

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

T.-S.

v.

ILO

127th Session

Judgment No. 4107

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs C. T.-S. against the International Labour Organization (ILO) on 20 September 2017, the ILO's reply of 24 November 2017, the complainant's rejoinder of 8 February 2018 and the ILO's surrejoinder of 9 March 2018;

Considering Articles II, paragraph 1, and VII of the Statute of the Tribunal;

Having examined the written submissions;

Considering that the facts of the case may be summed up as follows:

The complainant challenges the withdrawal of an offer of agreed termination.

The complainant is a former official of the International Social Security Association (ISSA). The ISSA was founded in 1927 under the auspices of the ILO, but is administered separately from the ILO. Pursuant to the 1992 Agreement between the ILO and the ISSA, amended in 1997, officials of the General Secretariat of the ISSA are under contract with the International Labour Office (the ILO's secretariat) and their employment is governed by the provisions of the ILO Staff Regulations. At the material time, the complainant held a fixed-term contract which was due to expire on 31 July 2016, at the end of the month in which she would reach the mandatory retirement age.

In 2015 several exchanges occurred between the complainant and the ISSA Administration concerning the possibility of an agreed termination of appointment. In this context, she met with the Secretary General of the ISSA on 29 April 2015. On 5 May 2015 she sent an email to the Secretary General stating that she accepted the terms of the agreed termination that had been discussed during their meeting of 29 April. That same day, the Secretary General replied: “Thank you for accepting the offer as outlined in your [email]. We will now inform HRD [the ILO’s Human Resources Development Department] with a view to preparing an official agreement between yourself and the ILO.”

By an email of 10 June 2015, HRD informed the ISSA that the Office could not support the agreement that had been discussed with the complainant, because it exceeded the scope of an agreed termination under the Staff Regulations. HRD explained how the agreement would have to be modified in order to comply with the relevant rules and the established practice of the Office. On 22 June 2015 the Secretary General informed the complainant of HRD’s position and invited her to consider an agreed termination on terms acceptable to the Office. However, the terms outlined by HRD were not acceptable to the complainant, and she decided to continue working at the ISSA.

On 29 June 2015 the complainant lodged a grievance with HRD, challenging the withdrawal of the offer made to her on 29 April. This grievance was rejected by the Director of HRD on 14 October 2015, and the complainant then filed a grievance with the Joint Advisory Appeals Board (JAAB). On 29 April 2016, while that grievance was still pending, she tendered her resignation with effect from 1 June 2016.

In its report of 15 May 2017, the JAAB found that the Office’s reliance on a “long established practice” concerning the application of Article 11.16 of the Staff Regulations on agreed termination was unfounded, as the Circulars on which the practice was supposedly based were no longer in force. It concluded that the complainant had been misled by the ISSA Administration and was entitled to an award of moral damages for the ISSA’s failure to negotiate in good faith an agreement complying with the applicable rules. However, the JAAB

saw no reason to award the complainant material damages, as it found that she had suffered no financial prejudice.

The complainant was informed of the Director-General's final decision on her grievance by a letter of 5 July 2017. Although the Director-General did not share the JAAB's conclusion that the ISSA Administration had failed to negotiate in good faith an agreement complying with the applicable rules, he recognised that procedural issues had not been adequately addressed or clarified and that this might have caused confusion as to the conditions under which an agreed termination could be concluded. The Director-General therefore decided to award the complainant 5,000 Swiss francs in compensation for the resulting moral prejudice. That is the impugned decision.

The complainant asks the Tribunal to award her 12,000 United States dollars corresponding to two months' salary less pension payments received for June and July 2016; 16,450 dollars in compensation for loss of pension due to leaving earlier than her official retirement date; and a total of 30,000 dollars in moral damages under various heads.

The ILO submits that insofar as the complainant's claims are based on allegations concerning the appointment of the Acting Director of the Social Security Development Branch that was the subject of a separate grievance, they are irreceivable because she did not challenge the Director-General's final decision on that grievance. It also challenges the receivability of her claims insofar as they are based on allegations concerning the circumstances leading to her resignation, as she has not exhausted the internal means of redress with respect to these allegations. It invites the Tribunal to confirm that the compensation awarded in the impugned decision is fair and reasonable.

CONSIDERATIONS

1. In 2015, as the complainant was nearing retirement age, she took part in negotiations with the ISSA Administration for a potential agreed termination. Agreement was reached on 29 April 2015 and was confirmed in writing later that day. When the ISSA Secretary General forwarded the details to HRD, he was informed that the ILO could not

“support or facilitate” the proposed agreement as the terms of that agreement went beyond the provisions of the Staff Regulations. HRD indicated how the terms of the offer could be amended so as to comply with the requirements of an agreed termination under the Staff Regulations and explained that, if the parties wished to conclude an agreement on different terms, it would have to take the form of an individual settlement. The ISSA Administration offered the complainant an amended agreed termination, in line with the Staff Regulations, but the complainant rejected the modifications and decided to continue working. She challenged the withdrawal of the previously agreed termination agreement by submitting a grievance first to HRD and then to the JAAB. The complainant tendered her resignation as of 1 June 2016 but left the ISSA on 29 April 2016, taking into account her outstanding annual leave. She was due to retire on 31 July 2016.

2. The JAAB noted that there had been a legal vacuum with regard to agreed terminations following the expiry of the exceptional measures concerning agreed termination that had been introduced for a limited time in 2013, and that HRD’s reliance on a “long established practice” was misplaced. Noting that the complainant had ultimately suffered no financial prejudice, it recommended that she be awarded 5,000 Swiss francs in moral damages on the grounds that she had been misled and that the ISSA had failed to negotiate in good faith an agreement complying with the applicable rules.

3. The complainant impugns the Director-General’s 5 July 2017 decision endorsing, in part, the JAAB’s reasoning and the recommendation to award the complainant 5,000 Swiss francs. The Director-General did not agree with the JAAB’s finding that the ISSA Administration had failed to act in good faith.

4. The complainant requests oral hearings and asks the Tribunal to order the ILO to pay her:

- (a) two months’ salary less pension payments received for June and July 2016 (12,000 United States dollars);

- (b) compensation for pension foregone because of leaving earlier than the official retirement date of 31 July 2016 (estimated at 16,450 dollars);
- (c) moral damages for the “distress, loss of self-esteem and self-confidence engendering a feeling of worthlessness and hopelessness caused by various actions of the ISSA since 2006, culminating in the proposal to terminate [her] contract early” (25,000 dollars); and
- (d) moral damages for withdrawing an offer which had been made in writing and which she had accepted (5,000 dollars).

5. The complainant grounds her complaint on the following: the ISSA Administration did not negotiate in good faith; the appointment of the Acting Director of the Social Security Development Branch, while not challenged in the present complaint, demonstrates the motivation for proposing an agreed termination of the complainant’s contract; the ISSA’s negative treatment of the complainant also demonstrates what was motivating it; and she was entitled to consider that the original agreement reached after six months of negotiations had already been discussed with HRD and would merely need an official approval from HRD, not an entire renegotiation.

6. The complaint is receivable insofar as it impugns the Director-General’s 5 July 2017 decision endorsing, in part, the JAAB’s reasoning, and the recommendation to award the complainant 5,000 Swiss francs as compensation for the moral prejudice resulting from the confusion created during the negotiations. Any claims linked to the appointment of the Acting Director of the Social Security Development Branch and/or to actions which allegedly forced her to resign are irreceivable for failure to exhaust internal means of redress.

7. On her complaint form, the complainant requests oral proceedings. However, as the written submissions are sufficient for the Tribunal to reach a reasoned decision, the Tribunal sees no need for oral proceedings. That request is thus denied.

8. The complaint is unfounded. The Tribunal finds that the Administration’s bad faith was not proven but that its negligence was, as it negotiated for several months without having verified the rules and

parameters by which an agreed termination was bound. The Tribunal considers that the 5,000 Swiss francs in compensation awarded by the Director-General, which was the amount recommended by the JAAB, is adequate to compensate the moral injury suffered by the complainant in relation to the ISSA Administration's negligent behaviour. The complainant's claims for material damages stem from her allegations regarding her resignation prior to reaching retirement age and are thus irreceivable.

9. In light of the above, the complaint must be dismissed in its entirety.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 31 October 2018, Mr Giuseppe Barbagallo, President of the Tribunal, Ms Dolores M. Hansen, Judge, and Mr Michael F. Moore, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 6 February 2019.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

MICHAEL F. MOORE

DRAŽEN PETROVIĆ