

The Administrative Tribunal,

Considering the second complaint filed by Ms I. S. against the International Organization for Migration (IOM) on 22 May 2007, the IOM's reply of 25 June, the complainant's rejoinder of 16 July and the Organization's surrejoinder of 20 August 2007;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

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

A. Facts relevant to this case are to be found under A in Judgment 2732, also delivered this day. Suffice it to recall that the complainant's appointment, which took effect on 17 June 2006, was terminated on 12 December 2006 on the grounds of unsatisfactory performance. On 3 January 2007 she was requested to complete and sign several forms concerning separation formalities, including a separation clearance form, in order for the Administration to prepare the relevant personnel action.

In a letter of 6 January to the Director of Human Resources Management, the complainant stated that she was under no contractual obligation to sign any forms in order to receive due compensation. In another letter of the same day she claimed payment of outstanding entitlements for the period up to 12 December 2006 in the amount of 16,358.85 United States dollars. By a letter of 17 January 2007 to the Regional Representative and the Director of Human Resources Management, she reiterated her claim, to which she added interest and 1,319.00 dollars for attorney fees. On 19 January the Administration forwarded to the complainant the personnel action relevant to her separation and advised her that it could not proceed with the payment until it had received the separation clearance form and other related forms. On the same day, the complainant requested the immediate payment of the amount indicated in the personnel action, noting, however, that it did not correspond to the amount due, for the recovery of which she had initiated legal proceedings.

By an e-mail of 22 January the complainant was again advised that the Administration needed a copy of the signed separation forms before it could release the payment of her terminal emoluments. The complainant replied on the same day that she would not sign any forms "reducing [her] rights". By an e-mail of 30 January the Senior Legal Officer informed the complainant that her terminal emoluments would be paid as soon as Human Resources Management received the signed separation forms. She added that this was required of all staff members at the end of their employment with the IOM. In a letter of the same date, the complainant stated that she did not agree with the term "end of employment" since she herself had terminated her appointment with effect from 11 December 2006 due to "material breach" by the Organization. She reiterated that she had no obligation to sign any forms and that there was no provision entitling the IOM to withhold payments due. As an attachment to the letter she submitted unsigned modified versions of the requested forms. On 31 January 2007 the Senior Legal Officer replied that the Administration could not accept the modified forms and reiterated the request for submission of the standard forms. By an e-mail of 12 February the Regional Representative confirmed that terminal emoluments would be duly paid upon receipt by Human Resources Management of the signed separation forms. The complainant maintained her position, and on 14 February 2007 she submitted signed versions of the modified separation forms.

On 16 February 2007 the complainant lodged an appeal against the Administration's failure to pay her salary, related entitlements and travel expenses for the period of service up to 12 December 2006. She claimed payment of outstanding entitlements of 16,405.40 dollars to which she added interest of 550.75 dollars and 1,612.53 dollars for attorney fees. In its report of 14 May 2007 the Joint Administrative Review Board took the position that "the disagreement over the requirements of the terminal emoluments [was], at essence, directly related to the 27 November 2006 termination". Emphasising that under Annex D to the Staff Regulations and Staff Rules for officials the complainant did not have the right to appeal against termination action, it concluded that the appeal was irreceivable. By letter of 18 May 2007 the complainant was informed that the Director General agreed with the

conclusion of the Board. That is the impugned decision.

B. The complainant contends that, contrary to the position taken by the Joint Administrative Review Board, her appeal was not directed against termination action, which is the subject of her first complaint before the Tribunal, but against the Administration's failure to refund her contributions to the Provident Fund and to pay her compensation for unused leave and travel expenses for her period of service up to 12 December 2006. In her opinion, there are no grounds for the Organization to withhold these payments.

She argues that she did sign the forms the Organization requested her to sign, and that she only altered them in order to make clear that she did not agree with her "unlawful" termination nor had she agreed that the Staff Regulations and Staff Rules would apply to her. In her view, signing a document referring to "separation" would amount to an implicit agreement regarding her termination. She considers that, by signing slightly modified forms, she proposed an amicable solution, whereas the Organization did not make any effort to address her concerns.

The complainant requests payment of 6,989.65 United States dollars comprising her contributions to the Provident Fund, unused leave and travel costs. She also seeks interest at the rate of 12 per cent per annum on all amounts as from 13 December 2006 and compensation for the loss due to the fluctuation of the exchange rate between the euro and the dollar as from the same date. Lastly, she claims 2,000 euros in moral damages and 2,200 euros in costs.

C. In its reply the IOM submits that the sole reason why the complainant has not been paid terminal emoluments following the termination of her appointment is that, despite repeated requests, she has refused to complete and sign the appropriate separation clearance forms. Relying on the Manual for the Administration of International Staff, it emphasises that its standard procedures require all staff members to sign such forms upon separation and that no terminal emoluments are paid unless duly completed separation forms are received. It rejects as unacceptable the modified forms submitted by the complainant, arguing that their effect was to deny not only the fact that the latter had actually been separated from the Organization, but also the applicability of the Staff Regulations and Staff Rules.

Furthermore, the IOM argues that, although the complainant has on many occasions been informed of the need to submit the requisite travel authorisation form, receipts from highway tolls and logbooks in support of her claims for travel expenses, she has refused to do so. It adds that until she provides full information, such claims shall remain outstanding. It draws attention to the fact that the complainant has admitted having instructed her assistant to insert arbitrary figures into the logbook and asserts that such fraudulent submission of information amounts to falsification and is thus in blatant breach of Staff Rule 10.12, according to which "every official shall be considered [...] as responsible for the truth of any statement he makes for obtaining payment of any allowance or benefit".

The Organization considers that the complaint has arisen solely as a result of the complainant's disregard of its standard forms and procedures. As such, it is abusive and unnecessary and has resulted in a considerable waste of time and money. It therefore brings a counterclaim for damages in an amount to be determined by the Tribunal and which shall be set off against her terminal emoluments and outstanding claims.

D. In her rejoinder the complainant presses her pleas. She disputes the relevance to her case of the Manual for the Administration of International Staff and asserts that on 1 March 2007 she told Human Resources Management that she would sign unaltered forms once she had received information as to the exact amounts that would be paid and on condition that these amounts covered all outstanding claims. She points out that the Organization is withholding the payment of her travel expenses even though it does not contest the distances travelled or the official purpose of the travel. In her opinion, information other than travel date, destination and mileage is either undue or irrelevant for the calculation of the amount to be refunded. She categorically rejects the allegations of fraudulent submission of information and falsification, asserting that they are defamatory and that they merely underline her claim for moral damages. She considers that the IOM's counterclaim should be dismissed as unsubstantiated.

E. In its surrejoinder the Organization maintains its position. It adds that the delay caused in the payment of outstanding entitlements is solely due to the complainant's actions. The fact that the complainant did not agree with the content of the separation forms did not exempt her from the obligation to sign them in order to receive terminal emoluments. Furthermore, there is nothing in these forms releasing the IOM from its obligations or depriving her of the possibility of resorting to legal action. It further submits that the complainant failed to provide accurate and

full information concerning her travel claims and that she refused to answer questions aimed at clarifying the conflicting information she had submitted. It maintains its counterclaim for damages.

CONSIDERATIONS

1. The complainant joined the IOM on 17 June 2006 on a one-year fixed-term contract as a Project Manager for the NATO Trust Fund at grade P.4. In November 2006, while on probation, she was informed that her contract would be terminated with effect from 12 December 2006.
2. On 11 December 2006 the complainant appealed her termination to the Joint Administrative Review Board. Ultimately, the Board concluded that as the complainant was terminated for unsatisfactory performance, the appeal was irreceivable since Annex D to the Staff Regulations and Staff Rules precludes an appeal against termination during a period of probation unless the charge is misconduct. The Director General agreed with the conclusion. In Judgment 2732 regarding the complainant's first case, the Tribunal declared the complaint receivable, set aside the decision to terminate the complainant, and awarded her damages and costs.
3. On 3 January 2007 the Administration asked the complainant to complete and sign separation forms. On 6 January the complainant replied that she was under no contractual obligation to sign any forms as a condition precedent to receipt of the compensation to which she was entitled. On the same day she requested payment of outstanding entitlements in the amount of 16,358.85 United States dollars. The complainant and the Administration exchanged similar correspondence until the end of January 2007 at which time the complainant did remit modified versions of the forms that had been provided to her. She was subsequently informed that the changes were not acceptable and that the payment would not be made unless she completed and signed the standard forms. There was a further exchange of correspondence in the course of which the complainant and the Administration maintained their respective positions.
4. The complainant filed an appeal on 16 February 2007 with the Director General for the payment of terminal emoluments in the amount of 16,405.40 dollars increased by interest and attorney fees.

She stated on 1 March 2007 that she would sign the unaltered forms after receiving information as to the amount that would be transferred and on condition that this amount covered all outstanding compensation and entitlements. The Administration responded that the suggestion would be considered.
5. In its report of 14 May 2007 the Joint Administrative Review Board considered whether this appeal was also barred by Article 1 of Annex D. It considered whether the appeal was one "against termination action" and concluded that it was. In reaching this conclusion, the Board observed that the appeal was related to the same employment contract and the same termination as the earlier appeal, and that the changes made by the complainant to the separation forms related to her perception about the termination and were another challenge to the termination. It concluded that since the appeal was, in essence, about the termination, it fell within the ambit of Article 1 of Annex D.
6. On 18 May 2007 the complainant was informed that the Director General had accepted the conclusion reached by the Joint Administrative Review Board that the appeal was irreceivable. She impugns that decision before the Tribunal.
7. On the issue of receivability, the IOM does not take a position. The Tribunal accepts the complaint as receivable. It is not directed to the complainant's termination as such but to the question of her entitlements pursuant to the relevant Staff Regulations and Staff Rules.
8. The Organization submits that the forms it has asked the complainant to complete and sign are standard separation forms; this requirement is part of the normal termination process and it is standard practice not to pay termination emoluments until the signed forms are received. The Organization takes the position that it must use standard forms and cannot renegotiate the wording of the forms with every employee. Further, the changes to the forms the complainant sought were incorrect in fact and in law and were, therefore, unacceptable.
9. The defendant also points out that the Manual for the Administration of International Staff in the section "Separation from Service – Administrative Steps" states that "[t]here will be no payment on the part of Treasury unless a duly completed Separation Clearance form is received". It adds that the separation clearance form does not

deprive the complainant of the possibility of pursuing legal action nor does it contain a general clause releasing the Organization from its obligations. Only the waiver of claims upon separation from service contains a release clause regarding future medical claims in the event that the staff member does not undergo an exit physical examination.

10. The complainant maintains that she did sign the relevant forms and that the alterations were only made to clarify that she did not agree with her termination and that she had never agreed to be bound by the Staff Regulations and Staff Rules. She alleges that signing a document that refers to “separation” would imply that she had consented to the termination.

11. She submits that the Manual for the Administration of International Staff is an internal guideline that defines the obligations of the Organization’s administrative staff and has no relevance to her. She adds that the Staff Regulations and Staff Rules do not mention any obligation to complete forms as a condition for payment.

12. The central issue in this dispute is whether payment may be properly withheld until a completed separation clearance form has been received. This question may only be answered by reference to whether the relevant Provident Fund or Staff Regulations and Staff Rules in fact, or by necessary implication, subject any outstanding payment to the completion of a particular form and/or the remitting of any proof of expenditures.

13. Regarding the Organization’s reference to the Manual for the Administration of International Staff, the Tribunal observes that the specific section cited does not form part of the IOM’s Staff Regulations and Staff Rules. Further, its purpose appears to be one of guidance only directed at the avoidance of future legal repercussions.

14. As to the complainant’s specific claims, these are all matters that ought to have been considered by the Joint Administrative Review Board, had it not concluded that the appeal was irreceivable. The Tribunal found in Judgment 2732 that the Director General did not err in concluding that the complainant’s appeal to the Review Board was irreceivable. It nonetheless declared the complainant’s first complaint receivable. For the same reasons her second complaint is also receivable. The complaint must be allowed, the decision of 18 May 2007 must be set aside, and the matter must be remitted to the Board for a determination in accordance with consideration 12. The complainant is entitled to costs in the amount of 400 euros. All other claims are dismissed, including the Organization’s counterclaim for damages.

DECISION

For the above reasons,

1. The Director General’s decision of 18 May 2007 is set aside.
2. The complaint is allowed and the matter is remitted to the Joint Administrative Review Board for a determination in accordance with consideration 12.
3. The IOM shall pay the complainant 400 euros in costs.
4. All other claims are dismissed, as is the Organization’s counterclaim for damages.

In witness of this judgment, adopted on 16 May 2008, Ms Mary G. Gaudron, Vice-President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Ms Dolores M. Hansen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 9 July 2008.

Mary G. Gaudron

Giuseppe Barbagallo

Dolores M. Hansen

Catherine Comtet

Updated by SD. Approved by CC. Last update: 14 July 2008.