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

**106th Session** **Judgment No. 2798**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms M.-O. B. against the International Organisation of Vine and Wine (OIV) on 18 December 2007, the Organisation's reply of 11 February 2008 and the complainant's rejoinder of 25 March 2008, the OIV having declined to file a surrejoinder;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

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

A. On 1 January 1995 the complainant, a French national born in 1967, joined the International Vine and Wine Office – which was replaced by the OIV on 17 March 2004 – as a documentalist/editor on a permanent contract.

After the establishment of the OIV, the 1958 Status of Personnel regulations were replaced by the Staff Status Regulations which entered into force on 1 January 2006. Annex 1 to these Regulations contains a table classifying all positions at the OIV in four categories. On 31 December 2005 the complainant had a job in documentation and publications and was classed as: principal administrative

assistant, class 2, grade 5, index (705) 584. Under the new Staff Status Regulations she was to keep her post, but would be classed in category III (persons entrusted with clerical duties in the administrative or technical activities of the OIV), class 2, grade 3, index 279. The complainant wrote to the Director General on 1 and 29 December 2005 to say that she could not accept the proposed classification; in particular she objected to the loss of her title of "Head of Documentation and Information Management Unit". Nevertheless she expressed her readiness to consider her "assignment" under the Staff Status Regulations, provided that her title was retained and on the "essential and determining condition" that, within a reasonable time, she would move up to category II (persons entrusted with duties of coordination and responsibility in fields specific to the administrative or technical activities of the OIV).

In a letter to the complainant dated 6 January 2006 the Director General took note of her refusal to accept the proposed classification. He informed her that in July 2004 he had redefined the OIV's organisation chart. The new chart, to which, as far as he knew, no objection had been raised, did not comprise a "documentation and information management" unit. He added that the classification, grade, remuneration, working hours and allowances which she had been offered were "a great improvement on the existing situation". As he was obliged to contemplate dismissal, he called the complainant to a meeting which took place on 16 January, during which she maintained her stance. By a letter of 27 January 2006 the Director General notified her of his decision to dismiss her "on genuine and serious grounds" with effect from 30 April.

On 30 March 2006 the complainant sent two letters to the Director General. In one she announced that she was "formally challeng[ing] the grounds" for her dismissal and she made several financial demands. In the other she informed the Director General of her intention to submit the case to the "competent judicial body". She underlined that she had refused his proposal because it entailed an "obvious demotion". On 21 April the Director General replied that he was obliged to apply the Staff Status Regulations as adopted by the Member States, according to which staff members responsible for

publications and documentation are classed in category III. The complainant received 3,469.89 euros in redundancy payment at the end of the period of notice.

On 19 May 2006 the complainant initiated proceedings before an employment tribunal in Paris, the *conseil de prud'hommes*. By a letter of 25 July 2007, which was received on 3 August, she asked the Director General to re-examine the decision to dismiss her. On 27 September she suggested to him that the case be examined by an independent person designated by the President of the Administrative Tribunal, pursuant to Article 131 of the Staff Status Regulations. The Director General replied on 4 October that he was in favour of that procedure, provided that she first withdrew her suit before the *conseil de prud'hommes*, which she refused to do. On 18 December 2007 the complainant filed a complaint with the Tribunal in which she impugned the implied rejection of the request for re-examination registered on 3 August. On 17 January 2008 she asked the *conseil de prud'hommes* to stay its proceedings pending the delivery of this judgment.

B. The complainant explains that since 30 March 2006 the Tribunal has had jurisdiction to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials or of the provisions of the Staff Status Regulations of the OIV. She was notified of her dismissal on 27 January 2006 and it took effect on 30 April. In support of her contention that the Tribunal can nevertheless hear her complaint, she cites Judgment 2582, in which the Tribunal stated that although the complainant's appointment with the organisation in question had ended prior to the latter's recognition of the Tribunal's jurisdiction, which had been approved by the Governing Body of the International Labour Office (ILO), "it may properly hear the present case brought by a former official of [the organisation] who, subsequently to that recognition, has alleged a breach of statutory provisions". Moreover, the complainant asserts that since the Organisation did not reply to her request of 25 July 2007, she has filed her complaint within the prescribed time limit.

On the merits the complainant contends that the OIV committed an error of law by applying the 1958 Status of Personnel regulations and not the Staff Status Regulations, the only provisions which were in force at the time of her dismissal, which led the Organisation to base itself mistakenly on the French Labour Code when calculating the amount of her redundancy payment. She adds that she met the conditions for receiving the compensation for job loss provided for in Article 121 of the Staff Status Regulations. According to her calculations, she ought to have received compensation for job loss in the amount of 33,130 euros, whereas the redundancy payment she received from the OIV amounted to only 3,469.89 euros.

In her opinion, the decision to dismiss her was wrongful according to both the Staff Status Regulations and the French Labour Code. The new classification proposed to her was in fact a demotion which she was entitled to refuse. As she held a head of service post – a title which she had been given by the former Director General – she ought to have been classed in category II. Furthermore, all the other heads of units had been offered a position in this category, and one of her former subordinates, who was considerably less well qualified than she was, had also been classified in that category. She concludes that the principle of equal treatment has been breached and that the Director General abused his authority. She says that she has suffered considerable injury on account of the Organisation's bad faith.

The complainant asks the Tribunal to quash the decision to dismiss her and that concerning the amount of her redundancy payment. She also claims 29,660.11 euros as supplementary compensation for job loss, 66,260 euros for material injury because reinstatement seems inadvisable or even impossible, 30,000 euros as compensation for the injury caused by the discrimination to which she was subjected, interest at the legal rate on all these sums and 5,000 euros in costs.

C. In its reply the OIV asserts that the Tribunal has sole jurisdiction to hear the case. It submits that the complaint is irreceivable because it

has been filed out of time. Reviewing the sequence of events, it explains that since the "claim" of 30 March 2006, in which the dismissal was first challenged, was rejected on 21 April, the ninety-day time limit for filing a complaint with the Tribunal expired on 22 July 2006. Nevertheless, it states that since the complainant's counsel was not informed in writing of the recognition by the OIV of the Tribunal's jurisdiction until 20 November 2006, it was on this date at the latest that the Organisation transmitted to the complainant all the information enabling her to defend her interests to the best extent possible. Since the request for re-examination was not submitted until 25 July 2007, it could not have the effect of reopening the time limits which, in accordance with Article VII, paragraph 3, of the Statute of the Tribunal, had expired much earlier.

On the merits, and subsidiarily, the Organisation points out that when the Director General redefined the organisation chart in July 2004, the complainant did not express any reservations, although the chart made no provision for a "documentation and information management" unit or, consequently, for the post of head of this unit. In the Organisation's view the complainant – who was an editor and not a head of service – is confusing her index classification with the job classification. According to the classification shown in the annex to the Headquarters Agreement concluded in 1965 between France and the International Vine and Wine Office, the complainant was already in category III – that of clerks – and the 2006 classification merely replicated that of 1965, in accordance with the OIV's legal obligations. Since the entry into force of the new Staff Status Regulations did not therefore entail any demotion, the complainant in effect refused to accept a position of the same rank within the meaning of Article 121(a) of the Staff Status Regulations. Hence she was not entitled to any compensation for job loss. Although the entire dismissal procedure was conducted according to the rules of French law, this choice did not constitute an error of law, but "a beneficial measure justified by the particular circumstances" of the case. The complainant's claim for supplementary compensation must therefore be rejected.

In the Organisation's opinion, the complainant has not shown in what way the principle of equal treatment was breached. She had demanded a change of category and a pay rise out of all proportion to the nature and level of her duties according to the Headquarters Agreement and the classification established by the Staff Status Regulations. Her demands were clearly illegitimate and could not be granted. The OIV considers that the complaint is manifestly vexatious. Since, instead of accepting the Staff Status Regulations and initiating either the reclassification procedure provided for in Article 58 or the internal appeal procedure, the complainant has set in motion lengthy, adversarial and purely dilatory procedures, the OIV asks the Tribunal to order her to pay it 5,000 euros in costs.

D. In her rejoinder the complainant asks the Tribunal to treat as inadmissible the references made by the Organisation in its reply to facts which are covered by the privilege attaching to correspondence between counsels. In her opinion the letters of 30 March 2006 did not constitute "claims" because they contained no request that the Director General should reverse his decision to dismiss her. The only "claim" she presented dates from 25 July 2007. Since the Organisation did not reply within sixty days, her complaint was filed within the prescribed time limit.

On the merits she states that by informing the Director General on 29 December 2005 that the classification proposed to her was incompatible with the nature of her duties, she initiated the procedure provided for in Article 58 of the Staff Status Regulations. Since the proposal made to her was that she should keep the position she was occupying, she denies that her dismissal resulted from her refusal to accept a position of the same rank and she deduces from this that Article 121(a) did not apply to her. She also disputes the reference to the classification in the Headquarters Agreement on the grounds that this is tantamount to denying changes in the way the Organisation functions and the duties actually performed by the personnel. Lastly, she asserts that the OIV has not shown in what way her complaint is vexatious.

## CONSIDERATIONS

1. In the wake of the adoption on 14 October 2005 of the new Staff Status Regulations, the complainant was informed that pursuant to these Regulations – which would enter into force on 1 January 2006 – she would be classed in category III. After informing the Director General by a memorandum of 1 December 2005 of the reasons why she could not accept that classification, the complainant confirmed her disagreement on 29 December 2005 and explained that the classification in question did not appear to match the profile of her position or her expectations. As the complainant maintained her stance at the pre-dismissal meeting on 16 January 2006, to which she was summoned by the Director General, she was notified of her dismissal as of 30 April by a letter of 27 January.

By two letters of 30 March 2006 the complainant on the one hand formally challenged the grounds for her dismissal and submitted various financial claims (first letter) and, on the other hand, announced her intention "in the absence of an amicable settlement, to submit [her] claims to the competent judicial body in order to obtain compensation for all the injury suffered as a result of [her] unjustified dismissal" (second letter). The Director General replied in writing to both letters on 21 April 2006.

2. On 19 May 2006 the complainant initiated proceedings before the Paris *conseil de prud'hommes*. Then, in a letter of 25 July 2007 received by the Organisation on 3 August, she requested the re-examination of the decision to dismiss her, in accordance with Article 131 of the Staff Status Regulations. On 27 September she asked to have her case examined by an independent person designated by the President of the Tribunal pursuant to the same article.

In his reply of 4 October 2007 the Director General indicated that he was in favour of the procedure proposed by the complainant, provided that she first withdrew her suit before the *conseil de prud'hommes*. The complainant refused this request and managed to have the hearing postponed until 18 February 2008, while at the

same time she requested that the *conseil de prud'hommes* stay its proceedings until the Tribunal had ruled on her case.

On 18 December 2007 she filed her complaint impugning the implied rejection of her request for re-examination of 25 July 2007.

3. The complainant's claims are set forth under B, above.

4. Notwithstanding the parties' submissions regarding the Tribunal's jurisdiction, there are no grounds for questioning it, since the contractual relationship between the parties ended after the Director General of the OIV had been notified of the decision by the ILO's Governing Body to approve the OIV's recognition of the Tribunal's jurisdiction, which took effect on 30 March 2006.

5. The Organisation's main plea is that the complaint is irreceivable because it was filed out of time. It argues that the complainant must be deemed to have submitted her first "claim" on 30 March 2006, for that is when she challenged the lawfulness of her dismissal, which is one of the main elements of the dispute. According to the OIV, the Director General rejected this "claim" in a letter of 21 April 2006, and the ninety-day time limit for filing a complaint laid down in the Statute of the Tribunal therefore expired on 22 July 2006. Nevertheless, in view of the case law of the Tribunal, which, it says, has always shown great flexibility "when calculating time limits in order to ensure the effective enjoyment of staff rights", the Organisation agreed in November 2006 to commence the conciliation procedure for which provision is made in Article 131 of the Staff Status Regulations, thereby waiving the time limit. It explains that, although the Director General was informed by letter of 11 April 2006 that the OIV's recognition of the Tribunal's jurisdiction had been approved by the ILO's Governing Body, the complainant's counsel was not informed of this until 20 November 2006. Thus it considers that 20 November 2006 was the final date on which it provided the complainant with all the information enabling her to defend her interests on optimum conditions, in accordance with its duty to inform and advise its current and former staff members.

It states that the complainant then waited for eight months, in other words until 25 July 2007, before presenting her request for the re-examination of her dismissal, solely in order artificially to reopen the time limit for filing a complaint.

6. The complainant replies that the Organisation's line of reasoning is unconvincing because, contrary to its allegations, she did not submit any "claim" to the Director General on 30 March 2006. Although the Organisation states that the two letters of 30 March 2006 constituted "the first challenge of her dismissal", the list of the appendices it supplies indicates:

"10 – Letter […] of 30 March 2006 (challenging her dismissal);

11 – Letter […] of 30 March 2006 (challenging her classification)".

In the complainant's view, it is therefore difficult to determine whether the so-called "claim" is to be found in the letter challenging her dismissal or in the letter challenging her classification. She asserts that the letters in question contain no request that the Director General should reverse his decision to dismiss her and cannot therefore under any circumstances constitute a "claim". Furthermore, the Director General's letter of 21 April 2006 deals with specific issues and does not mention the rejection of any "claim" seeking the cancellation of the decision to dismiss her. The complainant therefore considers that her complaint registered on 18 December 2007 must be deemed receivable, as her "claim" was sent on 25 July 2007 and received on 3 August. Thus the Administration had until 3 October 2007 to deal with the matter, which means that her complaint was filed within the ninety-day time limit which would expire on 3 January 2008.

7. The Tribunal must first determine the date on which the complainant's "claim" was submitted, before ascertaining whether the complaint was filed within the time limit set by the relevant provisions.

The Tribunal is of the opinion that each of the letters of 30 March 2006 may be deemed to be a request for re-examination within the meaning of Article 131, which relevantly provides that "[a]ny general secretariat member, who considers that action taken against him/her conflicts with the provisions of these Staff Status Regulations or with

the terms of his/her letter of appointment, may request that the matter be re-examined".

One of the letters stated that the complainant was formally challenging the grounds for her dismissal and the other stated that, in the absence of an amicable settlement, she intended to submit her claim to the competent judicial body in order to obtain compensation for all the injury suffered as a result of her unjustified dismissal. These were therefore clearly claims initiating the preliminary internal procedure, in accordance with the Tribunal's case law that any application challenging a decision must be treated as a "claim". Even though the complainant submits that the Director General's reply of 21 April 2006 did not constitute a rejection which could trigger the time limit for challenging his decision, it is still necessary to determine what was the deadline for referring the matter to the competent judicial body.

8. It is true that the recognition of the Tribunal's jurisdiction, with effect as of 30 March 2006, was brought to the complainant's attention on 20 November 2006 at the latest. Given this fact and the particular circumstances of this case, the principle of good faith makes it necessary to choose this date alone, that is to say the date on which the complainant possessed all the information enabling her to defend her interests, as the starting point of the period within which a complaint could be filed with the Tribunal. The request for re-examination received by the Organisation on 3 August 2007 could not, however, have the effect of reopening the time limit for filing a complaint. The Tribunal is therefore of the view that the complainant, who under Article VII, paragraph 2, of the Statute of the Tribunal had ninety days as from 20 November 2006 to file her complaint, but who did not do so until 18 December 2007, was at all events time-barred. As the complaint is thus irreceivable, it must be dismissed.

9. The Organisation asks the Tribunal to order the complainant to pay it 5,000 euros for costs on the grounds that the complaint is vexatious.

The Tribunal sees no reason to grant this request.

## DECISION

For the above reasons,

The complaint and the Organisation's counterclaim are dismissed.

In witness of this judgment, adopted on 13 November 2008, Mr Seydou Ba, President of the Tribunal, Mr Claude Rouiller, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 4 February 2009.

Seydou Ba
Claude Rouiller
Patrick Frydman
Catherine Comtet