

**H.**

*v.*

**ITER Organization**

**123rd Session**

**Judgment No. 3769**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr M. H. against the ITER International Fusion Energy Organization (ITER Organization) on 18 February 2014, the ITER Organization's reply of 4 June and the letter of 31 July 2014 from the complainant's counsel informing the Registrar of the Tribunal that he would enter no rejoinder;

Considering Article II, paragraph 5, 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 renew his contract following the abolition of his post.

The complainant was appointed as a staff member on 1 January 2008 in the Quality Assurance Division of the Department for Safety, Quality and Security. His fixed-term contract was due to expire on 31 December 2012, but was extended for one year.

At the beginning of 2013 an audit of the Quality Assurance procedures was conducted, the findings of which pointed to a lack of electrical engineering expertise within the Quality Assurance Division. By a letter of 30 June 2013, the Director-General informed the complainant that his appointment would end upon the expiry of his contract on 31 December

2013. No reason was given. The complainant replied on 3 July that he could not accept the “proposal” not to renew his contract. On 10 July the Director-General explained that, following the 2013 reorganization process, new business needs and skills requirements had emerged. The Quality Assurance Division was lacking a person with electrical engineering experience and this deficiency now needed to be addressed. Consequently, he had decided not to renew the complainant’s contract. On 18 July the complainant replied that, since he believed he had “sufficient knowledge, skill and experience” to work in the electrical area, he hoped that his employment be reconsidered.

On 30 August 2013 the complainant lodged an appeal with the Director-General against the decision of 10 July and, on 10 September, he submitted a request for mediation under Article 26.1(e) of the Staff Regulations. The Director-General dismissed the appeal and confirmed his non-renewal decision on 26 September 2013, pointing out that the complainant could not be considered for the new post which had been created to replace his post and to address the electrical engineering needs. On 3 October 2013 the complainant made another request for mediation.

The Mediator issued his report on 20 November 2013, recommending *inter alia* that a “fresh look” be taken at the question of the renewal of the complainant’s contract, that the complainant be given an opportunity to apply for the new post and that consideration be given to the possibility of renewing the complainant’s contract until the new position was filled. By a letter of 29 November 2013, the Director-General confirmed his decision not to renew the complainant’s contract. That is the impugned decision.

On 4 December 2013 the complainant informed the Director-General that he could not accept the decision of 29 November. He expressed his willingness to accept any other post regardless of the grade.

On 18 February 2014 the complainant filed his complaint with the Tribunal, asking it to quash the impugned decision and to order the ITER Organization to reinstate him with full pay and allowances as of 1 January 2014, inclusive of all entitlements, and to undertake immediate action to assign him to a suitable post. Additionally, he claims compensation for moral injury and costs in the amount of 5,000 euros.

The ITER Organization invites the Tribunal to dismiss the complaint as unfounded.

### CONSIDERATIONS

1. The complainant was notified by a letter dated 31 May 2012 that his fixed-term contract would be extended for one year, effective from 1 January 2013 to 31 December 2013. He was notified by letter dated 30 June 2013, and it was confirmed in a letter dated 10 July 2013, that his contract would not be renewed beyond its expiry date. The justification for the non-renewal was that due to the 2013 reorganization process and the identification of the need for an expert in electrical engineering, the Organization would need to find a new candidate with the necessary skill mix to fulfil the evolving needs of the Department for Safety, Quality and Security. The complainant's P4 post (SQS-005) was set to be abolished following the complainant's contract expiry on 31 December 2013 and was to be replaced by a new P3 post (SQS-039) with the necessary qualification requirements.

2. In a letter dated 30 August 2013 the complainant lodged an appeal against the decision of 10 July 2013 not to renew his contract beyond its 31 December 2013 expiry and, on 10 September 2013, he requested consultation with a Mediator in accordance with Article 26.1(e) of the Staff Regulations. The Mediator's report to the Director-General dated 20 November 2013 recommended "that the Director-General take a fresh look at the question of the renewal of the [complainant's] contract of employment when it expires on 31 December 2013, in a final decision on the present [a]ppeal which should show (and not simply affirm) that full consideration had been given to the question whether or not the post to be replaced should be that of the [complainant] and, if this is confirmed to be the case, that all reasonable efforts have been taken to find another appropriate position in the Organization which could be offered to the [complainant] on a longer term or short term basis. For this purpose, the Administration should provide the Director-General with a list of possible appropriate positions that it has considered, including any possible

positions that might be suggested by the [complainant], indicating the reason why the [complainant] was not considered sufficiently qualified for each such post (unless the reason is obvious). In addition, the [complainant] should be given an opportunity to apply for the [post] SQS-039. For this purpose, the education requirement in the job description should be amended in an appropriate way, for example, by qualifying the expression ‘At least Bachelor’s degree in the Quality Assurance field’ [...] by wording such as ‘or equivalent experience’. Finally, the Director-General should give consideration to renewing the [complainant’s] contract of employment until the [post] SQS-039 is filled, and, if he decides that this is not in the interests of the Organization, explain the reason why in his final decision.”

3. The complainant was notified of the Director-General’s final decision in a letter from the Legal Advisor dated 29 November 2013. The Director-General decided to confirm his decision not to renew the complainant’s contract beyond its 31 December 2013 expiry.

4. The complainant impugns that decision in the present complaint on the grounds that the abolition of his post was not based on objective grounds; the Organization did not demonstrate that any effort had been made to reassign him; the Organization did not consider him for suitable posts at a lower grade; no valid reason was given for not extending his contract until the post SQS-039 was filled; and the non-renewal of his contract was not justified.

5. The complaint is unfounded and must be dismissed. “According to firm precedent, a decision concerning the restructuring of an international organisation’s services, which leads to the abolition of a post, may be taken at the discretion of its executive head and is subject to only limited review by the Tribunal. The latter must therefore confine itself to ascertaining whether the decision was taken in accordance with the rules on competence, form or procedure, whether it involves a mistake of fact or of law, whether it constituted abuse of authority, whether it failed to take account of material facts, or whether it draws clearly mistaken conclusions from the evidence. The Tribunal may not, however, supplant

an organisation's view with its own (see, for example, Judgments 1131, under 5, 2510, under 10, and 2933, under 10). Nevertheless, any decision to abolish a post must be based on objective grounds and its purpose may never be to remove a member of staff regarded as unwanted. Disguising such purposes as a restructuring measure would constitute abuse of authority (see Judgments 1231, under 26, 1729, under 11, and 3353, under 17).” (See Judgment 3582, under 6.)

6. In the present case, the reason for not renewing the complainant's contract and for abolishing his post was the need to create a modified post to meet the needs of the Organization which had been identified as lacking a person with electrical engineering skills necessary to begin the new phase in the creation of the Project Control Directorate. As the complainant's contract expired in December, and the general business needs of the Organization were changing, it was open to the Organization to select his post for abolition. The Tribunal cannot substitute its opinion for that of the Organization which found that the complainant did not have the necessary skill mix and experience to fulfil the requirements of the new post (SQS-039). “The case law shows that an organisation enjoys wide discretion in deciding whether or not to renew a fixed-term appointment and a fortiori whether to convert it into an indefinite one. The exercise of such discretion is subject to review, but only to limited review, the Tribunal respecting the organisation's freedom to determine its own requirements and the career prospects of staff.” (See Judgment 1349, under 11.)

7. The complainant asserts that the Organization should have considered him for posts lower than his P4 level. The Tribunal notes that the Organization considered the complainant's qualifications with regard to the new P3 post (SQS-039) and found that he did not have the necessary skill mix and experience. The Tribunal also acknowledges the Organization's submission that a potentially appropriate post (SQS-013) for the complainant became available in September 2013 but that the complainant did not apply for it. It is important to note that the Organization is generally under no obligation to extend a fixed-term contract or to reassign someone whose fixed-term contract is expiring, unless it is

specifically provided by a provision in the staff rules or regulations. What is important is that the reason for the non-renewal be valid (and not an excuse to be rid of a staff member) and be notified within a reasonable time (see, for example, Judgments 1128, under 2, 1154, under 4, 1983, under 6, 3582, under 9, 3586, under 10, 3626, under 12).

8. The complainant claims that no valid reason was given for not extending his contract until the post SQS-039 was filled. This claim is unfounded. In the letter of 29 November 2013, the complainant was informed that “[w]ith regard to the last proposal of the Mediator, we regret to inform you that no extension of your contract can be offered to you after 31 December 2013, inasmuch as the implementation of the reorganization of the [Quality Assurance] Division will start in January 2014. To facilitate the continuous implementation of this reorganization, the SQS-005 [post] will be abolished on 31 December 2013.” The Tribunal finds that this decision falls within the discretion of the Director-General and that it is not legally flawed.

#### DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 20 October 2016, Mr Giuseppe Barbagallo, Vice-President of the Tribunal, Mr Michael F. Moore, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 8 February 2017.

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

HUGH A. RAWLINS

DRAŽEN PETROVIĆ