

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

118th Session

Judgment No. 3366

THE ADMINISTRATIVE TRIBUNAL,

Considering the seventh complaint filed by Mr S. M.-S. against the World Health Organization (WHO) on 18 June 2012, WHO's reply of 5 October 2012, the complainant's rejoinder of 21 January 2013 and WHO's surrejoinder of 15 February 2013;

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 and the pleadings may be summed up as follows:

A. Information about the complainant's career at WHO can be found in Judgments 2913 and 3364. It should be recalled that at the material time the complainant was employed at the WHO Regional Office for Africa (hereinafter "the Regional Office") at Brazzaville (Congo).

On 6 November 2007 the complainant, who had made threats against WHO in an e-mail of 26 October 2007, was informed that pending the outcome of an investigation into the facts of the matter, he

was being suspended from duty on full salary, with immediate effect, until 5 December 2007 inclusive, and that for the duration of his suspension he was prohibited from entering the premises of the Regional Office without a prior formal invitation.

The complainant's suspension was extended several times because the investigation was still in progress. On 26 September 2008 he was informed that the Regional Director had decided to dismiss him for misconduct. His appeal against that decision was finally dismissed on 11 August 2011. On 8 September 2011 he wrote to the Director-General to complain that his dignity and reputation had been undermined because, following his dismissal, his photograph had been displayed without his consent in the guard posts and in the library of the Regional Office.

On 8 December 2011 the Director of Human Resources Services informed him that no favourable reply could be given to his appeal, because the posting of his photograph at the access control points to the Regional Office was in accordance with security practice. On 7 February 2012 the complainant sent to the Headquarters Board of Appeal (HBA) a statement of intention to appeal against the decision of 8 December 2011. On 18 April 2012 the Director-General explained to him that as he was no longer a staff member of WHO, he no longer had access to the internal appeals system and that his "appeal" of 7 February 2012 would not therefore be considered by the HBA. That is the impugned decision.

B. The complainant argues that the Director-General, in denying him access to the internal means of redress, failed to observe paragraph 48 of the HBA's Rules of Procedure. He also contends that his dignity and reputation were harmed because his photograph was displayed, without his knowledge and without legal justification, in the guard posts and in the library of the Regional Office.

The complainant requests the Tribunal to set aside the decisions of 8 December 2011 and 18 April 2012. He also claims one million United States dollars in damages and 50,000 dollars in costs.

C. In its reply, WHO submits that the complaint is irreceivable because the complainant's allegations refer to a matter which has not been the subject of "formal and clearly identifiable decisions". Moreover, as the complainant's allegation of an attack on his dignity and reputation had already been made during the internal appeal procedure that resulted in the filing of his fourth, fifth and sixth complaints, if he had "something to add" he ought to have done so in the context of one of those three complaints, rather than in a new complaint. WHO concludes that the complaint is therefore irreceivable.

On the merits, WHO denies having deprived the complainant of his right of appeal, pointing out that since he was no longer a staff member, he did not have access to the internal appeal procedures in accordance with Staff Rules 1230 and 1240. It contends that the act of displaying photographs of the complainant in an enclosure to which access is strictly controlled was in line with the security practice of the Regional Office in respect of "persons who no longer have access" to its premises, and that the allegations of an attack on his dignity and reputation "are seriously lacking in credibility and relevance" owing to the complainant's failure to show that he was harmed in any way as a result of his photograph being displayed. WHO considers the complaint to be abusive, and requests the Tribunal to order the complainant to pay all or part of the costs of the proceedings.

D. In his rejoinder, the complainant develops his arguments. Relying on the case law of the Tribunal, he contends that WHO's counterclaim is devoid of merit.

E. In its surrejoinder, WHO maintains its position.

CONSIDERATIONS

1. Information about the career of the complainant, who was dismissed for misconduct on 26 September 2008, may be found in Judgment 3364, also delivered today.

2. In this case, the complainant impugns the decision of 18 April 2012 by which the Director-General of WHO refused to transmit his appeal of 7 February 2012 to the HBA. In that appeal, he alleged that he had suffered an attack on his honour and dignity because his photograph had been displayed, following his dismissal, in the guard posts and in the library of the WHO Regional Office at Brazzaville.

3. The complainant seeks the quashing of the impugned decision and he claims damages in the amount of one million United States dollars as well as 50,000 dollars for costs.

4. The Tribunal notes that, as WHO has pointed out, the photographs in question were not displayed in a “public place” but in an enclosure with controlled access.

Because of the written threats he had sent to WHO, it was entitled to refuse the complainant access to the Office. It was therefore normal, in accordance with standard practice, to display his photograph at various places in the building, to ensure that the ban would be effective.

5. There is no doubt that the displaying of the complainant’s photograph in the guard posts and in the library of the Regional Office was liable to offend his honour, reputation or dignity. However, for the reasons already stated, and which relate to the complainant’s own conduct, this measure was justified.

6. The complaint must therefore be dismissed, without there being any need to rule on WHO’s objections to receivability.

7. WHO has asked the Tribunal to make an award of costs against the complainant on the grounds that the complaint is abusive. The Tribunal does not consider it appropriate to accede to this request.

DECISION

For the above reasons,

The complaint is dismissed, as is the counterclaim by WHO.

In witness of this judgment, adopted on 1 May 2014, Mr Claude Rouiller, Vice-President of the Tribunal, Mr Seydou Ba, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 9 July 2014.

CLAUDE ROUILLER
SEYDOU BA
PATRICK FRYDMAN

DRAŽEN PETROVIĆ