

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

C. J.

v.

Energy Charter Conference

(Application for execution)

129th Session

Judgment No. 4214

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for execution of Judgment 4008, filed by Ms. L. C. J. on 9 January 2019 and corrected on 28 January, the reply of the Energy Charter Conference of 3 April, the complainant's rejoinder of 24 May and the Conference's surrejoinder of 12 July 2019;

Considering Articles II, paragraph 5, and VI, paragraph 1, of the Statute of the Tribunal;

Having examined the written submissions;

CONSIDERATIONS

1. In Judgment 4008, delivered in public on 26 June 2018, the Tribunal ruled on three complaints filed by the complainant. In her first complaint, she challenged the decision not to extend her fixed-term contract following the abolition of her post, and to give her a Project Staff contract. In her second complaint, she challenged three vacancy notices published on 3 June 2016, since she considered that the duties attached to the posts advertised matched those which she was performing. In her third complaint, she challenged the rejection of her applications for two of these posts.

2. With regard to the first complaint, the Tribunal held that the Secretary-General's decisions not to extend the complainant's fixed-term contract and to offer her a Project Staff contract for a period of one year were unlawful and should be set aside.

The deliberations of the Energy Charter Conference on 3 December 2015 related to the restructuring of the Secretariat were found to be irregular in that they breached the rules concerning consultation of the Staff Committee, thereby rendering unlawful the individual decision not to extend the complainant's contract, taken on the basis of those deliberations. Furthermore, the Tribunal found that the latter decision was unlawful because it breached Rule 25.1 of the Staff Rules, which, in this case, required senior staff of the General Secretariat to be consulted. Lastly, the Tribunal considered that the decision to offer the complainant a Project Staff contract involved distorting the notion of a temporary contract.

With regard to the second complaint, the Tribunal held that as a result of the setting aside of the Secretary-General's decision challenged in the first complaint, the vacancy notices challenged by the complainant must also be cancelled. The Tribunal, however, made it clear that the organisation must shield the successful candidates from any injury resulting from the cancellation of those vacancy notices.

With regard to the third complaint, the Tribunal concluded that since the vacancy notices relating to the posts for which the complainant had applied had to be cancelled, the complaint had become moot and there was therefore no reason to rule on it.

The Tribunal considered that there were no grounds for ordering the complainant's reinstatement, but awarded her compensation assessed *ex aequo et bono* at 35,000 euros and 5,000 euros in costs.

3. Following the public delivery of the judgment, the organisation paid the complainant 40,000 euros corresponding to the abovementioned awards. Furthermore, the Secretary-General confirmed with retroactive effect the decisions to appoint the staff recruited by means of the cancelled vacancy notices, without issuing new vacancy notices or organising a new recruitment procedure. Lastly, the Conference

confirmed, at its session of 27 and 28 November 2018, the decisions arising from its deliberations of 3 December 2015, which the Tribunal had considered to be unlawful. In this regard, the defendant organisation states, and this is not disputed by the complainant, that the decisions were confirmed “with the support of the Staff Committee and management (Senior Management) in strict conformity with the applicable procedure.”*

4. The complainant submits that the organisation failed to execute Judgment 4008 properly. She recalls that the Tribunal found her third complaint to be moot because the vacancy notices had been cancelled, which, in her view, necessarily means that the appointment decisions made on the basis of those vacancy notices were unlawful. She considers that the cancellation of the vacancy notices must therefore be interpreted as requiring that she be given a new opportunity to apply for a new job based on new, lawful decisions. She underscores that this did not occur because the candidates appointed were retroactively confirmed without any new vacancy announcements being issued and without a new recruitment procedure being organised. She concludes that by proceeding in this manner, the organisation rendered the judgment ineffective.

She requests the execution of Judgment 4008 and:

- the payment of the sum of 389,626.42 euros with interest at an annual rate of 8 per cent from 27 June 2018;
- the payment of moral damages assessed provisionally and *ex aequo et bono* at 10,000 euros;
- the refund of expenses and lawyers’ fees since the public delivery of Judgment 4008, estimated at 4,318.43 euros;
- if the defendant organisation does not pay the abovementioned sums within 30 days of the delivery of the judgment, the payment of a penalty of 15,000 euros per month of delay.

* Registry’s translation.

5. The complainant considers that the proper execution of Judgment 4008 would entail publishing new vacancy notices and starting a new recruitment procedure.

However, the Tribunal recalls that the procedure for filling the vacant posts was an “internal selection procedure”, as indicated in the note of 3 June 2016 in which the vacancy notices were published, which meant that only staff members could apply.

In Judgment 4008, the Tribunal set aside the decisions not to extend the complainant’s fixed-term contract and to offer her a Project Staff contract for the period from 1 January to 31 December 2016, but did not order her reinstatement. It considered that the various forms of injury suffered by the complainant would be fairly redressed by awarding her compensation assessed *ex aequo et bono* at 35,000 euros.

It follows that the complainant, being no longer a staff member, could not have applied in response to a new vacancy notice of the same kind. Accordingly, by refraining from publishing such a notice and starting a new recruitment procedure, the organisation did not render the judgment ineffective.

6. The application for execution must therefore be dismissed in its entirety.

DECISION

For the above reasons,

The application for execution is dismissed.

In witness of this judgment, adopted on 7 November 2019, Mr Patrick Frydman, President of the Tribunal, Ms Fatoumata Diakité, Judge, and Mr Yves Kreins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 10 February 2020.

(Signed)

PATRICK FRYDMAN

FATOUMATA DIAKITÉ

YVES KREINS

DRAŽEN PETROVIĆ