

B. H.

v.

ICC

124th Session

Judgment No. 3857

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms E. J. B. H. against the International Criminal Court (ICC) on 7 October 2014 and corrected on 14 October 2014, the ICC's reply of 26 January 2015, and the letter of 4 February 2015 whereby the complainant informed the Registry that she did not wish 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 challenges the termination of her appointment.

The complainant joined the ICC on 1 September 2009 as a Management Accounting Supervisor in the Budget and Finance Section. By a letter of 27 June 2013 she was notified by the Registrar of the Court that allegations had been made against her that, if established, would amount to misconduct or serious misconduct and that a fact-finding inquiry into those allegations had been authorised. In addition, she was suspended, with pay, with immediate effect, for an initial period of three months pending the completion of the fact-finding inquiry. The complainant's suspension was subsequently extended numerous times.

On 1 October 2013 the independent investigator tasked with conducting the fact-finding inquiry submitted his report to the Registrar. By a letter of 15 October the Registrar informed the complainant that, based on that report, he had decided to pursue a case against her.

The Registrar referred the matter to the Disciplinary Advisory Board (DAB) on 16 December 2013. In its report of 28 March 2014 the DAB recommended, among other things, that the Registrar close the disciplinary proceedings without imposing a disciplinary sanction.

In early May 2014 the complainant met with the Registrar to receive a copy of the DAB report and to discuss issues with respect to her working relationships with colleagues that had been identified in the investigator's report and by the DAB. Following this meeting the Chief of the Human Resources Section made several attempts to arrange to meet with the complainant in order to discuss the way forward but was unsuccessful.

By a letter of 17 July 2014 the complainant was informed that the Registrar had decided to close the disciplinary proceedings against her without imposing a disciplinary measure. Nevertheless, he had decided to terminate her appointment under Staff Rule 109.1(b)(i) in conjunction with Staff Rule 109.2(c). Following requests for review of that decision, on 30 August 2014 the complainant filed an appeal with the Appeals Board challenging the decision of 17 July. While the internal appeal proceedings were still pending, she filed her complaint with the Tribunal, impugning the decision of 17 July 2014.

The complainant asks the Tribunal to set aside the impugned decision and she seeks various forms of relief including, but not limited to, her reinstatement, material and moral damages, and costs.

The ICC asks the Tribunal to find the complaint irreceivable on the grounds that the complainant has not exhausted the internal means of redress. Alternatively, it requests the Tribunal to find that the complaint is without merit and to dismiss it in its entirety.

CONSIDERATIONS

1. By a letter dated 17 July 2014 the complainant was informed by the Registrar of the Court that her employment was terminated. It is unnecessary, in this judgment, to descend into further detail about the circumstances in which this came about.

2. The complainant sought an administrative review of the decision to terminate her employment and, in due course, filed an appeal on 30 August 2014 with the Appeals Board. Again, it is not necessary to refer to further documentation furnished to the Appeals Board by the complainant. It is sufficient to note that the complaint to which this judgment is directed was filed on 7 October 2014. In the present complaint the complainant seeks to impugn the decision to terminate her employment communicated to her on 17 July 2014.

3. As at 7 October 2014 the complainant's internal appeal had not been determined. The ICC argues in its reply that the present complaint is irreceivable. It is correct. Quite plainly the complainant had not, at the time of filing her complaint, exhausted the internal means of redress. In the result, the complaint is irreceivable under Article VII, paragraph 1, of the Tribunal's Statute. Accordingly it should be dismissed as irreceivable.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 10 May 2017, Mr Giuseppe Barbagallo, Vice-President of the Tribunal, Mr Michael F. Moore, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 28 June 2017.

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

HUGH A. RAWLINS

DRAŽEN PETROVIĆ