

J.
v.
IOM

121st Session

Judgment No. 3576

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr C. J. against the International Organization for Migration (IOM) on 21 August 2013 and corrected on 18 October 2013, IOM's reply of 6 March 2014, the complainant's rejoinder of 2 April and IOM's surrejoinder of 16 July 2014;

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 non-renewal of his fixed-term contract due to budgetary constraints.

The complainant was granted a one-year fixed-term contract on 6 January 2012 as a Programme Manager in the IOM Office in Sri Lanka. By a letter of 10 October 2012, which the complainant received on 12 October, he was notified that his contract would not be extended upon its expiry on 5 January 2013 due to budgetary constraints. He "formally appeal[ed]" that decision on 19 October 2012 by writing to the Chief of Staff at Headquarters, arguing that the real reason for not renewing his contract was "unfair treatment by local management

which include[d] harassment and mobbing”. The Chief of Staff wrote to him on 6 November confirming that his contract could not be renewed as no funds were available. He indicated that if the complainant wished to launch an Action Prior to the Lodging of an Appeal against the decision not to renew his contract, he would have to follow the procedure outlined in the Statutes of the Joint Administrative Review Board (JARB), i.e. Annex D to the Staff Rules for Officials. He added that a fact-finding team had been mandated to investigate his allegations of harassment and mobbing.

By letter of 20 December 2012 the Director of Human Resources Management informed the complainant that the fact-finding team had confirmed that there was not enough funding to continue his contract and that there was no evidence that his contract had not been renewed for any other reason than the lack of funding. The team also found that his allegations of harassment were unfounded. The Director stressed that, according to Article 4(iv) of the JARB’s Statutes, the Action Prior to the Lodging of an Appeal was the first step of the internal appeal proceedings and should be made within 60 days “after [he had] received notification of the contested administrative decision, i.e. the decision of non-renewal due to budgetary constraints”, if he wished to contest it.

On 21 January 2013 the complainant filed an appeal with the JARB challenging the decision not to renew his contract. In its report of 10 April 2013 the JARB recommended rejecting the appeal as time-barred. By letter dated 25 April 2013 the complainant was informed that the Director General had decided to endorse the JARB’s findings. That same day, copies of that letter and of the JARB’s report were sent to the complainant as attachments to an e-mail in which IOM asked him to acknowledge receipt of the attached documents and to confirm his postal address. This e-mail was copied to the complainant’s counsel. Having received no reply IOM contacted the complainant’s counsel directly on 2 May seeking confirmation of the complainant’s postal address. The counsel replied that the documents could be sent to her postal address, which IOM did. She acknowledged receipt of the documents on 27 May 2013.

The complainant filed his complaint with the Tribunal on 21 August 2013, impugning the decision of 25 April 2013. He asks the Tribunal to invalidate the decision not to renew his contract and to order that he be reinstated in a suitable post or paid the “salaries and full benefits for the period that [he] was considered to be separated from service”. He also asks the Tribunal to order IOM to conduct a proper investigation of his harassment claim and to provide him with adequate protection against retaliation. He further seeks an award of moral damages and “professional damages”, as well as costs.

IOM asks the Tribunal to dismiss the complaint as irreceivable and, subsidiarily, as unfounded. It adds that the complainant was new to IOM and was granted only a one year fixed-term contract; he could have no expectation of renewal of his contract and his claim for reinstatement should therefore be rejected.

CONSIDERATIONS

1. On 12 October 2012, the complainant received a letter from the Regional Director, dated 10 October 2012, confirming that IOM was not in a position to renew his one-year fixed-term contract upon its expiry on 5 January 2013 due to budgetary constraints. It further specified that the non-renewal was not performance or conduct related. The complainant contested that decision in an email dated 19 October 2012 and entitled “appeal against non-renewal of contract”. The Organization responded in an email dated 6 November 2012, stating inter alia “[t]his is in reference to your email containing a letter to which you refer as being your formal complaint concerning the non-renewal of your IOM contract due to budgetary constraints. We looked into this and confirm that your contract cannot be renewed as there are no funds available to renew your contract.” It also noted that should the complainant wish to launch a formal Action Prior to the Lodging of an Appeal as required by and stipulated in the Staff Regulations and Rules against the decision not to renew his contract, he would have to follow the procedure outlined in the JARB’s Statutes that are annexed to the Organization’s Staff Regulations and Rules,

which were also attached to the email. The complainant filed an internal appeal with the JARB on 21 January 2013.

2. In its report of 10 April 2013, the JARB found the appeal to be time-barred. The JARB's Statutes regarding filing an Action Prior to the Lodging of an Appeal and the Submission of Appeals provide in relevant part:

"4. Action Prior to the Lodging of an Appeal

(i) Before an appeal is lodged, the staff member must submit a request for review of the decision to the Head of Administration in his/her duty station (the Director of Human Resources Management at Headquarters, the Regional Representative or the Chief of Mission, as the case may be, in the field).

(ii) The request must outline the administrative action, decision or omission that in the staff member's opinion constitutes an infringement of his/her rights. It must also specify the remedial action that in his/her opinion should be taken by the Administration.

(iii) The request must be submitted in writing. The staff member can exceptionally submit the request by email, provided that the original request in writing is posted within 48 hours of the dispatch of the email.

(iv) The staff member must submit the request within 60 days after he/she received notification of the contested administrative action or decision. In case of an administrative omission, the request must be submitted within 60 days after the staff member became aware of the omission.

(v) The Head of Administration in the staff member's duty station shall respond to the request in writing within 30 days of receipt thereof.

5. Submission of Appeals

(i) Appeals to the Board shall be filed against the decision taken by the Administration under Article 4(v) within 30 days of the receipt of the decision of the Administration.

(ii) If the Head of Administration in the staff member's duty station fails to respond to the staff member's request according to Article 4(v) within 30 days, the staff member may appeal against the contested administrative action, decision or omission within 30 days of the expiration of the 30 day time limit specified in Article 4(v).

[...]"

3. The JARB considered that if the email of 6 November 2012 was to be considered the appealable decision taken by the Administration, the deadline for filing the internal appeal was 6 December and if the

email of 6 November was not considered a valid reply, as the complainant submitted, then in accordance with Article 5 of the JARB's Statutes, the complainant had to file his appeal within 30 days of the deadline set for the Administration to reply (19 November 2012), which would set his deadline for filing an appeal at 19 December 2012. In either case, as the complainant filed his appeal on 21 January 2013, the JARB considered that the appeal was clearly time-barred.

4. The complainant was notified of the Director General's decision, to endorse the conclusion and reasoning of the JARB which found the appeal to be time-barred, in a letter from the Director of Human Resources Management, dated 25 April 2013, which was emailed on that same date. As neither the complainant nor his legal counsel acknowledged receipt of the email, the Organization contacted the complainant's legal counsel on 2 May 2013 to notify her that the JARB's report and the Director General's decision had been sent via email and to again request the complainant's mailing address for where the hard copy of the two documents should be sent. The complainant's legal counsel replied that same day, providing the address where the documents could be sent. On 27 May 2013 the complainant's legal counsel acknowledged receipt of the hard copy documents. The complainant filed his complaint with the Tribunal on 21 August 2013.

5. The complaint is irreceivable as it was not filed within the 90 days specified in the Tribunal's Statute. The 90-day time limit began on 2 May 2013 when the complainant's legal counsel replied to the reminder that the JARB's report and the Director General's decision had been emailed on 25 April 2013 to the complainant. Thus, the deadline for filing his complaint was 31 July 2013. In light of the above the complaint must be dismissed.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 28 October 2015, Mr Giuseppe Barbagallo, Vice-President of the Tribunal, Ms Dolores M. Hansen, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 3 February 2016.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

HUGH A. RAWLINS

DRAŽEN PETROVIĆ