

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

D.

v.

Global Fund to Fight AIDS, Tuberculosis and Malaria

122nd Session

Judgment No. 3681

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr P. D. against the Global Fund to Fight AIDS, Tuberculosis and Malaria (hereinafter “the Global Fund”) on 19 October 2012 and corrected on 8 December 2012, the Global Fund’s reply of 8 April 2013, the complainant’s rejoinder of 1 July and the Global Fund’s surrejoinder of 1 October 2013;

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 decisions to abolish his position and to terminate his contract, as well as the compensation that was awarded to him in consequence thereof.

In the summer of 2011 the complainant, a Swiss national who held a contract of employment for defined duration expiring on 31 December 2012, was advised of a planned structural review of the Global Fund. He was informed by a letter of 19 March 2012 that his position would be abolished. As he could not be reassigned by 30 April, his employment was terminated on that date; this meant that he would automatically be offered a mutually agreed separation agreement unless he chose to

exercise his rights under redundancy provisions. He sent a letter to the Administration on 2 May enquiring about his unemployment insurance cover. Having joined the Global Fund's Provident Fund on entering its employment, he complained that the Global Fund had not told him at that point that he was entitled to join the Swiss unemployment insurance scheme, and he asked the Global Fund to propose a solution that would keep him from suffering any further damage in addition to that which the organization had already caused him.

On 10 May 2012 the complainant was offered a mutually agreed separation agreement providing that he would receive, *inter alia*, a termination indemnity, six months' base salary in lieu of notice and reassignment and an amount equivalent to the contributions which the Global Fund would have made to his Provident Fund account over a period of six months, and that he would waive all right of appeal. The complainant refused to sign the agreement.

On 18 May 2012 the complainant filed an appeal with the Appeal Board challenging the decision of 19 March and the separation agreement that he had been offered. The Appeal Board refused to examine the case on the grounds that the complainant was not challenging an administrative decision.

By a letter of 5 July 2012 the Administration sent the complainant a breakdown of the entitlements that would be paid to him under the provision governing redundancy. The amounts shown were less generous than those he had been offered on 10 May. By signing this letter on 11 July, the complainant acknowledged that the entitlements listed therein constituted full and final settlement of payments due to him. However, he added the following handwritten note: "Without prejudice to the pending appeal."* By an e-mail of 16 August the complainant informed the Global Fund that in his view the payment, which had been effected on 25 July, was incomplete. The administration responded by an e-mail of 30 August 2012, which the complainant impugns in his complaint, referring him to its letter of 5 July.

* Registry's translation.

In his complaint filed on 19 October 2012, the complainant seeks the quashing of the decisions to abolish his post and terminate his employment, the “[c]orrection of the separation offer dated 1[1] July 2012 [...] on the financial basis of the first offer of 10 May 2012 and including [...] appropriate compensation for the professional and financial injury caused by the inability to make unemployment insurance contributions for the next two years”, moral damages and costs.

The Global Fund asks the Tribunal to dismiss the complaint as irreceivable or, failing that, as devoid of merit, and it makes a counterclaim for costs.

CONSIDERATIONS

1. Article VII, paragraph 2, of the Statute of the Tribunal provides that, to be receivable, a complaint must have been filed within 90 days after the complainant was notified of the decision impugned.

2. The complaint is directed against an e-mail of 30 August 2012 in which the defendant reminded the complainant of the decision of 5 July 2012 providing him with a breakdown of his termination entitlements. However, this e-mail did not constitute a new decision as it merely confirmed the decision of 5 July. Hence, the dispatch of this e-mail did not re-open the time limit for appealing against the decision of 5 July 2012, of which the complainant was notified on 11 July (see Judgment 2790, under 8, and the case law cited therein). As the complaint was filed more than 90 days after this notification, it is time-barred under Article VII, paragraph 2, of the Statute of the Tribunal and must be dismissed for that reason.

3. The Global Fund asks that the complainant be ordered to pay costs. In this case, the Tribunal does not consider it appropriate to make such an order.

DECISION

For the above reasons,

The complaint is dismissed, as is the Global Fund's counterclaim.

In witness of this judgment, adopted on 28 April 2016, 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 6 July 2016.

(Signed)

CLAUDE ROUILLER PATRICK FRYDMAN FATOUMATA DIAKITÉ

DRAŽEN PETROVIĆ