Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

A. N., B., L. and R.

v.

WHO

129th Session **Judgment No. 4236**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaints filed by Mr S. A. N., Mr S. K. B., Mr C. L. and Mr E. R. against the World Health Organization (WHO) on 5 December 2017, WHO's single reply of 16 May 2018, the complainants' rejoinder of 1 August and WHO's surrejoinder of 13 November 2018, corrected on 21 January 2019;

Considering the applications to intervene filed by 217 interveners (listed in the annex to this judgment) on 13, 19 and 21 August 2019 and corrected on 13 September, and WHO's comments thereon dated 1 October 2019;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal and Article 13 of its Rules;

Having examined the written submissions and decided not to hold oral proceedings, for which none of the parties has applied;

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

The complainants challenge the results of the comprehensive local salary survey of 2013 for New Delhi, India.

A comprehensive salary survey was carried out by the United Nations Office of the Human Resources Management (UN/OHRM) in New Delhi in 2013. It was carried out on the basis of the methodology (Methodology II) adopted by the International Civil Service Commission (ICSC) in 2011.

By an email of 7 October 2014 the complainants, who were National Officer category employees of WHO at its South-East Asia Regional Office (SEARO) in New Delhi, were informed that the salary survey showed that the salaries for locally recruited staff (staff in the General Service category and staff in the National Officer category) were above the labour market. Thus the existing salaries effective 1 July 2012 were maintained for those appointed prior to 1 November 2014, but new salary scales would apply for those appointed on or after 1 November 2014 to reflect the downward adjustments.

In December 2014 the complainants requested and were granted permission to file an appeal to the Headquarters Board of Appeal (HBA). Hence, in early 2015, they filed their appeal directly with the HBA, challenging the decision of 7 October 2014. They asked that the results of the salary survey be rescinded, that the interim adjustment for 2013 be made based on the previous mini-survey (2012) through a revision of the salary scales, with interest at 8 per cent in respect of arrears and allowances from 1 July 2013 to the date of payment, and that a new comprehensive salary survey be conducted for 2014 with WHO acting as responsible agency and coordinating agency in accordance with Methodology II. They also sought "legal and administrative costs", compensation for moral injury and any other relief as may be considered just.

The HBA submitted its report to the Director-General on 14 July 2017. It found that the appeal was receivable given that the complainants were adversely affected by the contested decision. The decision to freeze their salaries effective 1 November 2014 was not entirely in accordance with Methodology II, as WHO had not fully complied with its obligations as the responsible agency in the local salary survey for the duty station New Delhi. In particular, WHO had failed to question and clarify the considerable discrepancy between the data collected by the survey teams and the data purchased by the external providers in the final report by the salary survey specialists. It recommended that the complainants be compensated for the material damages caused by WHO's omission to fulfil its obligations as the responsible agency and

conduct a local salary survey in accordance with the guidelines set out in Methodology II, but that all other claims be dismissed.

On 5 September 2017 the Director-General informed the complainants that he had concluded that their appeal was irreceivable as they did not challenge their payslip which reflected the individual application of the salary freeze, but the general decision. He added that, in his view, the 2013 contested salary survey had been conducted in compliance with the applicable methodology. He therefore decided to reject the HBA's conclusions and recommendations. That is the decision the complainants impugn before the Tribunal.

The complainants ask the Tribunal to set aside the decision of 5 September 2017, to rescind the results of the 2013 salary survey, which were announced on 7 October 2014, to order the adjustment of their salaries effective 1 July 2012 based on the previously held mini survey (2012) through revision of salary scales with interest, and to award them appropriate compensation for material loss. They also claim moral damages and costs. Lastly, they ask to be granted any award the Tribunal may consider just and fair.

WHO asks the Tribunal to dismiss the complaints as irreceivable or devoid of merit.

CONSIDERATIONS

1. Four staff members of WHO, Mr S. A. N., Mr S. K. B., Mr C. L. and Mr E. R., each filed a complaint with the Tribunal on 5 December 2017. Each of the complainants was, at the relevant time, employed by WHO as a National Officer at SEARO in New Delhi. They each challenge the same decision and their pleas are in substantially the same terms. Indeed they filed a common rejoinder. It is appropriate that the complaints be joined so that one judgment can be rendered.

2. In its reply, WHO argues that each complaint is irreceivable. It is convenient to deal with this issue at the outset and only refer to facts necessary to deal with it. Following a salary survey conducted in 2013, an email was sent on 7 October 2014 to staff at SEARO informing

them that, in effect, the salaries of staff appointed before 1 November 2014 would remain the same and staff appointed on or after 1 November 2014 would be paid salaries at a reduced rate. On either 18 February 2015 or 2 March 2015 a large number of staff members, including the present complainants, lodged an appeal against the decision of 7 October 2014 that was heard by the HBA, which reported to the Director-General on 14 July 2017. On the question of receivability, the HBA concluded the appeal was receivable. Without descending into detail, the HBA made two recommendations concerning the merits of the appeal favourable to the complainants. Those recommendations were rejected by the Director-General in a letter dated 5 September 2017. He concluded, amongst other things, that the appeal was irreceivable. This is the decision impugned in these proceedings.

3. Both in their briefs and in the common rejoinder, the complainants refer to several earlier judgments of the Tribunal, namely Judgments 522, 663, 1618 and 2244 in support of the contention that the complaints are receivable. The Director-General relied on Judgment 3427 in his letter of 5 September 2017 and WHO relies in its pleas on Judgments 3736, 3921 and 3931 to argue the complaints are not receivable. Certainly the contemporary case law of the Tribunal supports the argument of WHO. It is sufficient to refer to Judgment 3931. The circumstances considered in that judgment align almost completely with the circumstances in this matter. The Tribunal said:

> "3. [...] The result of the impugned decision was that the salaries of staff who had been recruited before 1 November 2014 would be frozen and staff recruited after that date would receive salaries under a new salary scale. All the complainants were recruited before 1 November 2014. An aspect of the Organization's argument is that the freezing of salaries results in the continued payment of pre-existing salaries with no injurious effect. However, an argument to the same effect in relation to a salary freeze was rejected by the Tribunal in Judgment 3740, consideration 11. It is unnecessary to repeat the analysis that, with one important qualification, is apt to apply in the present case. The qualification is this. In the case leading to Judgment 3740 the complainants lodged internal appeals against 'the individual administrative decisions to apply to [each complainant] the statutory decision consisting of the revision of the remuneration of the [General Service category] Staff stationed in Rome' as reflected in their respective February 2013 pay slips. Challenging a pay slip is

> an orthodox and accepted mechanism whereby an individual staff member can challenge a general decision as and when it is implemented in a way that affects or is likely to affect that individual staff member.
>
> 4. In the present case, the complainants' causes of action are not based on pay slips. They seek to challenge the general decision embodied in the Administrative Order of 1 October 2014 vide Dossier 2-1 New Delhi. They cannot do so. The distinction between challenging a general decision and challenging the implementation of the general decision as applied to an individual staff member is not a barren technical point to frustrate individual staff members from pursuing their rights or protecting their interests. It is a distinction rooted in the nature and extent of the jurisdiction of the Tribunal conferred by the Tribunal's Statute. The Tribunal must act within the limits established by the Statute. There are many statements in the Tribunal's case law about the nature of this jurisdiction and its limits. One example of a comparatively recent discussion of those limits and how they arise from the Statute is found in Judgment 3642, consideration 11. As the Tribunal observed in Judgment 3760, consideration 6: '[t]he jurisdiction of the Tribunal is, under the Statute construed as a whole, concerned with the vindication or enforcement of individual rights (see, for example, Judgment 3642, under 11).'"

4. It bears repeating that the need to challenge an individual decision is not a barren technical point to frustrate individual staff members from pursuing their rights or protecting their interests but rather arises from the nature of the Tribunal's jurisdiction. For example, in the present case, the relief the complainants seek includes setting aside the decision of the Director-General dated 5 September 2017 and rescinding the results of the 2013 salary survey as announced in the email of 7 October 2014. But orders of this type would apply to all staff affected by both the decision of 5 September 2017 and the email of 7 October 2014 irrespective of whether those staff agreed to or supported that outcome.

5. These four complaints are irreceivable and should be dismissed. A number of individuals applied to intervene in these proceedings. As the proceedings have been unsuccessful, the applications to intervene should be dismissed.

DECISION

For the above reasons,

The complaints are dismissed, as are the applications to intervene.

In witness of this judgment, adopted on 31 October 2019, Ms Dolores M. Hansen, Vice-President of the Tribunal, Mr Michael F. Moore, Judge, and Mr Yves Kreins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 10 February 2020.

DOLORES M. HANSEN

MICHAEL F. MOORE

YVES KREINS

DRAŽEN PETROVIĆ

Annex

Two hundred and seventeen interveners (in alphabetical order):

(Names removed)