

119th Session

Judgment No. 3445

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaints filed by Mr R. A. Z., Mr M. A. D. S. and Mrs L. V. C. against the International Labour Organization (ILO) on 19 March 2007, corrected on 15 May 2007, and the ILO's replies of 20 October 2009;

Considering the complaint filed by Mr A. R. O. P. against the ILO on 19 March 2007, corrected on 15 May, and the ILO's reply of 18 December 2007;

Considering Articles II, paragraph 4, and VII, paragraph 2, of the Statute of the Tribunal;

Having examined the written submissions and disallowed the complainants' application for oral proceedings;

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

A. Mr A. Z. worked for a joint program run by the International Labour Office – the ILO's secretariat – and the United Nations Development Programme (UNDP) in Guatemala following the destruction caused by hurricane Stan in 2005. He held external collaboration contracts for the period 1 December 2005 to 30 June 2006 to work on that programme. Article 13 of his contracts provided that any conflict arising from the application or interpretation of his contracts should be submitted to the Tribunal, in accordance with Article II, paragraph 4, of its Statute.

By an e-mail of 16 November 2006 the Director of the ILO Sub-regional Office for Latin America, Haiti, Panama, and the Dominican Republic informed Mr A. Z. that his external collaboration contracts for

March, April and June 2006 were rescinded as she was not satisfied with his performance and behaviour. The complainant impugns that decision before the Tribunal. Mrs V. C., Mr D. S. and Mr O. P., who worked on the same project as external collaborators, and whose contracts also included an article providing for the competence of the Tribunal in case of conflict, filed a complaint with the Tribunal on the same date, impugning the decision of 16 November 2006.

B. The complainants contend that some of their external collaboration contracts were signed after they had actually performed the corresponding work. They criticise the ILO for the delay in dealing with their contracts and in paying their remuneration, which caused them emotional stress and financial damage. They submit that they worked between 1 and 13 July 2006 without being paid. Mr A. Z. further contends that he suffered financial damage in that he made advance payments using his own money to finance the end of the project he was working on, and to finance the living expenses and remuneration of some members of his team. He submits that the decision to rescind his contracts was biased and unfair.

The complainants ask the Tribunal to annul the decision of 16 November 2006 and to order the ILO to pay to Mr A. Z. “professional fees” for the months of March, April and June 2006. They seek the payment of their professional fees for the period 1 to 13 July 2006, together with moral damages and compensation for “Collection Procedures Expenses”.

C. In its replies the ILO contends that the complaints are time-barred and hence irreceivable. Mr A. Z. received final notification on 16 November 2006 that his contracts for March, April and June 2006 would be rescinded, but he filed his complaint with the Tribunal only on 19 March 2007. The claims for payment of professional fees for the period 1 to 13 July 2006 put forward by Mr A. Z., Mrs V. C. and Mr D. S. are also time-barred given that they were informed on 18 July 2006 that no contract would be offered for that period, and they filed their complaints with the Tribunal only on 19 March 2007.

The ILO submits that the complaints filed by Mrs V. C. and Mr D. S. are procedurally flawed given that they indicate on their complaint forms that they impugn the decision dated 16 November 2006 by which Mr A. Z. was informed that his contracts were rescinded. They have no standing to bring a complaint against that decision and they have failed to impugn a final decision regarding the alleged failure to pay their professional fees.

On the merits, it asserts that the decision to rescind Mr A. Z. contracts for March, April and June 2006 was justified given that he had not submitted the report which conditioned the payment of his professional fees. The ILO was under no obligation to pay professional fees for Mr A. Z., Mrs V. C. or Mr D. S. for the period 1 to 13 July 2006 as they had not been asked to perform the work they did. It nevertheless offered to pay them in recognition that service had indeed been provided, but they refused the payment.

Regarding Mr O. P. complaint, the ILO submits that he is in a different position in fact and in law to that of the three other complainants because his external collaboration contract covered the month of July 2006 whereas the other complainants held contracts only up to June 2006. Mr O. P. was paid his professional fees for the period 1 to 13 July 2006. The other claim he makes regarding the decision to rescind Mr A. Z. contracts relates to a third party and is therefore irreceivable; so are his claims for damages. The ILO adds that in the event that Mr O. P. does not withdraw his complaint, it asks the Tribunal to order him to reimburse the costs it incurred with respect to his case given its frivolous nature.

CONSIDERATIONS

1. Mr A. Z. was the National Programme Manager for the ILO's Employment Intensive Investment Programme, an ILO initiative that was part of the UNDP's Emergency Joint Program after hurricane Stan hit Guatemala in 2005. His written contracts spanned the period from 1 December 2005 to 30 June 2006. He continued to

work from 1 to 13 July 2006 without a contract being in place for this period.

2. Mr A. Z. contests the ILO's decision to rescind his contracts without payment for March, April and June of 2006 on the ground that he failed to file the required monthly reports. In addition to claiming the payment of his professional fees for those three months, he also seeks payment of his professional fees for the time he worked in July, moral damages, reimbursement of project expenditures and costs.

3. At the time Mr A. Z. filed his complaint, three other individuals, Mr D. S., Mrs V. C. and Mr O. P. filed complaints with the Tribunal arising from work on the same project. Mrs V. C. and Mr D. S. also worked for the ILO/UNDP Emergency Joint Program. Their written contracts spanned the same periods as those of Mr A. Z. and they also worked from 1 to 13 July 2006 without a contract being in place for this period. They contest the ILO's failure to pay them their professional fees for the period they worked in July and claim moral damages, reimbursement of expenditures for the project and costs. They also contest the decision to rescind Mr A. Z. contracts for March, April and June 2006.

4. Mr O. P. worked for the same program as the other complainants on a written contract for the period 1 May 2006 to 31 July 2006. He claims, among other things, that he is still owed his professional fees for the period 1 to 13 July 2006. As will become evident, any further consideration of the facts of this case is unnecessary.

5. The ILO applies for the joinder of Mr A. Z. complaint with those of Mr D. S. and Mrs V. C. The Organization also notes that while Mr O. P. is not in the same position in fact and law as the other complainants, it is not opposed to the Tribunal's adjudication of his complaint with theirs.

6. It is well settled that complaints should only be joined if they raise the same issues of fact and law (Judgment 1541, under 3). While

the four complaints are not entirely uniform in terms of the substance of the issues of fact and law raised, they may conveniently be dealt with in one judgment and are joined.

7. The Tribunal notes that as the complaints were filed with the Tribunal beyond the ninety-day time limit provided in Article VII of the Statute, the complaints are time-barred and irreceivable.

8. Regarding the complaints of Mr A. Z., Mr D. S. and Mrs V. C., the ILO states that it has set aside sufficient funds in its project accounts to provide for the payment of the professional fees for the months of March, April and June 2006 to Mr A. Z. and for the payment of the professional fees for the period 1 to 13 July 2006 to all three complainants, adjusted for inflation as of the date the complainants refused payment upon receipt of the relevant banking information for each complainant.

9. In the circumstances, the Tribunal urges the complainants Mr A. Z., Mr D. S. and Mrs V. C. to provide their respective banking information to the ILO. The Tribunal expects that upon receipt of the relevant banking information from a complainant the ILO will pay the amount set aside for that complainant.

10. As to Mr O. P. complaint, the evidence shows that he was paid for the period 1 to 13 July 2006 by bank transfer in December 2006. The ILO's request for costs based on the frivolous nature of the complaint is rejected.

11. For the above reasons, the complaints will be dismissed as irreceivable.

DECISION

For the above reasons,

The complaints are dismissed.

In witness of this judgment, adopted on 31 October 2014, 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 11 February 2015.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

HUGH A. RAWLINS

DRAŽEN PETROVIĆ