

V. and L.-R.

v.

IOM

121st Session

Judgment No. 3577

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms T. V. against the International Organization for Migration (IOM) on 26 November 2012 and corrected on 11 February 2013, the IOM's reply of 8 July, the complainant's rejoinder of 19 September, corrected on 8 October, the IOM's surrejoinder of 23 December 2013, the complainant's additional submissions of 27 February 2014 and the IOM's final comments thereon of 2 May 2014;

Considering the complaint filed by Ms S. L.-R. against the IOM on 30 November 2012 and corrected on 11 February 2013, the IOM's reply of 1 July, the complainant's rejoinder of 14 October, corrected on 29 October 2013, the IOM's surrejoinder of 6 February 2014, the complainant's additional submissions of 16 May and the IOM's final comments thereon of 25 August 2014;

Considering Articles II, paragraph 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 first complainant, Ms V., is a former staff member of IOM. She worked at the IOM Mission in Belgrade under successive

fixed-term contracts from 1998 until 2011. Her last contract ran from 1 July through 31 December 2011. By a letter dated 12 December 2011, she was informed that due to a significant decrease in the activities of the project on which she worked, her contract would not be renewed upon its expiry on 31 December 2011 and that her service with the Organization would therefore come to an end on that date. On 27 February 2012 she was notified that she had been granted two-years' Coverage after Cessation of Participation under the IOM Medical Service Plan in connection with a medical condition that she had contracted during her service with IOM. The coverage period was from 1 January 2012 to 30 December 2014.

The second complainant, Ms L.-R., is also a former staff member of IOM. She worked at the IOM Mission in Belgrade under successive fixed-term contracts from February 2001 until November 2011. Her last contract expired on 30 November 2011, at which point she separated from IOM. The programme for which she worked ended in May 2012.

By letters of 3 July 2012 to the Director General and the Ombudsperson, the complainants alleged through their counsel that they had suffered abuse at work and a violation of their dignity, reputation, personal and professional integrity by Mr G., the Chief of the IOM Mission in Belgrade. They asserted that his aggressive behaviour, which had culminated in the decision to terminate their employment, constituted harassment under Serbian law and certain ILO Conventions. Ms V. also asserted that she had contracted an occupational disease. They claimed material and moral damages. On 12 September 2012 the complainants addressed through their counsel the Joint Administrative Review Board (JARB) contesting the Administration's lack of response to their letters of 3 July 2012 and stating their intention to pursue their rights before the Tribunal.

The Officer-in-Charge of Human Resources Management (HRM) responded to the complainants' counsel by two separate letters dated 27 September 2012. Pointing out that the employment relationship between IOM and its staff members was not governed by national law, she noted that the action by each of the complainants against the

respective decisions not to renew their contracts was time-barred because they had failed to submit a request for review of these decisions, i.e. the required Action Prior to the Lodging of an Appeal, within the applicable 60-day time limit. As to their allegations of harassment, the Officer-in-Charge informed the complainants' counsel that the complainants had not made a harassment complaint in accordance with the applicable IOM procedure, thus deciding not to avail themselves of the means put at their disposal. With regard to Ms V.'s claim that she suffered from an occupational disease, the Officer-in-Charge dismissed it on the ground that her illness was not directly attributable to the official duties which she had performed in the course of her employment with IOM.

The complainants filed their complaints respectively on 26 and 30 November 2012 against the implied rejection of their claims of harassment, undue termination and professional illness, which had been notified to the Administration through their letters of 3 July 2012.

Ms V. claims material damages in the amount of 1,350 United States dollars per month for the remainder of her lifetime (850 dollars for the loss of a disability pension and 500 dollars for the loss of social security). She claims moral damages in the amount of 300,000 dollars for the harassment which she suffered and the occupational disease which she contracted. She claims 1,500 dollars in costs.

Ms L.-R. claims material damages in the amount of 500 dollars per month for the remainder of her lifetime for the improper termination of her contract which made her ineligible for drawing a pension from the United Nations Joint Staff Pension Fund. She claims moral damages in the amount of 150,000 dollars for mental distress, fear, and the violation of her reputation and professional and personal integrity. She claims the costs of the procedure.

IOM asks the Tribunal to dismiss the complaints in their entirety as irreceivable pursuant to Article VII, paragraph 1, of the Statute of the Tribunal and, subsidiarily, to dis-miss them as devoid of merit.

CONSIDERATIONS

1. The first complainant, Ms V., is a former staff member of the IOM Mission in Belgrade, where she held several positions from 1998 to 2011. In December 2011 she was offered a three-month part-time contract (working 20 hours a week) but she declined that offer and her full-time contract expired on 31 December 2011 and was not renewed. Ms V. was informed in a letter dated 27 February 2012 that she had been granted a two-year Coverage after Cessation of Participation for a health disorder which was contracted during her service with IOM. The coverage period was 1 January 2012 to 30 December 2014.

2. Ms V. sent through her counsel a letter to the IOM's Director General and a copy to the Ombudsperson, dated 3 July 2012, stating that she had suffered from abuse at work in the form of repetitive active and passive behaviour towards her by the Chief of Mission, Mr G., which had violated her dignity, reputation, and personal and professional integrity contrary to Serbian law and ILO Conventions. She asserted that the harassment had begun in December 2010 and had lasted throughout the remainder of her contract which was terminated on 31 December 2011. She also submitted that she suffered from an occupational disease and asked for an award of material damages in the amounts of 850 and 500 United States dollars per month for the remainder of her lifetime, as disability pension and social security respectively. She also asked for moral damages stemming from the harassment and occupational disease in the amount of 300,000 dollars. In a letter dated 12 September 2012 to the JARB, she contested through her counsel the Administration's lack of a response to the 3 July letter.

3. The second complainant, Ms L.-R., is a former staff member of the IOM Mission in Belgrade, where she worked from February 2001 until 30 November 2011 when her contract expired and was not renewed.

4. In a letter dated 3 July 2012 to the Director General, making reference to Serbian law and ILO Conventions, Ms L.-R. indicated that in early November 2011, the Chief of Mission, Mr. G., had intentionally harassed her and that his behaviour had ultimately led to the improper termination of her contract. She sought an award of material damages in the amount of 500 United States dollars per month for the remainder of her lifetime and moral damages in the amount of 150,000 dollars. On 12 September 2012, Ms L.-.'s counsel sent a letter to the JARB contesting the lack of a response to her letter of 3 July 2012 to the Director General.

5. In two separate letters, both dated 27 September 2012, the Officer-in-Charge of Human Resources Management (HRM) responded to the complainants. It was pointed out in both letters that IOM is immune from Serbian jurisdiction, is not subject to national law, and must follow IOM's internal rules and regulations. It was noted in the letter to Ms L.-R. that her contract was not terminated, but that it had expired on 30 November 2011 and was not renewed. In the letter to Ms V. it was also noted that her contract was not terminated but that it had expired on 31 December 2011 and was not renewed. In both letters it was stated that in accordance with IOM's internal rules and the Statute of the JARB, the complainants had 60 days after receiving notification of the contested administrative decisions (i.e. the non-renewal of their contracts) to submit an Action Prior to the Lodging of an Appeal, requesting review of the contested decisions. As the complainants' first letters were both sent on 3 July 2012, IOM considered their actions regarding the non-renewal of their contracts to be time-barred. It was further stated that IOM provides an internal procedure to address complaints of harassment and that under the law of the international civil service, the onus of proof lies with the person alleging the harassment. It was noted that neither complainant had made any harassment complaint in accordance with that procedure. With regard to Ms V.'s claim of suffering from an occupational disease, it was noted that contrary to her assertions, her illness was not service-incurred. Her continued coverage under the Medical Service Plan , in accordance with its rules, allowed for her to

benefit from an after service coverage for two years, only for a specific condition which started while she was in active service with IOM and which was not directly attributable to the official duties she had performed on behalf of the Organization.

6. On 26 and 30 November 2012, Ms V. and Ms L.-R. respectively filed their complaints with the Tribunal. They both maintained their requests for awards of moral and material damages, as outlined in their letters of 3 July 2012 (detailed above). IOM primarily requests the Tribunal to dismiss the two complaints as irreceivable pursuant to Article VII, paragraph 1, of the Statute of the Tribunal and, subsidiarily, requests the Tribunal to find the two complaints devoid of merit.

7. Considering the similarity of the two cases in both fact and in law, the Tribunal finds it convenient that they be joined and addressed in a single decision.

8. The complaints are irreceivable. Insofar as the complainants challenge the non-renewal of their contracts, their complaints are time-barred in accordance with paragraph (iv) of Article 4 of Annex D to the applicable Staff Regulations and Staff Rules. According to that Annex, the complainants should have submitted a request for review of the decisions not to renew their contracts within 60 days of the notification of those decisions. Their letters of 3 July 2012, insofar as they challenge the non-renewal of their contracts, are time-barred and those decisions are immune from challenge.

9. With regard to their claims of harassment, the Tribunal points out that the IOM's Official Instruction IN/90 of 22 August 2007 entitled "Policy for a Respectful Working Environment" provides an Informal and a Formal Complaint Procedure to be followed in cases of harassment. If the Informal Complaint Procedure does not result in an informal and rapid resolution of the problem, the staff member must then follow the Formal Complaint Procedure by first notifying the Director of HRM of the details of the situation to be addressed. If

the situation is not resolved following whichever means of resolution deemed appropriate by the Director of HRM, including investigation and intervention, the staff member may request a review of the outcome of the procedure and, if necessary, may then bring an appeal before the JARB. After receiving the recommendation of the JARB, the Director General must take a final decision which can, if necessary, then be challenged in accordance with the Statute and the Rules of the Tribunal. Paragraph 23 of Official Instruction IN/90 provides that: “Appeals must be made in compliance with the procedures to be found in the Staff Regulations and Rules Chapter 11 and in particular Annex D. Please Note: the letter to HRM mentioned in paragraph 20 above is not considered as ‘Action Prior to the Lodging of an Appeal’.” (Original emphasis.) As neither complainant followed the proper procedures, there are no final decisions which can be impugned. Thus, these claims are irreceivable in accordance with Article VII, paragraph 1, of the Statute of the Tribunal. Even if the Tribunal were to consider the letters of 3 July to be proper notifications initiating harassment complaints, the letters of 12 September cannot be considered proper appeals to the JARB as the complainants had not submitted requests for review of the implied rejection of their 3 July letters. In conclusion, the complainants did not follow the procedures which would result in a final administrative decision that could be impugned before the Tribunal.

10. This conclusion should not be taken in any way as detracting from the fact that harassment is a serious issue which can interfere with the well-being of employees and the proper functioning of an international organisation. As such, allegations of harassment must be taken seriously by all parties and addressed in a timely and efficient manner. In the two cases at hand, the complainants, whether through fear of negative consequences or unfamiliarity with the procedures available to staff members, did not avail themselves of the Informal and Formal Complaint Procedures. The seriousness of the allegations presented in the complaints deserved to have been properly addressed. The Tribunal recalls that while an organisation has a duty of care towards its staff to treat allegations of harassment in a timely and

efficient manner, so too staff members must pursue their rights through appropriate channels and in accordance with internal rules, regulations, guidelines and policies.

11. Coming to Ms V.'s claim of suffering from an occupational disease, the Tribunal notes the Organization's assertions that its Medical Officer does not consider the complainant's medical condition to be directly attributable to her work with IOM and that the reimbursement of her treatments at the rate of 90 per cent was made in accordance with the Medical Service Plan for non-occupational illnesses and accidents. Furthermore, her continued coverage for two years post-service was also in accordance with the provisions for non-occupational illnesses. The Tribunal also notes that the complainant did not contest the classification of her illness as being non-occupational, nor did she challenge the reimbursement of her expenses at a rate of 90 per cent (occupational accidents and illnesses being reimbursed at 100 per cent) within the time limits set out in the relevant regulations and rules. Thus, those decisions are now immune from challenge and her claim is irreceivable as time-barred. Even if the complainant were asserting that she had become aware that her illness should be considered an occupational disease just before sending the 3 July letter, she had to follow the proper procedure from that point forward for requesting a review of the decision not to consider her illness as an occupational disease, and subsequently continue with a proper internal appeal in order to receive a final administrative decision which could be impugned before the Tribunal.

12. In light of the above, the present two complaints are irreceivable and must be dismissed in their entirety.

DECISION

For the above reasons,

The complaints are dismissed.

In witness of this judgment, adopted on 28 October 2015, Mr Giuseppe Barbagallo, Vice-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 3 February 2016.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

HUGH A. RAWLINS

DRAŽEN PETROVIĆ