Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

A.-E.

v.

ILO

121st Session **Judgment No. 3624**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms D. A.-E. against the International Labour Organization (ILO) on 24 March 2014 and corrected on 3 April, the ILO's reply of 28 July, the complainant's rejoinder of 1 September and the ILO's surrejoinder of 24 November 2014;

Considering Articles II, paragraph 1, 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 disputes the non-conversion of her short-term appointment into a fixed-term contract and the fact that her allegations of harassment were not investigated.

The complainant, who had been employed under a short-term contract since 1 October 2010 and had been subject to Rule 3.5[*] of the

[*] This rule stipulates that, with a few exceptions, whenever the appointment of a short-term official is extended by a period of less than one year so that his total continuous contractual service amounts to one year or more, the terms and conditions of a fixed-term appointment apply to her or

Rules governing conditions of service of short-term officials since September 2011, was informed by a letter of 1 June 2012 that her contract would not be extended beyond its expiry date of 31 July 2012. At that time, she was awaiting the results of a competition to fill a post in her section for which she had applied. Having informed the complainant on 24 July that her application had been unsuccessful, the Administration confirmed to her in writing, on 30 July, that her contract would not be renewed, but nevertheless granted her a two-month extension by way of notice. Her contract thus ended on 30 September 2012.

In a grievance filed with the Human Resources Development Department (HRD) on 20 March 2013, the complainant contended that it had been illegal to extend her appointment using short-term contracts under Rule 3.5, and she requested the redefinition of her contractual relationship as fixed-term contracts. She also contended that her terms of employment had been violated in that HRD, which had received an anonymous letter alleging that she was pursuing a relationship with her immediate supervisor, had not taken appropriate action in this regard. She asserted that this letter had affected not only the decision not to renew her contract, but also her chances of success in the competition in which she had participated. Considering that these facts amounted to harassment, she requested an independent investigation into the matter. On 18 June 2013 her grievance was dismissed on the grounds that it had not been filed within the six-month period stipulated by the Staff Regulations.

The complainant referred the matter to the Joint Advisory Appeals Board (JAAB) on 2 July 2013, pressing the same claims as in the grievance filed with HRD and requesting the quashing of the decision of 18 June.

The JAAB issued its report on 7 November 2013. It held that the grievance was receivable and, on the merits, recommended that the complainant's request for the redefinition of her contractual

him as from the effective date of the contract which creates one year or more of continuous service.

relationship should not be granted but that she should be paid moral damages of 20,000 Swiss francs. The JAAB considered that the anonymous letter had constituted harassment and that by refraining from taking the necessary action to restore the complainant's dignity, the Organisation had failed in its duty of protection and care.

By a letter of 20 December 2013, which constitutes the impugned decision, the Director-General informed the complainant that he accepted the JAAB's first recommendation but dismissed the second as, in his opinion, first, the Organization had taken the necessary measures to protect the interests of the complainant and her direct supervisor and, second, it had not been established that the anonymous letter had influenced the outcome of the competition procedure in any way.

On 24 March 2014 the complainant filed a complaint with the Tribunal, requesting that it quash the impugned decision, redefine her contractual relationship, order the ILO to organise an independent investigation and award her compensation for the injury suffered and costs.

The ILO, which was authorised by the Tribunal to confine its submissions to the issue of receivability, asks that the complaint be dismissed on the grounds that the complainant has not exhausted the internal means of redress.

CONSIDERATIONS

1. The ILO submits that the complaint is irreceivable because the grievance of 20 March 2013 was time-barred. The JAAB dismissed this objection to receivability, which was also raised before it, and examined the grievance on the merits. It recommended, first, that the request for the redefinition of the contractual relationship between the parties be dismissed and, second, that the complainant be granted compensation for the affront to her dignity. In the impugned decision, the Director-General endorsed the first recommendation but not the second. The defendant organisation hence no longer sought to rely on the fact that the grievance was time-barred, as it had previously claimed.

2. According to the Tribunal's case law on the objective nature of time limits for appeals and the necessary stability of legal situations, the lateness of an internal appeal renders a complaint with the same subject matter irreceivable on the grounds of non-exhaustion of the internal means of redress that the Staff Regulations make available to those concerned. It matters little in this respect that the appeal body may wrongly have entertained a late appeal (see Judgments 1754, under 7, 2297, under 13, 2543, under 5, 2675, under 6, 2838, under 6, and 2966, under 12). Nor does it matter that the decision-making authority seems ultimately, as would appear from the impugned decision, to have waived the objection to receivability that it had initially raised.

3. The complaint will hence be receivable only if the complainant has exhausted the internal means of redress available to her within the meaning of Article VII, paragraph 1, of the Statute of the Tribunal, that is, if she filed her claim with the competent bodies of the defendant organisation within the time limits prescribed by the rules governing the grievance and internal appeal procedures.

4. Paragraph 1 of Article 13.2 of the Staff Regulations of the International Labour Office, the Organization's secretariat, reads as follows:

> "An official who wishes to file a grievance on the grounds that s/he has been treated in a manner incompatible with her/his terms and conditions of employment shall, except as may be otherwise provided in these Regulations or other relevant rules, request the Human Resources Development Department to review the matter within six months of the treatment complained of. The procedure for the examination of general grievances related to the terms and conditions of employment is governed by article 13.3."

It is not controverted that, in the absence of provisions to the contrary, the complainant should have lodged a grievance under paragraph 1 of Article 13.2 within six months of the dates on which she was notified that her contract would not be redefined and that no action would be taken on her allegations of harassment (see Judgments 977, under 5, and 1754, under 7).

The only issue to be resolved here is whether the complainant's grievance under paragraph 1 of Article 13.2 was filed within that time limit.

5. The complainant states that she endorses the reasoning of the JAAB. In the latter's view, the grievance submitted to it did not have as its subject matter "the non-renewal of [the] contract or the outcome of the competition" in which the complainant had participated, but the "redefinition of her contractual relationship and […] the conduct of an investigation into the harassment that she allegedly suffered". It therefore considered that the dates on which the complainant had been informed of the non-renewal of her contract and of the outcome of the competition were "immaterial for the purpose of determining the starting point of the six-month period during which she could request HRD to review the matter."

According to the JAAB, it was hence "perfectly legitimate for [the complainant] to consider the expiry date of her contract as the beginning of the period" within which she could challenge the refusal to redefine her contract. The same was also true of the beginning of the time limit to lodge a grievance against the refusal to investigate whether she had been a victim of harassment, since it was only "when her employment relationship […] ended that it became clear [to the complainant] that the Office did not intend to take corrective action" in this respect.

As the grievance had been filed on 20 March 2013, i.e. before the expiry of the six-month period following the end of her appointment on 30 September 2012, the JAAB held that it was not time-barred.

6. The complainant took up employment with the ILO on 1 October 2010 under a short-term contract expiring on 18 March 2011. This contract was extended nine times without, interruption but with several substantive amendments, up until 30 September 2012, the date on which the complainant left the Organization.

On 1 June 2012 the complainant's contract was extended by two months. The letter sent to her at that stage underscored that this extension would be the last and that her contract would end on 31 July 2012.

On 30 January 2012 the Organization had published a vacancy notice with a view to filling a post entailing duties that were broadly similar to those undertaken until that point by the complainant. The complainant, who took part in the competition as an external candidate, was included with six others on the short list – known as the "pre-selective list" – that was drawn up on 16 May 2012 by her direct supervisor. On 24 July 2012 she was informed that her application had been turned down.

On 30 July 2012 the Organization wrote to the complainant confirming that, in view of this outcome, her contract would not be renewed beyond its expiry date of 31 July, but that she would be given a notice period of two months, so that her contract was in fact extended to 30 September.

7. In May 2012, while the applications submitted in response to the vacancy notice published on 30 January 2012 were being considered, an anonymous letter was received by several ILO departments that reported rumours of an alleged relationship between the complainant and the supervisor who had drawn up the short list on which her name appeared. When he became aware of this letter, the supervisor decided not to participate in the selection board.

In reply to a request by the complainant, the Administration explained, in a written communication dated 13 August 2012, how it had handled the anonymous letter of May 2012. It informed her that, as per its usual practice, the letter had been destroyed after it had been shown to the supervisor, that he had been invited to consider whether or not to participate in the selection board, and that this letter had not influenced the outcome of the competition.

8. In view of these facts, it is plain that, on receiving the letter of 1 June 2012 extending her contract, which was confirmed on 30 July 2012, and the e-mail of 24 July 2012, the complainant could not fail to

be aware not only that her short-term contract would not be renewed and that her application had been rejected at the end of the competition procedure, but also that her contractual relationship would not be redefined, something which, moreover, she had not formally requested before filing her grievance dated 20 March 2013. It is equally indisputable that, having received the written communication of 13 August 2012, she knew that the matter of her allegations of harassment resulting from the distribution of an anonymous letter was considered by the Administration to be closed.

Inasmuch as it sought the redefinition of the complainant's contractual relationship as a fixed-term contract, the grievance should have hence been filed, in the scenario most favourable to the complainant, no later than six months after receipt of the confirmation letter of 30 July 2012. Inasmuch as it sought the opening of an investigation into the harassment alleged by the complainant, the grievance should have been filed within the six months following receipt of the written communication of 13 August 2012 explaining how the anonymous letter had been handled.

It may be concluded from the foregoing that the grievance of 20 March 2013 was time-barred and that the complaint is therefore irreceivable by reason of the complainant's failure to exhaust the internal means of redress made available her under the Staff Regulations.

9. The complaint must hence be dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 11 November 2015, Mr Claude Rouiller, President of the Tribunal, Mr Patrick Frydman, Judge, and Ms Fatoumata Diakité, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 3 February 2016.

(Signed)

CLAUDE ROUILLER PATRICK FRYDMAN FATOUMATA DIAKITÉ

DRAŽEN PETROVIĆ