

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

A.
v.
ILO

120th Session

Judgment No. 3542

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr L. A. against the International Labour Organization (ILO) on 4 March 2013, the ILO's reply of 26 June, the complainant's rejoinder of 4 October 2013 and the ILO's surrejoinder of 8 January 2014;

Considering Articles II, paragraphs 1 and 5, 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 denounces the alleged retaliatory measures to which he has been subjected because he exercised his right of appeal.

The complainant was employed in the service of the International Labour Office (the Office), the ILO's secretariat, from 1988 to 1991. In 1993 he entered the service of the ILO's International Training Centre (hereinafter "the Centre"), located in Turin (Italy).

Between 2003 and 2004 the complainant held the post of manager of a unit in charge of a project jointly financed by the European Social Fund and the Italian Government. Concerns over his management of this project were raised by an Italian magazine, by the ILO's Office of Internal Audit and Oversight and by the European Anti-Fraud

Office (OLAF). On 24 April 2012 the Centre decided to extend the complainant's fixed-term contract, which was due to expire on 30 April of that year, by one month until 31 May, in order to have time to consider the complainant's observations on the report drawn up by OLAF.

The Director of the Centre informed the complainant by a letter of 11 May 2012 of her intention not to renew his fixed-term contract after 31 May and to pay him two months' salary in lieu of notice, on the grounds that his mismanagement of the above-mentioned project had led to an irretrievable breakdown in the confidence and trust which was fundamental to the relationship between the Centre as his employer and him as an employee. She invited him to comment, which he did on 22 May. The complainant was informed by a letter of 28 May that the Director "confirm[ed] [her] decision" of 11 May.

On 1 June 2012 the complainant filed an internal complaint against the decision of 24 April, which was forwarded to a Joint Committee for an opinion pursuant to Article 10.3 of the Staff Regulations of the Centre.

The complainant immediately started to search for a new position. He expressed interest in a vacancy in the Office's country office in Harare (Zimbabwe), but he was not selected. In June he completed two short assignments in Tunisia and Morocco under external collaboration contracts with the Office. At the same time, he entered into negotiations regarding further assignments, but they were unsuccessful.

On 16 October the Office's Staff Union Legal Adviser sent the Chief of the Centre's Human Resources Services an e-mail on the complainant's behalf in which he alleged that the Director of the Centre and the Office's Administration had instructed "responsible chiefs no longer to issue consultancy contracts [to the complainant] in view of the appeal which he [had] lodged, not to recommend [him] for ILO internal competitions and to forbid certain colleagues to agree to act as references in his applications for competitions". There was no answer to this e-mail.

On 19 October the complainant lodged a second internal complaint which was directed against the “decision” of 11 May not to renew his contract.

On 3 December 2012 the complainant, represented by his lawyer, sent a letter to the Director-General of the Office, with a copy to the Director of the Centre, in which he denounced the ILO’s conduct which, in his opinion, “breached [his] right of appeal”, as well as the ILO’s breach of its duty to act in good faith and to respect his dignity and his reputation. He asked the ILO forthwith to withdraw the instructions which, he said, had been given by the Director of the Centre and the Office’s Administration, to “inform all ILO staff who had been notified of these instructions” of their withdrawal and to redress the moral and material injury which, he claimed, he had suffered. He also requested information about the appeal channels available to him in the event that his requests were denied. On 19 December 2012 the Chief of the Centre’s Human Resources Services replied that the letter of 3 December 2012 referred to matters which already formed the subject of an internal complaint which was being examined. On 9 January 2013 the Office’s Deputy Legal Adviser, acting on behalf of the Director-General, informed the complainant that he could not avail himself of the internal appeal channels as they were reserved for the Office’s serving officials, nor could he file a complaint with the Tribunal, since he could not plead any non-observance of the terms of his appointment or of the Staff Regulations of the Office. On the merits, she assured him that, to the best of her knowledge, no instruction aimed at thwarting his applications had been given.

On 4 March 2013 the complainant filed a complaint with the Tribunal. In the complaint form he indicates that his complaint is directed against the ILO, “including the International Training Centre”, and that he is impugning the decision of 19 December 2012. He asks the Tribunal to set aside the “impugned decision, stemming from the letters of 19 December 2012 and 9 January 2013”, to declare non-existent, or at least null and void, the “decision no longer to recruit him”, to order the defendant organisation to inform in writing all service chiefs that his candidature for positions or assignments could be considered and, lastly,

to order the Organization to redress the injury suffered and to pay him costs in the amount of 7,000 euros.

The Centre's Joint Committee convened after the complainant had filed his complaint with the Tribunal. It decided to join his two internal complaints. After this body had issued its conclusions, the Director of the Centre decided on 28 June 2013 to dismiss the internal complaints as unfounded. This decision forms the subject of a second complaint filed by the complainant with the Tribunal on 24 September 2013.

In the ILO's reply of 26 June to the first complaint, which the Tribunal authorised it to confine to the issue of receivability, the Organization submits that the complainant does not identify any challengeable decision and has not provided evidence of an alleged decision not to recruit him. It adds that the Tribunal lacks competence both *ratione materiae* and *ratione personae*.

In his rejoinder the complainant maintains his claims, but asks for costs in the amount of 10,000 euros. He also asks the Tribunal to order the appointment of an independent investigator to establish the exact scope of the retaliatory measures against him and thus to permit a precise assessment of the injury suffered.

CONSIDERATIONS

1. In accordance with Article II, paragraphs 1 and 5, of its Statute, the Tribunal is competent to hear disputes alleging non-observance, in substance or in form, of the terms of appointment of officials of the International Labour Office and of other international organisations which have recognised the jurisdiction of the Tribunal in that sphere, and of the relevant Staff Regulations.

2. The complainant identified the defendant organisation as being the "ILO, including the International Training Centre".

It is clear from the Centre's various constituent instruments that, while it is an integral part of the International Labour Organization, it functions independently of the International Labour Office, and that

the staff of these two entities are governed by separate regulations (for various cases concerning the Centre's officials, see Judgments 203, 478, 742, 1750, 2077 and 2100).

3. In the instant case, the complainant alleges that he was subjected to retaliatory action because he filed an internal complaint with the appeal bodies of the Centre in order to contest an alleged breach of the rights which he enjoyed while he was in its service. He therefore indicates in the complaint form that the impugned decision is a letter written to him by the Chief of the Centre's Human Resources Services and dated 19 December 2012. In his brief, however, he asks for the setting aside of a decision stemming not only from that letter but also from the letter which was sent to him on 9 January 2013 and signed by the Deputy Legal Advisor on behalf of the Director-General of the Office.

(a) Both these letters are direct replies to the request which the complainant's lawyer had addressed to the Director-General of the Office on 3 December 2012 in which he complained of the "ILO's conduct [...] which breaches [the complainant's] right of appeal" and which was inconsistent with "its duty to act in good faith and to respect [his] dignity and reputation".

A copy of this request had been sent to the Centre, which was invited "to take such action as may be appropriate on this message as soon as possible and, at all events, to do nothing which might compromise [the complainant's] honour, dignity and reputation".

(b) A careful reading of these letters objectively placed in their true context shows that the purpose of this complaint can only be to challenge the refusal of the Director-General of the Office, of which the complainant was notified on 9 January 2013, to entertain the request which the latter had sent him on 3 December 2012.

4. In the Tribunal's view, unlike the Centre's letter of 19 December 2012, the reply of 9 January 2013 is certainly an administrative decision within the meaning of Article VII of the Statute of the Tribunal insofar as it contains the refusal to entertain a request to put an end to conduct which was allegedly breaching the complainant's rights to be appointed

to special assignments or to a position in the Office. It is equally plain that, through this decision, the complainant was denied all access to internal means of redress.

5. The fact that officials of the Centre and those of the Office are governed by separate Staff Regulations has led the Office to regard the Centre's staff members as external candidates to vacancies within the Office. The complainant does not clearly contest this practice, or at least does not put forward any legal or factual arguments to show that it is incorrect. A steady line of precedent has it that the Tribunal may not hear complaints challenging a decision to reject the candidature of an external applicant for a post in an international organisation that has recognised the Tribunal's jurisdiction (see Judgment 2657, under 3). This case law must apply here by analogy, since the complaint concerns the circumstances surrounding recruitment procedures within two administrative entities which are clearly identified as being separate, though they belong to the same international organisation.

Moreover, the complainant does not find himself in the exceptional situation where, even in the absence of a signed contract between the parties, the Tribunal must entertain the complaint of an external applicant on the grounds that the reciprocal commitments made by the parties are tantamount to a contract (see Judgment 3112, under 2).

As an external applicant the complainant therefore does not have standing to challenge before the Tribunal the fact that the ILO allegedly adopted a line of conduct which effectively thwarted his candidature for positions as an official of the Office or, *a fortiori*, for the special or occasional assignments which he wished to carry out.

6. In view of the foregoing, the complaint must be dismissed.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 7 May 2015, Mr Claude Rouiller, Vice-President of the Tribunal, Mr Seydou Ba, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Andrew Butler, Deputy Registrar.

Delivered in public in Geneva on 30 June 2015.

(Signed)

CLAUDE ROUILLER

SEYDOU BA

PATRICK FRYDMAN

ANDREW BUTLER