

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**114th Session**

**Judgment No. 3183**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms T. R. against the International Organization of Legal Metrology (OIML) on 4 November 2010 and corrected on 22 November, the Organization's reply of 23 December 2010, the complainant's rejoinder of 11 February 2011 and the OIML's surrejoinder of 14 March 2011;

Considering Articles II, paragraph 5, and VII 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. The complainant, a French national born in 1951, joined the International Bureau of Legal Metrology (BIML), the Secretariat of the OIML which has its administrative headquarters in Paris, on 1 April 2005. She was recruited as a part-time secretary on a five-year contract. She was employed full-time as from 1 September 2005.

In 2007 the complainant's doctor diagnosed her as suffering from a "major depression". On 17 July 2008 the Director of the BIML

wrote to the complainant to inform her that, in accordance with the first paragraph of Article XIV of the BIML Staff Regulations, she would no longer be entitled to full pay as from August, because she had been on sick leave since 19 July 2007. He added that he was obliged to have her examined by two doctors. According to Article XIX, paragraph 1c), of the Regulations, the purpose of the examination is to determine whether an agent is subject to a “permanent or frequently recurring physical or mental incapacity that renders him/her incapable of fulfilling his/her functions in a normal manner”. If the agent is found to be suffering from such incapacity, his or her employment contract must be terminated, otherwise he or she is given “sick pay” for an additional two years. In the instant case, the medical examination was held on 10 October 2008. The doctor designated by the complainant concluded that she had temporary, non-recurring physical and mental incapacity. The doctor designated by the President of the International Committee of Legal Metrology (CIML) – the body responsible for undertaking and carrying out the tasks for which the Organization was established – considered that the complainant was not suffering from permanent or frequent periodical incapacity preventing her from exercising her functions in a normal manner. She was therefore entitled to receive “sick pay”.

The complainant was informed by a letter of 7 January 2010 that her post was being definitively abolished as a result of the reorganisation which had taken place the previous month and that, as the efforts which had been made to find her a new post had proved unsuccessful, her contract would not be renewed when it expired on 31 March. On 13 April she wrote to the Director to request a certificate of employment and the “end-of-contract indemnities due to [her] under French law”. On 15 April she was sent the certificate in question together with a covering letter explaining that the French Labour Code did not apply to the Organization and that the employment contracts offered by the OIML were governed by the Staff Regulations, which make no provision for the payment of an end-of-contract indemnity. The complainant then initiated proceedings before the Paris employment tribunal, the *conseil de prud’hommes*,

in order to claim the payment of that indemnity in the amount of 10,187 euros. At that juncture, the Organization notified both the complainant and the *conseil de prud'hommes* that the latter had no jurisdiction over the dispute.

In a letter of 15 July 2010 to the Director the complainant alleged that her transfer to a basement office had led to her “professional sidelining” as from the autumn of 2006 and that these working conditions had adversely affected her health. She also said that she had not been informed of the reorganisation that had taken place in December 2009 and she expressed doubts as to whether any steps to redeploy her had actually been taken. She added that she wished to obtain recognition of and compensation for her injury, which she estimated as amounting to nine months’ salary – or 16,200 euros – and she asked whether it would be possible to settle the dispute by mutual agreement on the basis of Article XXIII of the Staff Regulations. She received a reply stating that no medical report had established any connection between her depression and her working conditions and that, in the absence of any injury, her claim for compensation had been rejected. On 31 August 2010, again relying on Article XXIII, the complainant appealed by submitting her claim to the President of the CIML, who rejected it. That is the impugned decision.

B. The complainant contends that the reason given for the non-renewal of her contract, namely the reorganisation in December 2009, is incorrect because, according to her, a colleague who was previously an archivist is now performing secretarial duties. She infers from this that her post was given to this colleague after his own post was abolished. In the complainant’s opinion, it was her state of health brought about by the deterioration in her working conditions that was the reason for the non-renewal of her contract. She maintains that in her basement office she was isolated from the other members of staff and that this isolation was accompanied by “increasingly marked professional disesteem”. She explains that as from December 2006 working relations with her immediate supervisor worsened, and that the latter “bullied” her on numerous occasions. She had also been “ridiculed” because, for personal reasons, in January 2007 she had had

to ask that her name no longer be shown on the Organization's internet site. She evaluates her injury to be nine months' salary, or 16,648.92 euros.

On her complaint form, the complainant states that she seeks the setting aside of the decision of the President of the CIML refusing to accept her claim for compensation, damages in the amount of 16,900 euros and 5,000 euros in legal expenses. In her submissions she also requests that the Tribunal order the Organization to pay the costs of the proceedings.

C. In its reply the Organization submits that the file contains no evidence that the complainant expressed dissatisfaction about her working conditions or her isolation, that her immediate supervisor treated her with disdain or bullied her, or that there was a causal link between the conduct of some of her colleagues and her state of health. It denies that the complainant was ridiculed because she had asked to have her name removed from the OIML's internet site and stresses that this request was dealt with promptly. It concludes from the foregoing that the complainant is obviously prone to "mythomania" and that her working conditions can in no way be regarded as the cause of the deterioration of her state of health.

The OIML also explains that the reorganisation was necessary in order to enable it to recruit an accountant without creating a new post. It adds that it was impossible to keep the complainant's secretarial post in view of its small staff complement (ten employees) and the fact that her lengthy absence had not prevented the BIML from operating smoothly. It states that the archivist's duties did not change after the complainant's separation from service and that, since her post was abolished, it cannot be held that her state of health was the reason for not renewing her contract.

It points out that the complainant has not said why she is asking for the payment of nine months' salary or explained the discrepancies in the amount of that compensation and it asks that she be ordered to pay the costs of the proceedings.

D. In her rejoinder the complainant explains that she is claiming redress for the injury resulting from the non-renewal of her contract, which she evaluates as nine months' salary (16,648.92 euros), because this covers the period between the expiry of her contract and her retirement. She modifies her claims and now asks for the payment of this sum twice: first, in compensation for the injury resulting from "the lack of any economic reason for the non-renewal of her contract" and, secondly, in compensation for the harassment which she suffered.

E. In its surrejoinder the OIML contends that the Tribunal must rule only on the issue of whether compensation is due in respect of injury allegedly caused by the impact of the complainant's working conditions on her state of health, since this was the sole injury to which she referred in the internal dispute settlement proceedings. It therefore requests that the complainant's claim for compensation for the injury resulting from the non-renewal of her contract be declared irreceivable. On the merits, it reiterates its position. It adds, on the basis of several items of documentary evidence, that the complainant and her immediate supervisor entertained cordial relations and that the latter tried to underscore the value of her subordinate's work and promote her independence. It points out that the archivist with whom the complainant shared her basement office and the accountant who now occupies that office have never complained about their working conditions.

#### CONSIDERATIONS

1. The complainant joined the BIML in Paris on 1 April 2005 as a secretary on a renewable five-year fixed-term contract. Her doctor diagnosed her as suffering from a "major depression" and she was placed on sick leave as from 19 July 2007. She received full pay for one year in accordance with Article XIV of the Staff Regulations. At the end of that period the Director of the BIML sought a medical opinion from a doctor designated by the President of the CIML and a doctor designated by the complainant in order to determine

whether she was suffering from a disease entitling her to “sick pay” for an additional two years, or whether she had a “permanent or frequently recurring physical or mental incapacity that render[ed] [her] incapable of fulfilling [her] functions in a normal manner”. As the second eventuality, which would have entailed the termination of her service under Article XIX of the Staff Regulations, was ruled out, the complainant received “sick pay” as from 1 August 2008.

2. On 7 January 2010 the Director informed the complainant that her post was being definitively abolished as a result of a reorganisation carried out in December 2009 and that her employment contract would not be renewed. He explained that it had proved impossible to offer her another post in view of her qualifications and experience and the Organization’s small staff complement.

On 13 April 2010 the complainant requested *inter alia* the payment of the “end-of-contract indemnities” which, in her view, were due to her under French law. She received the reply that the Staff Regulations, which alone were applicable, made no provision for such indemnification. The complainant first referred her case to the Paris *conseil de prud’hommes*, whose jurisdiction was challenged by the Organization. She then wrote a letter to the Director of the BIML in which she stated that her sick leave had been due to her working conditions. She also complained that she had not been informed of the December 2009 reorganisation and she expressed doubts as to whether any steps to redeploy her had really been taken thereafter. She evaluated her injury as amounting to nine months’ salary and, pursuant to Article XXIII of the Staff Regulations, asked the Director whether the dispute might be settled by mutual agreement. As it proved impossible to reach such an agreement, she filed an appeal with the President of the CIML, who rejected it. That is the decision impugned before this Tribunal.

3. The Tribunal wishes to stress that the Organization scrupulously abided by the provisions of the Staff Regulations which apply to agents whose service has to be interrupted because of sickness

and it drew all the consequences from the findings of the medical opinion which it sought.

4. In accordance with Article VI of the Staff Regulations, the complainant's fixed-term contract could be renewed for a period of five years or less. The complainant does not dispute the fact that the Organization was entitled to take the decision not to renew it, which led to the cessation of her service *ipso facto* "on the expiry of the contract", in accordance with Article XIX, paragraph 2a). The complainant's argument, insofar as it is comprehensible, seems to be that, if she had been in good health, her contract would have been renewed until her retirement in January 2011. In her opinion, as the deterioration in her state of health was due to her worsening working conditions from December 2006 onwards, the Organization attempted to evade its responsibility by using the reorganisation of its services as a pretext for not renewing her contract.

5. It must be found that the complainant's allegations regarding the causes of her failing health, which are tantamount to an accusation of harassment, are not borne out in any way by the evidence in the file. For example, the submissions show that, contrary to the complainant's assertions, her immediate supervisor displayed a considerate attitude towards her at the most difficult times, that her physical environment was acceptable and that the Administration promptly dealt with her request to remove her name from the Organization's internet site.

6. Similarly, there is nothing in the file to substantiate the complainant's contentions that the reorganisation of December 2009 was merely an excuse not to renew her contract. On the contrary, the explanations furnished by the Organization are convincing. As the BIML apparently functioned without a secretary for more than two years without encountering any major difficulties, the decision to abolish that post is understandable. In addition, since the Organization has a staff complement of no more than ten, it is not surprising that it was unable to offer the complainant a different post.

7. It may be concluded from the foregoing that the complaint is unfounded in its entirety and must therefore be dismissed without there being any need to rule on the receivability of some of the claims therein.

8. The Organization asks the Tribunal to order the complainant to pay the costs of the proceedings. The Tribunal sees no reason for doing so and will reject this request.

#### DECISION

For the above reasons,

1. The complaint is dismissed.
2. The OIML's counterclaim is also dismissed.

In witness of this judgment, adopted on 6 January 2013, Mr Seydou Ba, President of the Tribunal, Mr Claude Rouiller, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 6 February 2013.

Seydou Ba  
Claude Rouiller  
Patrick Frydman  
Catherine Comtet