

118th Session

Judgment No. 3382

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr T.J. P. against the European Organization for Nuclear Research (CERN) on 13 June 2012;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal and Article 7 of its Rules;

Having examined the written submissions;

CONSIDERATIONS

1. The complainant filed a complaint with the Tribunal on 13 June 2012. He named as the defendant, the European Organization for Nuclear Research (CERN). In that part of the complaint form in which the impugned decision must be identified, the complainant said, in substance, CERN had failed to take a decision (for the purposes of Article VII, paragraph 3, of the Tribunal's Statute) on a claim notified to CERN's administration by the complainant on 12 April 2012. Thus the complainant was alleging an implied decision had been made rejecting his claim. Reference was also made to 16 May 2012.

2. The complainant applied for a position as a firefighter with CERN. He was informed by e-mail dated 14 December 2011 from a recruitment specialist at CERN that the outcome of an earlier interview was positive and CERN was considering offering the complainant a position. The e-mail noted that all offers of employment at CERN were subject to a satisfactory medical examination. The e-mail invited the complainant to download and complete part of a medical questionnaire and arrange for the other part to be completed by a doctor of the complainant's choice. It is clear that CERN decided not to offer the complainant a position because "the conclusion of the medical examination was not satisfactory for the position of Firefighter", and this was communicated to the complainant in an e-mail of 31 January 2012.

3. The reference in the complaint to the date of 12 April 2012 was a reference to an e-mail from the complainant sent that day to the Human Resources Department of CERN. The e-mail set out the complainant's account and assessment of the selection process. The complainant was critical of the process. He requested, in effect, that the decision not to recruit him be set aside, as it was, in his assessment, "based on wrong information and wrong process". The complainant asked for a response by 15 May 2012. On 16 May 2012 the complainant sent an e-mail to the Human Resources Department saying that he had not received a response to his e-mail of 12 April 2012, and that "the next stage for me [would] be filing a claim [with the Tribunal]". The complainant was sent a response on 18 May 2012 telling him that CERN could not accede to his request of 12 April 2012.

4. The complainant never has been an official of CERN. The Tribunal's jurisdiction is limited and defined by the Tribunal's Statute and is confined, by Article II, to complaints of officials, which includes former officials (see, for example, Judgments 2503, consideration 4, and 3049, consideration 4). The Tribunal considered a case with some similar elements to the present complaint in Judgment 1964. In that judgment the Tribunal observed, at consideration 4, that the defendant organisation's agreement to appoint the complainant was subject to the fulfilment of a condition which could not be said to be a mere

formality, namely, recognition that he was physically fit enough to discharge his functions. The complainant was not appointed and as the complainant never had been an employee of the defendant organisation, the complaint raised a matter that was not within the scope of the Tribunal's competence. In this context, the Tribunal referred to Judgments 803, consideration 3, and 1554, consideration 10, which establish that unsuccessful external candidates for employment and persons who have not concluded a contract of employment of which all the essential terms have been agreed are excluded from the Tribunal's jurisdiction.

5. For these reasons the complaint is irreceivable. It should be dismissed summarily under Article 7 of the Rules of the Tribunal.

DECISION

For the above reasons,
The complaint is summarily dismissed.

In witness of this judgment, adopted on 9 May 2014, Mr Giuseppe Barbagallo, President of the Tribunal, Mr Michael F. Moore, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 9 July 2014.

GIUSEPPE BARBAGALLO
MICHAEL F. MOORE
HUGH A. RAWLINS
DRAŽEN PETROVIĆ