

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**L.**  
**v.**  
**WHO**

**124th Session**

**Judgment No. 3873**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr S. L. against the World Health Organization (WHO) on 30 July 2015 and corrected on 9 October, WHO's reply of 2 December 2015, the complainant's rejoinder of 18 January 2016 and WHO's letter of 7 April 2016 informing the Registrar of the Tribunal that WHO did not wish to file a surrejoinder;

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 claims compensation for various injuries that WHO allegedly caused him.

At the material time, the complainant had been employed since March 2008 as a driver for the Office of the WHO Representative in the Democratic Republic of the Congo in Lisala (at that time in Equateur province). In an email dated 10 June 2009, the Administrative Officer for that office instructed the Head of the Equateur Sub-Office to contact the new driver who was due to start work in Lisala on 15 June and to ask the complainant to work with the new driver until 20 June, then leave Lisala on 21 June to arrive at his new duty station of Matadi

(at that time in Bas-Congo province) “as soon as possible”. That is the decision that the complainant identifies in his complaint form as the impugned decision.

The complainant, who separated from service on 30 June 2011 when his post in Matadi was abolished, asks the Tribunal to award him compensation for various moral and material injuries that he considers he has suffered.

WHO, which was asked by the President of the Tribunal to confine its reply to the issue of receivability, submits that the complainant did not challenge the decision of 10 June 2009 within the time limit specified in the Staff Rules and that the requirements of Article VII of the Statute of the Tribunal have therefore not been met.

#### CONSIDERATIONS

1. The President of the Tribunal having decided to confine the present proceedings to an examination of the complaint’s receivability, the only question is whether the complainant exhausted the internal means of redress available to him under WHO’s Staff Rules. To satisfy Article VII, paragraph 1, of the Statute, which sets out that requirement, the complainant must follow the available internal appeal procedures properly and in particular observe any time limits that may be set for the purposes of those procedures (see, for example, Judgments 3296, under 10, and 3749, under 2).

Exceptions to that requirement are very limited, namely where staff regulations do not provide for an internal appeal procedure, where the complainant does not have access to an existing internal appeal procedure owing to his or her employment status, or where the parties have mutually agreed to forgo internal appeal proceedings. An exception may also be made where the complainant has initiated internal proceedings but the appeal body is unable to reach a decision without inordinate and inexcusable delay, even though the complainant has done his or her utmost to obtain a final decision (see, for example, Judgments 2912, under 6, 3397, under 1, 3558, under 9, and 3714, under 12).

The onus is on the complainant to prove that one of those conditions is satisfied.

2. The complainant impugns a “decision” taken on 10 June 2009 to change his duty station and transfer him from Lisala to Matadi. That document, which is an email, is not really an administrative decision that could adversely affect the official concerned, but rather an internal instruction given to the Head of the Equateur Sub-Office to invite the complainant to work temporarily with his future replacement before moving to his new duty station “as soon as possible”.

Although the file contains no document showing that this email (or an equivalent document) was received by the complainant, it must be assumed that he was in fact notified of his transfer to Matadi in a satisfactory manner. Indeed, he went to his new duty station without delay, as stipulated in the “decision” of 10 June 2009, and he acknowledges that he received an email containing the decision to “send [him] to Bas-Congo”.

3. However, instead of challenging the “decision” of 10 June 2009 in a timely manner by means of an internal appeal available to him under Staff Rule 1230.8.3, he remained in his new post until 30 June 2011, when he left WHO’s service. According to the evidence that he submitted, he did not complain to his supervisors about the conduct which he allegedly suffered at the time of his transfer until 17 June 2011.

4. In these circumstances, it must be concluded that complainant did not exhaust the internal means of redress available to him before filing a complaint with the Tribunal and, insofar as his complaint concerns his transfer to Matadi, it must be dismissed as irreceivable since it does not meet the requirements of Article VII, paragraph 1, of the Statute of the Tribunal.

5. Insofar as the complainant criticises his conditions of employment during his previous assignment in Lisala, his complainant is also and *a fortiori* irreceivable.

6. Lastly, insofar as the complainant challenges the termination of his appointment and the “failure to honour a consultancy contract” which he concluded with WHO in October 2012, the complainant also failed to exhaust internal means of redress and his complaint in that respect is likewise irreceivable.

DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 26 April 2017, Mr Claude Rouiller, President of the Tribunal, Mr Patrick Frydman, Judge, and Ms Fatoumata Diakité, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 28 June 2017.

*(Signed)*

CLAUDE ROUILLER      PATRICK FRYDMAN      FATOUMATA DIAKITÉ

DRAŽEN PETROVIĆ