance of fixed-term project-based contracts when extra budgetary funds are available to cover the costs for at least one year within the teams under the complainant's responsibility. She asks to be compensated for the 10.5 days of annual leave lost in 2013 and 2014 or authorized to take these days of leave in subsequent years. She also claims moral and material damages for herself and her team, as well as costs.

The ILO asks the Tribunal to dismiss the complaint as irreceivable *ratione temporis* and subsidiarily as devoid of merit.

CONSIDERATIONS

1. The complainant impugns the Director's decision, communicated to her via a minute dated 24 April 2015. In that minute, she was informed that her 18 December 2014 internal complaint was dismissed as devoid of merit. Her internal complaint was against the 29 July 2014 rejection of her 2 July 2014 request for the creation of a one-year fixed-term project-based contract for a multimedia designer (specifically, for Ms F., who had been working as an external collaborator and under a series of service contracts) in her unit, the MDP.

2. The complainant requests the Tribunal to: set aside the 29 July 2014 and 24 April 2015 decisions; order the Organization to authorize the issuance of one-year fixed-term project-based contracts in the teams under her responsibility; order compensation for the 10.5 days of annual leave that she had lost in 2013 and 2014, or order that she be authorized to take those days in 2015 or in subsequent years; award her "moral and material damages caused to [her] and [her] team by the stress generated by the systematic refusal to authorize the contracting of staff fully funded by projects"; and award her costs in the amount of 2,000 euros.

3. The complaint is partially irreceivable. With regard to the claims to set aside the 29 July 2014 and 24 April 2015 decisions, the Tribunal finds that those decisions do not adversely affect the complainant directly, nor do they fall under the provisions of Article II of the Statute of the Tribunal. The Director's rejection of the complainant's request for the creation of a fixed-term project-based contract does not fall under the provisions of Article II of the Statute in that the present complaint does not address the non-observance, in substance or in form, of the terms of her appointment, nor does it address a violation of the Staff Regulations (see Judgment 4048, under 5). It is not enough that the complainant submits that she would have been in a more favourable work situation if the Director had approved her request. The interest alleged by the complainant is not a personal one; she essentially contests the violation of the general interest in the efficiency or proper conduct of the Administration, which is not subject to challenge under the Statute of the Tribunal. Therefore, the claims relating to the 29 July 2014 and 24 April 2015 decisions must be rejected. Quite apart from the above consideration, the claim relating to the issuance of one-year fixed-term project-based contracts should also be rejected since it is not within the Tribunal's competence to make such an order.

4. Regarding the claim for compensation for the 10.5 days of annual leave that the complainant had allegedly lost in 2013 and 2014, the Tribunal determines that this claim is unfounded. Article 6.4(c) of the Staff Regulations stipulates inter alia that annual leave shall be granted upon application approved by the responsible chief. The complainant acknowledges that she was not denied any request for annual leave and she did not apply for 7.5 days of annual leave in 2013 and 3 days in 2014 in accordance with Article 6.4 of the Staff Regulations and the corresponding Circular No. 05/2012 and Information Note 28/2011. As she did not request those days during their respective years, and accordingly did not prove that she was not given the opportunity to take the annual leave, she cannot now base her request on the exigencies of the service which the Organization was not asked to evaluate at the relevant time.

5. The claims for moral and material damages, insofar as they regard a request for her “team”, are irreceivable for lack of standing as there is no basis on which the complainant may represent the members of her team. Taking into account that the Tribunal has not found the impugned decision and the decision of 29 July 2014 to be unlawful, the claims for moral and material damages stemming from those decisions must be rejected. In light of the above considerations, the complaint must be dismissed in its entirety.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 24 October 2018, Mr Giuseppe Barbagallo, 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 February 2019.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

HUGH A. RAWLINS

DRAŽEN PETROVIĆ