

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

**A.**  
**v.**  
**FAO**

**122nd Session**

**Judgment No. 3651**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr A. A. against the Food and Agriculture Organization of the United Nations (FAO) on 26 December 2013, the FAO's reply of 19 May 2014, the complainant's rejoinder of 18 June and the FAO's surrejoinder of 8 October 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 complainant challenges the decision not to confirm his appointment upon the expiry of his probationary period.

The complainant was recruited on 13 March 2011 under a three-year fixed-term contract as Information and Communications Technology Officer at grade P-4 at the Regional Office for Africa, in Accra, Ghana. His fixed-term appointment was subject to a probationary period of one year.

On 25 November 2011 the complainant was provided with his Probationary Performance Appraisal Report (PPAR) in which his performance for the period from 13 March to 12 September 2011 was

rated as “not satisfactory”. His conduct was presented as being detrimental to the work of the Regional Office for Africa. On the next day the complainant provided his observations on the PPAR and objected to the assessment of his performance.

On 20 January 2012 the PPAR covering the complainant’s performance for the period 13 September to 12 December 2011 was completed. His performance was rated as “not satisfactory” and the PPAR included a recommendation from his immediate supervisor not to confirm the complainant’s appointment. The complainant disagreed with the review and alleged that it was unfair and biased.

By memorandum of 31 January 2012 the complainant’s second-level supervisor, the Director of the Information Technology Division (CIO), informed the complainant that he would recommend not to confirm his appointment. The recommendation was based on the complainant’s failure to have satisfactorily completed his probationary period pursuant to paragraph 305.5.241 of the FAO Administrative Manual. The complainant provided his comments on 6 February.

By a memorandum of 8 March 2012 the Director of the Human Resources Management Division (CSH) informed the complainant that his appointment would not be confirmed upon the expiry of his one-year probationary period on 12 March 2012. He would be separated from the Organization as of that date. The decision was taken on the ground that the complainant’s performance did not meet expected standards, including his failure to uphold the standards of conduct expected of an international civil servant.

By an email dated 8 June 2012 the complainant lodged an appeal with the Director-General against the decision not to confirm his appointment, attaching a letter dated 5 June 2012. By a letter dated 6 August the complainant was informed that his appeal had not been lodged within the established time limit of 90 days from the date of receipt of the decision challenged and that it was, therefore, time-barred. The appeal was also dismissed on the ground that it was without merit.

On 5 October 2012 the complainant lodged an appeal with the Appeals Committee. In its report dated 2 August 2013, the Appeals

Committee recommended dismissing his appeal as time-barred. By a decision of 27 September 2013 the Director-General followed the Appeals Committee's recommendation. That is the decision impugned.

The complainant asks the Tribunal to award him compensation for the psychological, material and moral damage he suffered.

In its reply the FAO asks the Tribunal to reject the complaint as irreceivable on the grounds that the complainant's appeal was time-barred and that he has not put forward any valid reason justifying his failure to comply with the prescribed time limit for appealing an administrative decision. Subsidiarily, it asks the Tribunal to dismiss his complaint as entirely unfounded.

#### CONSIDERATIONS

1. The complainant was appointed as Information and Communications Technology Officer at the FAO's Regional Office for Africa in Accra, Ghana, on 13 March 2011. His appointment was subject to a one-year probationary period. When that period ended on 12 March 2012, however, his appointment was not confirmed and he was separated from the FAO.

In a memorandum dated 31 January 2012 the Director of CIO, his second-level supervisor, informed the complainant that he did not intend to recommend his confirmation and would recommend that he be separated from the FAO with effect from 12 March 2012 because of poor performance and unsatisfactory conduct. Manual Paragraph 305.5.241 states that:

“Confirmation of the appointment of staff members [...] is dependent upon satisfactory completion of their probationary period including such elements as (i) satisfactory performance of the duties and responsibilities assigned to them, and (ii) satisfactory conduct and suitability for the International Civil Service.”

2. In his response dated 6 February 2012 the complainant expressed objection to the proposed actions and set out his achievements over the period. However, by memorandum dated 8 March 2012, the Director of CSH informed him of his decision to follow the complainant's

second-level supervisor's recommendation not to confirm his appointment and to separate him from service with the FAO at the end of his probationary period pursuant to Staff Regulation 301.9.13 and Manual paragraph 305.5.244, and, additionally, to pay him one month's salary and allowances in lieu of notice, pursuant to Manual paragraph 314.4.3. Among other things, the Director of CSH noted the statement in the memorandum of 31 January 2012 that the complainant's conduct was "detrimental to the CIO presence in the field, and more broadly to the work of the Regional Office for Africa in efficiently assisting 47 countries". This is the decision against which the complainant appealed to the Director-General. However, by reply dated 6 August 2012, he was informed that the appeal was rejected because it was irreceivable as it was lodged out of time and that it was also unmeritorious. On his further appeal, the Appeals Committee recommended that the appeal be dismissed in its entirety as it was time-barred and accordingly irreceivable. The Director-General accepted that recommendation in the decision of 27 September 2013, which the complainant impugns before the Tribunal.

3. The FAO raises receivability as a threshold issue, insisting that the complainant's appeal to the Director-General against the decision that was contained in the memorandum of 8 March 2012 was out of time. It is observed that although the letter of appeal was dated 5 June 2012, it was despatched by the complainant to the Director of CIO by email on 8 June 2012. Staff Rule 303.1.311, which is under the rubric "Appeal to the Director-General", states as follows:

"Staff members who wish to lodge an appeal regarding a grievance arising out of disciplinary action or arising out of an administrative decision which they allege to be in conflict, either in substance or in form, with the terms of their appointment or with any pertinent Staff Regulation, Staff Rule or administrative directive, shall state their case in a letter to the Director-General, through their head of department or office. The letter shall be despatched within 90 days from the date of receipt of the decision impugned. [...]"

The FAO points out that the complainant stated, in his letter of appeal to the Director-General, that the decision contained in the memorandum of 8 March 2012 was communicated to him on the same date. Consequently, his appeal should have been despatched to the

Director-General by 6 June 2012. His appeal to the Director-General was therefore two days out of time when he despatched it on 8 June 2012.

4. The complainant, on the other hand, insists that his appeal was lodged within the required time limit as, in addition to transmitting it by email on 8 June 2012, he had also despatched it by regular mail on 5 June 2012. However, he has adduced no evidence to prove that he had actually despatched it by regular mail on 5 June.

5. In Judgment 3311, considerations 5 and 6, the Tribunal reiterated that the time limits for internal appeal procedures serve the important purposes of ensuring that disputes are dealt with in a timely way and the rights of parties are known to be settled at a particular point of time. The Tribunal relevantly rationalized this approach in the following terms: time limits are an objective matter of fact and strict adherence to them is necessary, otherwise the efficacy of the whole system of administrative and judicial review of decisions potentially adversely affecting the staff of international organisations would be put at risk. Flexibility about time limits should not intrude into the Tribunal's decision-making even if it might be thought to be equitable or fair in a particular case to allow some flexibility. To do otherwise would "impair the necessary stability of the parties' legal relations" (see Judgment 2722, consideration 3). However, there are some exceptions to this general approach, which have been expressed in the Tribunal's case law.

Additionally, however, Manual paragraph 331.3.31 provides that the Appeals Committee may consider an appeal that has been filed out of time to be receivable if it finds that the failure to abide by the time-limit was for a reason that was outside of the complainant's control and the length of the delay in filing was reasonable in the circumstances of the case.

6. The complainant only states that his appeal was hampered because upon being separated from service, the FAO discontinued his email account and that this action delayed his preparation of the appeal. It is however noted that the FAO re-activated the complainant's account a week later for thirty days. As the Appeals Committee found, this

circumstance did not justify the late filing of the complainant's appeal some two and a half months after his account was restored. Accordingly, the complaint is irreceivable, under Article VII, paragraph 1, of the Statute of the Tribunal, as the complainant has not exhausted the internal means of appeal and has failed to submit his appeal to the Director-General within the prescribed time limit required by Staff Rule 303.1.311. The complaint will therefore be dismissed in its entirety.

#### DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 3 May 2016, 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 6 July 2016.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

HUGH A. RAWLINS

DRAŽEN PETROVIĆ