

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**K. (No. 2)**

**v.**

**CTA**

**120th Session**

**Judgment No. 3482**

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr P. K. against the Technical Centre for Agricultural and Rural Cooperation (CTA) on 3 October 2012 and corrected on 22 December 2012, the CTA's reply of 25 April 2013, the complainant's rejoinder of 2 May and the CTA's surrejoinder of 6 September 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 may be summed up as follows:

The complainant challenges the decision to terminate his contract with immediate effect during his trial period.

Facts relevant to this case are to be found in Judgment 3068, delivered on 8 February 2012 on the complainant's first complaint. Suffice it to recall that he joined the CTA on 15 April 2009 and that his appointment for an indefinite period of time included an initial six-month trial period.

On 15 July 2009 a meeting was convened at the request of the Director of the CTA, which the complainant did not attend. Its purpose was to take stock of his performance and to prepare for a

second meeting to be held on the same day. During that second meeting, the complainant was informed that, following a technical incident on 13 July, the Director had expressed doubts about his professional capabilities. On 6 August the complainant had a meeting with the Head of the Administration and Human Resources Department during which his professional conduct was discussed. A record of the discussion was made in a “note for the file” which mentioned “[p]rofessional shortcomings” and an “inability to communicate”. On the following day the Director of the CTA informed the complainant orally that he had decided to terminate his contract with immediate effect, as his service since the beginning of his appointment had been deemed unsatisfactory.

On 7 September 2009 the complainant sent the Director an “appeal requesting the cancellation” of the decision to dismiss him and asked the Director to send him a copy of that decision. By a letter of 14 September the Head of the Administration and Human Resources Department replied that the CTA had taken due note of his letter of 7 September and enclosed a copy of the decision in question.

On 29 September the complainant wrote to the ACP-EC Committee of Ambassadors to request “a preliminary attempt at conciliation”. Having received no reply to this request, on 20 November 2009 he sent a letter to the Chairman of the Executive Board of the Centre entitled “Appeal requesting the cancellation of the CTA’s decision”, in which he requested conciliation with respect to his dispute with the CTA. As the Executive Board did not appoint a conciliator within the 45-day time limit stipulated in Article 4(3), of Annex IV to the Staff Regulations, the complainant filed his first complaint with the Tribunal on 13 January 2010. By a letter of 8 February 2010 the Director informed him that there was no reason to entertain his appeal of 20 November 2009.

In Judgment 3068 the Tribunal found that the complainant had been unduly deprived of the benefit of the conciliation procedure for which provision is made in the Staff Regulations. It therefore decided to set aside the decision of 8 February 2010 and to refer the case back to the CTA in order that that procedure might be held.

Pursuant to Judgment 3068, the Executive Board appointed a conciliator. In the statement of his case, dated 5 April 2012, the complainant claimed material damages in an amount equal to five years' salary and allowances. He also claimed 7,000 euros to cover his removal expenses and "charges for a missed flight", 20,000 euros for breach of privacy, 40,000 euros in compensation for the moral injury which he allegedly suffered and 5,000 euros in costs. In its rejoinder to this statement the CTA endeavoured to show that the complainant's "request for conciliation" was groundless.

In his report of 25 June 2012 the conciliator concluded that the decision of 7 August 2009 was not tainted with any substantive flaw. He emphasised that it had been taken in accordance with the adversarial principle and that it involved no obvious error of judgement or misuse of authority. He stated that he was therefore unable "to propose to the parties the terms of a settlement which might satisfy the claimant's claims for compensation".

On 3 October 2012 the complainant filed a second complaint with the Tribunal, impugning the implied rejection of his appeal of 20 November 2009 and maintains all the claims presented in the statement of his case in the conciliation procedure.

The CTA considers that the complaint is irreceivable as it is time-barred. Subsidiarily it submits that the complaint is unfounded. It asks the Tribunal to order the complainant to pay costs.

## CONSIDERATIONS

1. By Judgment 3068, delivered on 8 February 2012, the Tribunal, ruling on the complainant's first complaint, referred the case back to the CTA in order that a conciliation procedure might be held in accordance with Article 67 of the Staff Regulations and Annex IV thereto.

2. This conciliation procedure proved unsuccessful, as is clear from the conciliator's report of 25 June 2012, and the complainant then filed a complaint with the Tribunal on 3 October 2012.

*Receivability*

3. The CTA submits that the complaint is irreceivable because it was not filed within the 90-day time limit prescribed by Article VII, paragraph 2, of the Statute of the Tribunal.

It points out that the complainant received the conciliator's report of 25 June 2012, informing the parties that conciliation had failed, on 4 July 2012. As the complainant filed his complaint on 3 October 2012, it should be declared irreceivable because it was lodged after the mandatory 90-day time limit.

4. As the Tribunal has often had occasion to state, time limits are binding and an objective matter of fact. The Tribunal therefore should not entertain a complaint filed out of time, because any other conclusion, even if founded on considerations of equity, would impair the necessary stability of the parties' legal relations, which is the very justification for a time bar. However, an exception to this rule will be made where the complainant has been prevented by *vis major* from learning of the impugned decision in good time, or where the organisation has misled the complainant, concealed some paper from him or her or has otherwise deprived that person of the possibility of exercising his or her right of appeal, in breach of the principle of good faith (see, in particular, Judgments 1466, under 5, and 2722, under 3).

5. In this instance, Article 4(12) of Annex IV to the CTA Staff Regulations provides that "[i]n the event that conciliation has failed, the case may be submitted within three months to the Administrative Tribunal of the International Labour Organisation".

6. The Tribunal draws attention to the fact that the rules governing the receivability of complaints before the Tribunal are established exclusively by its own Statute. Consequently it was unlawful to set a three-month time limit in the aforementioned Staff Regulations in place of the 90 days prescribed in Article VII, paragraph 2, of the Statute of the Tribunal. As the complainant was misled by the incorrect information regarding the time limit contained in the CTA Staff

Regulations and he filed his complaint within the three-month time limit stipulated in the above-mentioned paragraph 12, his complaint must be deemed receivable.

*The merits*

7. As the Tribunal stated in Judgment 3068, under 23, the crux of this dispute lies in the complainant's challenging of the assessment of his performance during his trial period, which led to the termination of his appointment. That is why the Tribunal recalled that, according to firm precedent, it exercises only a limited power of review over such a decision. This decision will be set aside only if it was taken in breach of some rule of form or procedure, if it rests on a mistake of fact or of law, or if it stems from an abuse of authority (see, for example, Judgments 987, under 2, 1817, under 5, or 2715, under 5). But so far as concerns the assessment of an official's merits, unless the Tribunal finds that clearly wrong conclusions have been drawn from the evidence, it will not substitute its own opinion for that of the executive head of the organisation. (See Judgment 3068, under 23.)

8. It is not disputed that the complainant was still undergoing a trial period when the Director of the CTA decided to terminate his appointment.

9. The complainant takes the CTA to task for not warning him that his service was unsatisfactory. Moreover, as he said in the statement of his case in the conciliation proceedings, he was never explicitly informed that he was likely to lose his job. He also complains that he was never set any objectives which might have served as a yardstick for assessing his performance and that he was told of the decision to terminate his appointment without being given any opportunity to put his case.

10. The Tribunal recalls that, according to the case law, there is no general principle of law that requires an international organisation to retain a staff member in its service throughout that person's trial

period if, before that period expires, the competent authority has come to the final conclusion that the staff member concerned is unsuitable for the post to which he or she was assigned (see, in particular, Judgment 197, first paragraph). Moreover, Article 35(a) of the Staff Regulations of the CTA makes provision for the termination of a staff member's appointment during his or her trial period.

11. Furthermore, it is trite law that an organisation must give its staff members, especially those undergoing a trial period, guidance, instructions and advice as to the performance of their duties and that it must warn them in specific terms if they are not giving satisfaction and are at risk of dismissal; a staff member whose service is not considered satisfactory is entitled to be informed in a timely manner as to the unsatisfactory aspects of her or his service so that steps can be taken to remedy the situation. Moreover, she or he is entitled to have objectives set in advance so that he or she will know the yardstick by which future performance will be assessed (see Judgment 3128, under 5, and the case law cited therein). These are fundamental aspects of the duty of an international organisation to act in good faith towards its staff members and to respect their dignity (see Judgment 2529, under 15).

12. In the instant case, the CTA submits that the complainant's performance had been criticised and that he had been informed of this criticism at a meeting on 15 July 2009, of which minutes had been written.

13. However, the evidence in the file shows that it was not until 6 August 2009 that the complainant was called to a meeting in order to discuss his professional and interpersonal shortcomings and to be informed by the Head of the Administration and Human Resources Department that the latter would recommend that the Director should terminate the complainant's trial period and not confirm his appointment.

14. On 7 August 2009 the complainant was called to the Director's office to be informed of those aspects of his work which evidenced a lack professional capability and inability to communicate with his colleagues. After these remarks, the Director handed him the decision to dismiss him and thus terminate his trial period.

15. The CTA contends that the complainant does not dispute the fact that he was able to comment fully on the criticism of his work at the meetings on 15 July and 6 August 2009 and that he does not deny that he had an opportunity on 7 August 2009 to respond to "the criticism which had surfaced during his trial period, before the meetings which led to the dismissal decision".

16. The Tribunal finds, however, that the sequence of events recalled above shows that the CTA plainly did not comply with the requirements of the aforementioned case law before prematurely terminating the complainant's employment. Indeed, even if the CTA had good reason to consider that the complainant's performance and conduct was not yet satisfactory, there is nothing in the file to show that he was informed in a timely manner of those aspects of his service which were deemed unsatisfactory, so that steps could be taken to remedy the situation, or that objectives were set for him in advance so that he would know by what yardstick his work would be assessed. Similarly, the CTA provides no evidence that the complainant was warned that his appointment could end before his trial period expired.

17. It follows from the foregoing that, since the CTA breached its duty of care to its staff member by not acting in good faith towards him and by not respecting his dignity, the impugned decision must be set aside on these grounds without there being any need to rule on any other plea.

18. The complainant requests the payment of "five years' salary and allowances as material damages". The Tribunal considers that, in view of the circumstances of the case, it cannot be said that, if the

procedure had not been flawed, the complainant's appointment would have been confirmed at the end of the trial period. The Tribunal therefore considers that he should be awarded compensation equivalent to the sums which he would have received if the trial period had continued for six months as planned, less the sums he received during that period.

19. The complainant claims "7,000 euros to reimburse removal expenses and charges for a missed flight".

The Tribunal considers that in view of the evidence in the file there are no grounds for granting this request.

20. The complainant is entitled to 5,000 euros in compensation for the moral injury resulting from the suddenness of the premature termination of his trial period.

21. As he succeeds in part, the complainant is entitled to costs which the Tribunal sets at 1,000 euros.

22. The CTA asks that the complainant be ordered to pay costs. It follows from the foregoing that this claim must obviously be dismissed.

#### DECISION

For the above reasons,

1. The impugned decision is set aside.
2. The CTA shall pay the complainant material damages calculated as indicated under 18, above.
3. It shall pay him 5,000 euros in compensation for moral injury.
4. It shall also pay him costs in the amount of 1,000 euros.
5. All other claims are dismissed, as is the CTA's counterclaim.

In witness of this judgment, adopted on 7 May 2015, 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 30 June 2015.

*(Signed)*

CLAUDE ROUILLER

SEYDOU BA

PATRICK FRYDMAN

DRAŽEN PETROVIĆ