

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

**S.**  
**v.**  
**IOM**

**122nd Session**

**Judgment No. 3675**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr D. A. W. S. against the International Organization for Migration (IOM) on 14 April 2014 and IOM's reply of 7 August 2014, the complainant having decided not to file a rejoinder;

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 contests IOM's decision to abolish his post and not to renew his fixed-term appointment.

The complainant joined IOM in 2007. In September 2011 he was assigned to the position of Operations Officer in IOM Tunisia, and in June 2012 he was granted a one-year extension of his fixed-term contract in that role with effect from 1 September 2012.

By a letter of 13 June 2013 the complainant was informed that his position would be abolished as of 1 October 2013 due to the substantive reduction of the activities in Tunisia of a United States-funded programme. He was also informed that as a result his contract would only be extended

for one month upon its expiry on 31 August 2013, i.e. up to 30 September 2013. The complainant acknowledged receipt of this letter by signing it that same day, i.e. on 13 June 2013. By a further letter of 24 June 2013 the Administration offered him an extension of his contract for the period from 1 to 30 September 2013.

By a letter dated 9 August 2013 and postmarked 14 August 2013, the complainant submitted an Action Prior to the Lodging of an Appeal to the Chief of Mission, requesting a review of the decision to separate him from IOM communicated to him on 24 June 2013. He contended that the decision was based on an incomplete consideration of the facts and there had not been an appropriate evaluation of his work. He also indicated that he had applied for vacant positions in other field duty stations within the Organization and expressed his interest in continuing to work for IOM.

The Director of Human Resources Management (HRM) replied by a letter dated 19 September 2013 that the complainant's Action Prior to the Lodging of an Appeal was time-barred and thus irreceivable, because it had not been submitted within the 60-day time limit stipulated in Annex D to the Staff Rules. He noted that the decision not to renew the complainant's contract beyond 30 September 2013 was dated 13 June 2013 and that the one-month extension of his contract issued on 24 June 2013 was merely a consequence of the 13 June decision and not a new decision setting off a new time limit. He added that the complainant had been informed of the non-renewal of his contract by the letter of 13 June 2013 and had thus received more than three months' notice. Regarding the complainant's applications for other vacant positions, he explained that IOM had no obligation to offer him alternative employment and that he would have to go through the competitive selection process to secure a new position. The complainant received the 19 September letter on 4 October 2013 – although an electronic copy of that letter was sent to him on 19 September 2013 and he acknowledged receipt thereof on 23 September 2013.

On 6 November 2013 the complainant filed an appeal with the Joint Administrative Review Board (JARB). The JARB submitted its report to the Director General in January 2014. It concluded that, as neither

the complainant's Action Prior to the Lodging of an Appeal nor the appeal itself had been filed within the applicable time limits, the appeal was time-barred and irreceivable. It therefore recommended not to review its substance and to reject all of the complainant's requests. By a letter of 18 February 2014 the Director General informed the complainant of his decision to fully endorse the JARB's recommendation. That is the impugned decision.

The complainant asks the Tribunal to quash the decision not to renew his contract beyond 30 September 2013 and to order IOM to reintegrate him into the unit where he worked prior to his separation or to transfer him to another suitable position at the appropriate grade. He claims moral and professional damages and costs.

IOM invites the Tribunal to dismiss the complaint as time-barred and thus irreceivable. In the event that the Tribunal decides to examine the merits of the complaint, it asks it to consider the non-renewal decision lawful and to reject all of the complainant's claims.

#### CONSIDERATIONS

1. The complainant was notified by a letter dated 13 June 2013 from the Chief of Mission, IOM Tunisia, that due to the substantive reduction of the activities in Tunisia of a United States-funded programme, his position as Operations Officer would be abolished as of 1 October 2013 and that, consequently, his contract would be extended for only one month, until 30 September 2013. The complainant signed an acknowledgment of receipt of that letter on that same day (13 June 2013). On 24 June he received a letter from HRM offering him the extension of his fixed-term appointment for the period from 1 to 30 September 2013. By a letter dated 9 August 2013 and postmarked 14 August 2013, the complainant submitted an Action Prior to the Lodging of an Appeal in which he requested a review of the decision to separate him from service communicated to him on 24 June 2013, stating that he had not been informed of his possible separation and the non-renewal of his contract before that day. In a letter dated 19 September 2013, an advance copy of which was sent to the complainant by an e-mail of that same day, the

Director of HRD informed the complainant that his Action Prior to the Lodging of an Appeal was time-barred, as the date of notification of the decision not to renew his contract from which the 60-day time limit for lodging such an action started running was 13 June 2013, making the deadline for the submission 12 August 2013. As the complainant posted his request for review on 14 August 2013, it was time-barred and therefore irreceivable.

2. The complainant subsequently filed an appeal against the 19 September decision with the Joint Administrative Review Board (JARB). The appeal was dated 4 November 2013 but it was received by the JARB on 6 November 2013. In its report submitted to the Director General in January 2014, the JARB concluded that the complainant's appeal was doubly time-barred, as the Action Prior to the Lodging of an Appeal was not submitted within the 60-day time limit stipulated in Annex D to the Staff Rules, nor was the appeal submitted within the 30-day time limit stipulated in that same Annex. It thus recommended that the appeal be dismissed as irreceivable. The Director General, in a letter dated 18 February 2014, endorsed the JARB's recommendation. The complainant impugns this decision in the present complaint.

3. The Tribunal considers that the complaint is unfounded. It was on 13 June 2013 that the complainant was notified of the non-renewal of his contract beyond 30 September 2013. The letter of 24 June 2013 was a mere consequence of the 13 June decision, which specified that upon its expiry his contract would be extended for one month only, until 30 September 2013. Thus, the Action Prior to the Lodging of an Appeal, which was sent by post on 14 August, was outside the 12 August 2013 deadline and was therefore time-barred. The complainant asks for leniency regarding the deadline for the submission of his Action Prior to the Lodging of an Appeal, but he has not shown that he had requested an extension of the deadline for extenuating circumstances. Moreover, IOM has explained that not only was the complainant allowed to submit an electronic version of his request for review within the applicable deadline, following up with a hard copy within 48 hours, in accordance with Article 4(iii) of Annex D to the Staff Rules, but he was present at the

office on the day of the deadline and could have simply handed his Action Prior to the Lodging of an Appeal to the Chief of Mission in person. Moreover, in the letter of 13 June the complainant was invited to contact the Chief of Mission for “any clarification or assistance” he might have needed. As the Action Prior to the Lodging of an Appeal was time-barred, it is unnecessary to treat the receivability or the merits of the appeal, but the Tribunal notes that the JARB was correct in finding the appeal to be time-barred as well. The complainant was notified of the decision to reject his Action Prior to the Lodging of an Appeal as time-barred by an e-mail dated 19 September 2013, which is not only shown to have been opened that same day but was also expressly acknowledged as read by the complainant in his e-mail of 23 September 2013. Therefore, in line with the Tribunal’s case law, the date of notification of the decision to reject his Action Prior to the Lodging of an Appeal as time-barred was 19 September 2013, when he received the decision by e-mail, and not 4 October 2013, when he claims to have received the hard copy of the 19 September decision (see Judgments 2966, consideration 8, and 3351, considerations 13 to 16). Considering the above, the Tribunal finds that the decision of 18 February 2014 is lawful and the present complaint must be dismissed.

#### DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 16 May 2016, Mr Giuseppe Barbagallo, Vice-President of the Tribunal, Mr Michael F. Moore, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Andrew Butler, Deputy Registrar.

Delivered in public in Geneva on 6 July 2016.

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

HUGH A. RAWLINS

ANDREW BUTLER