

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

**G.**  
**v.**  
**ILO**

**123rd Session**

**Judgment No. 3774**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr B. F. G. against the International Labour Organization (ILO) on 14 March 2014 and corrected on 9 May, the ILO's reply of 9 October, the complainant's rejoinder of 1 December 2014 and the ILO's surrejoinder of 25 February 2015;

Considering Articles II 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 fact that he has not been offered further contracts with the ILO.

The complainant worked for the International Training Centre (hereinafter "the Centre") of the ILO under a number of temporary contracts from October 2000 to January 2013 with periods of break in service, some of which were for more than a year. His last short-term contract ended on 8 January 2013, and after this he was not eligible for employment until six months had elapsed pursuant to Circular No. 02/28 of the Centre. In July 2013 the Centre asked him if he would be available for further short-term contracts during the summer. He indicated his interest but was not offered any employment contract.

On 5 November 2013 he wrote an email to the Director of the Centre, copying the head of the two Programmes for which he had worked during his last period of employment and requesting her, in accordance with Article 12.2 of the Staff Regulations of the Centre, to consider his “grievance”. This concerned an alleged decision with respect to the possibility of recruiting him again. On 22 November the Centre Human Resources Services (HRS) wrote to the complainant concerning his email of 5 November 2013 drawing his attention to the requirements laid down in Article 12.2 for submitting an internal complaint: the procedure was available for an official who alleged that she or he had been treated inconsistently with the provisions of the Staff Regulations or with the terms of the contract of employment or that she or he had been subjected to unjustifiable or unfair treatment by a superior official. The internal complaint should be addressed to the Director of the Centre through the official’s responsible chief and through HRS within six months of the treatment complained of, unless otherwise provided in the Staff Regulations.

On 14 March 2014 the complainant filed a complaint with the Tribunal against the implied rejection of his “grievance” of 5 November 2013.

The complainant asks the Tribunal to set aside the implied rejection of his “grievance” and to award him compensation for the damage suffered. He also claims 1,300 Swiss francs in costs. In his rejoinder, he asks the Tribunal to order the Centre to organise an independent investigation into comments allegedly made by the Deputy Director of the Centre and requests compensation in this respect.

The ILO asks the Tribunal to dismiss the complaint as irreceivable and devoid of merit.

## CONSIDERATIONS

1. To the extent that the present complaint is intended to challenge the complainant’s non-selection for another short-term contract with the ILO, it will be dismissed as irreceivable as the Tribunal has no competence to hear it. The Tribunal considers that the complainant has no standing to challenge his non-selection for a post by virtue of

Article II of the Tribunal's Statute because he was no more than an outside applicant and could not claim the non-observance of the terms and conditions of an appointment which he did not have. The rationale for this decision is well explained, for example, in Judgment 3653, consideration 4:

“There is, however, no provision under which the Tribunal is competent to hear the claim concerning the complainant's non-selection for the post for which he had applied in November 2008. As he was not selected for the post, he did not become a WFP [World Food Programme] staff member [...] and therefore obtained no right to lodge an internal appeal under Staff Regulation 301.11.1 to challenge the non-selection. Because of his non-selection, he had not entered into a contractual relationship with the WFP. Accordingly, by virtue of Article II, paragraph 5, of the Tribunal's Statute, he has no standing to bring a claim before the Tribunal alleging the non-observance of the terms and conditions of an appointment which he did not have. This position was explained in Judgment 1509, consideration 16, in which the Tribunal held that the complainant was ‘no more than an outside applicant for employment’ and the organisation's decision was ‘in fact a refusal to recruit him’, which decision raises no question of non-observance of his terms of appointment or of its Staff Regulations and Staff Rules.”

2. The Tribunal has reviewed all of the complainant's claims and arguments which it finds to be related to the fact that when he was no longer in employment with the Centre he sought, without success, to be hired again.

3. For the foregoing reasons, the complaint will be dismissed in its entirety.

#### DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 19 October 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 8 February 2017.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

HUGH A. RAWLINS

DRAŽEN PETROVIĆ