

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

119th Session

Judgment No. 3436

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms O. K. N. against the Technical Centre for Agricultural and Rural Cooperation (CTA) on 12 July 2012 and corrected on 25 July, the CTA's reply of 16 November, corrected on 13 December 2012, the complainant's rejoinder of 20 March 2013, the CTA's surrejoinder of 24 June, the further submissions filed by the complainant on 27 August and the CTA's final observations thereon of 29 October 2013;

Considering Articles II, paragraph 5, 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 and the pleadings may be summed up as follows:

A. The complainant joined the CTA in 2003. At the material time, she had a contract for an indefinite period of time and held the post of Manager of the Communications Channels and Services Department.

In December 2010 the Executive Board of the CTA adopted the Centre's Strategic Plan 2011-2015 and in February 2011 it approved the Strategy Implementation Plan, which involved, amongst other things, a restructuring of the CTA's operational departments and the concomitant creation of nine new positions. Since the number of statutory posts in the new structure could not be higher than in the old one because of budgetary constraints, the creation of these new

positions entailed the abolition of several existing positions, and the Centre therefore carried out a two-stage “fit analysis” in order to identify the staff members who could be retained in the new structure. On 14 April 2011, during the first stage, at the end of which the Centre decided which of the positions from the old structure could be kept in the new one, the complainant was interviewed by a panel including the Director of the Centre and an external consultant who had been engaged by the CTA. On that occasion she expressed interest in two of the nine new positions. On 18 May 2011 she was informed that her post did not fit into the Centre’s new strategy and on 30 May she received a score chart showing the assessment of her suitability for the two positions which she had mentioned during the interview on 14 April. The purpose of the second stage of the fit analysis was to determine whether it would be possible to reassign the staff members whose posts were to be made redundant. On 15 June 2011 the complainant was informed that the fit analysis had shown that she did not possess the qualifications required for one of the two positions in which she had expressed an interest and that another candidate had been selected for the second, as the rating shown on that staff member’s score chart had been higher than hers. She was advised that her contract would therefore be terminated as of 14 February 2012 and that she would receive compensation equal to eight months of her basic monthly salary.

In a letter of 4 July 2011 the complainant informed the Director that she did not understand the decision of 15 June. In particular, she asked him to indicate the reasons for the termination of her contract. On 4 August the Director replied that the reasons for that decision had been stated, because reference had been made to the fit analysis.

On 9 August 2011 the complainant lodged an internal complaint against the decision of 15 June 2011, in which she requested *inter alia* her reinstatement or, failing that, payment of a sum equivalent to the salary which she would have received between February 2012 and the date of her retirement. Having been informed by a letter of 5 October that her requests could not be granted, on 17 November 2011 she requested the opening of a conciliation procedure.

In his report of 26 April 2012 the conciliator concluded that the Centre had not breached the principle of sound administration or its duty of care in implementing the CTA's restructuring process. However, he took the Centre to task for not supplying the complainant with sufficient information with regard to the "ineligibility of her qualifications" for any of the new posts created. Although he took the view that this failure did not render the decision to terminate the complainant's contract unlawful, the conciliator found that it had caused the complainant moral injury which should be redressed by granting compensation in an amount to be determined *ex aequo et bono* by the parties. On 10 May the complainant told the conciliator that she remained "open to the idea of compensation", but she explained that this should also cover the material injury which she had suffered because she had not been selected for "posts" which she could have held. She therefore claimed 5,000 euros for moral injury and 340,775 euros for material injury. The next day, the conciliator, having taken note of the complainant's position, recorded the failure of the conciliation process. On 12 July 2012 the complainant filed her complaint with the Tribunal, in which she impugns the decision of 15 June 2011.

B. The complainant contends that the Centre did not comply with its duty to state the reasons for its decision, particularly because the score chart which she received on 30 May 2011 lacked clarity and because she was not told the reasons why she had not been selected for one of the two positions in which she had expressed an interest. Moreover, she states that, in accordance with Article 28 of the Staff Regulations and the Tribunal's case law, she should have been reassigned as a matter of priority to one of the new positions. She also submits that the Centre did not examine all the possibilities for reassigning her to one of the new positions, including at a grade lower than the post she was holding, and she considers that post holders in the old structure should have been reassigned to the new positions and, if necessary, provided with suitable training.

The complainant contends that the CTA committed several glaring errors when assessing her professional situation. She taxes the external consultant with ignoring the qualifications and experience of

the staff members whose positions had been made redundant and regarding them as unsuitable. She is surprised that the Director of the CTA endorsed the opinion of the consultant, whereas he could have based his decisions on the assessment reports of each of the staff members concerned. She maintains that, after the new CTA organization chart had been put into effect, she was “divested” of her duties and responsibilities, which in her view constitutes a breach of Article 7 of the Staff Regulations. She also states that the CTA’s restructuring process was unlawful in that the Staff Committee was not properly consulted on the matter. Lastly, she accuses the Centre of breaching the principle of sound administration and its duty of care, mainly because, in her view, the restructuring process was not transparent.

The complainant requests the setting aside of the impugned decision and of that of 5 October 2011, and her reinstatement as from 14 February 2012. If she is not reinstated, she claims 1,152,529.21 euros, a sum equivalent to the salary she would have received until retirement age, less the remuneration she received between April and June 2012 as a consultant to the World Meteorological Organization. She also asks the Tribunal to award her 10,000 euros in compensation for moral injury and costs.

C. In its reply the Centre submits in particular that, since the score chart which the complainant received on 30 May 2011 was not a decision adversely affecting her, the obligation set forth in Article 24(3) of the Staff Regulations to state the grounds on which a decision is based did not apply. It also submits that it did all that it could to reassign the complainant to one of the new positions, but that her profile did not match any of them and that it even contemplated the possibility of training her for new duties.

The Centre denies that it made glaring errors of judgement in not retaining the complainant for one of the positions which she had mentioned. It explains that the external consultant played only an “administrative role” and merely gave “an opinion, which did not bind either the panel or the Director”. Moreover, it holds that the gradual disappearance of the complainant’s duties proves that her position was

redundant and it stresses that it did consult the Staff Committee during the restructuring process. It acknowledges that it did not do so when taking the individual decisions on the basis of the fit analysis, but states that it was not bound to involve the Committee in the preparation of those decisions. Lastly, the Centre endeavours to show that, throughout the restructuring process, it complied with the principle of sound administration and its duty of care.

The CTA asks the Tribunal to make an award of costs against the complainant.

D. In her rejoinder the complainant enlarges on her arguments.

E. In its surrejoinder the CTA maintains its position.

F. In her further submissions the complainant states that “many grey areas” surround the fit analysis and she submits that she possessed the requisite skills and experience to be reassigned to one of the two positions which she had mentioned on 14 April 2011. In addition, she maintains that the Centre did not comply with its duty to reassign her and she emphasises that, in accordance with the Tribunal’s case law, when an organisation has to abolish a post held by a staff member who holds a contract for an indefinite period of time, it has a duty to do all that it can to reassign that person as a matter of priority to another post matching his or her abilities and grade.

G. In its final observations, the CTA reiterates its position.

CONSIDERATIONS

1. The complainant joined the CTA in February 2003 and was given a contract for an indefinite period of time as from 1 January 2008.

2. In December 2010 the Executive Board of the Centre adopted a new strategic plan covering the period 2011-2015. In February 2011 it

approved an implementation plan which involved restructuring and redundancies at the CTA.

3. As the complainant's job was to be abolished in the context of this restructuring, she expressed interest in two of the nine positions which were to be created in the new structure.

She was informed by a letter of 15 June 2011 that she could not be reassigned to either of these two posts and that consequently her appointment would be terminated as of 14 February 2012.

4. On 9 August 2011 the complainant lodged an internal complaint against the termination of her appointment under Article 66(2) of the CTA Staff Regulations. The Director decided to reject that complaint on 5 October 2011. The complaint filed with the Tribunal after the failure of the conciliation procedure provided for in Article 67(1) of the said Regulations must be deemed to be directed against this decision. The complainant requests the setting aside of the decision of 15 June 2011 and therefore of that of 5 October and, principally, her reinstatement in the CTA. Failing that, she asks that the Centre be ordered to pay her a sum equivalent to the whole of the salary which she would have received until retirement age, as well as compensation for moral injury.

5. Precedent has it that international organisations may undertake restructuring entailing the redefinition of posts and staff reductions in order to achieve greater efficiency or budgetary savings (see, for example, Judgments 2156, under 8, or 2510, under 10). However, each and every individual decision adopted in the context of such restructuring must respect all the applicable legal rules and in particular the fundamental rights of the staff concerned (see, for example, Judgments 1614, under 3, 2907, under 13, or 3169, under 7).

6. The Tribunal's case law has consistently upheld the principle that an international organisation may not terminate the appointment of a staff member whose post has been abolished, at least if he or she holds an appointment of indeterminate duration, without first taking

suitable steps to find him or her alternative employment (see, for example, Judgments 269, under 2, 1745, under 7, 2207, under 9, or 3238, under 10). As a result, when an organisation has to abolish a post held by a staff member who, like the complainant in the instant case, holds a contract for an indefinite period of time, it has a duty to do all that it can to reassign that person as a matter of priority to another post matching his or her abilities and grade. Furthermore, if the attempt to find such a post proves fruitless, it is up to the organisation, if the staff member concerned agrees, to try to place him or her in duties at a lower grade and to widen its search accordingly (see Judgments 1782, under 11, or 2830, under 9).

7. In the instant case, it cannot be disputed that the CTA embarked upon a procedure designed to permit, as far as possible, the reassignment of staff members whose posts were to be made redundant.

8. However, it is clear from the submissions that, in order to help it to analyse whether staff members' profiles fitted the new posts available after the restructuring, the Centre called on the services of an external consultant who assisted in drawing up score charts to assess the suitability of the staff members concerned for these new posts.

9. By thus commissioning an extraneous body to undertake a task which entailed interfering in the assessment of staff members' suitability for the available positions, whereas the Staff Regulations made no provision for this, the Centre established an assessment system parallel to that which existed officially and which, moreover, did not offer staff members the safeguards inherent in the official system. Although the defendant organisation submits that this skills assessment was conducted by a panel which had full discretion in the matter, it is plain that the positions of the panel were, at the very least, influenced by the conclusions reached by the external consultant. The evidence on file shows that the failure of the process for reassigning the complainant as a matter of priority was at least partly due to consideration of the results which she obtained in the parallel assessment

process, as reflected in the score charts assessing her suitability for the positions for which she had applied.

10. It follows from the foregoing, without there being any need to examine the complainant's other pleas, that the above-mentioned decision of the Director of the CTA of 5 October 2011 and that of 15 June 2011 terminating the complainant's appointment must be set aside.

11. Having regard to the nature and length of the complainant's appointment, the Tribunal will therefore order the CTA to reinstate her, to the full extent possible, in the Centre as from the date on which the termination of her contract took effect, that is 14 February 2012, with all the legal consequences that this entails.

12. However, if the CTA considers, in view of its staff complement and budgetary resources, that it cannot actually reinstate the complainant, it shall have to pay her material damages for her unlawful removal from her post. In this connection, the complainant has no grounds for claiming the payment of all the emoluments which she would have received until she reached retirement age because, although her contract was concluded for an indefinite period of time, it did not guarantee that she would be employed by the Centre until the end of her career, since its functioning is contingent on various unforeseeable factors. The CTA will, however, be ordered to pay the complainant the equivalent of the salary and allowances of all kinds which she would have received had her contract remained in force for a period of five years as from 14 February 2012, less the compensation she received on termination of her contract and any remuneration she may have received during this period. The Centre must also pay the complainant the equivalent of the contributions to pension, provident or social security schemes which it would have had to bear during the same period.

13. The fact that the complainant's appointment was terminated unlawfully has caused her moral injury which must be redressed by the award of compensation in the amount of 5,000 euros.

14. As the complainant succeeds for the most part, she is entitled to costs which the Tribunal sets at 5,000 euros.

15. The CTA has entered the counterclaim that the complainant should be ordered to pay costs. In view of the foregoing considerations, this claim must obviously be dismissed.

DECISION

For the above reasons,

1. The decision of the Director of the CTA of 5 October 2011 and that of 15 June 2011 terminating the complainant's appointment are set aside.
2. The complainant shall be reinstated in the Centre, to the full extent possible, as from 14 February 2012, with all the legal consequences that this entails.
3. If the Centre considers that such reinstatement is impossible, it shall pay the complainant material damages calculated as indicated under 12, above.
4. At all events, the Centre shall pay the complainant moral damages in the amount of 5,000 euros.
5. It shall also pay her 5,000 euros in costs.
6. The complainant's remaining claims are dismissed, as is the Centre's counterclaim.

In witness of this judgment, adopted on 14 November 2014,
Mr Claude Rouiller, Vice-President of the Tribunal, Mr Seydou Ba,

Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 11 February 2015.

(Signed)

CLAUDE ROUILLER

SEYDOU BA

PATRICK FRYDMAN

DRAŽEN PETROVIĆ