

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

O.
v.
ICCO

130th Session

Judgment No. 4325

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms M. O. against the International Cocoa Organization (ICCO) on 27 December 2019;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal and Article 7 of its Rules;

Having examined the written submissions;

CONSIDERATIONS

1. By letter of 30 June 2017, the Executive Director of the ICCO – an organisation based in Abidjan, Côte d'Ivoire – informed the complainant that he had decided to terminate her appointment with immediate effect. At that time, the Organization's Staff Regulations and Staff Rules did not provide for any internal appeal mechanism. Although the complainant nevertheless took steps to challenge the decision of 30 June, it was confirmed by a letter from the Executive Director dated 11 August 2017. In October 2018, the complainant brought the case before a national court.

2. On 20 August 2019 the Executive Director of the ICCO sent a request for recognition of the jurisdiction of the Tribunal to the Director-General of the International Labour Office (hereinafter "the ILO"). At its 337th Session, held from 24 October to 7 November 2019, the ILO's Governing Body approved that recognition with effect from 30 October 2019.

3. On 27 December 2019 the complainant filed this complaint with the Tribunal, impugning the decision of 11 August 2017.

4. Under Article II, paragraph 5, of its Statute, the Tribunal may hear a complaint only when the international organisation concerned has addressed a declaration recognising the Tribunal's jurisdiction to the ILO's Director-General and that declaration has been approved by the ILO's Governing Body. Although, as stated in consideration 2 above, these requirements have been met in this case, the decision impugned by the complainant was taken when the ICCO had not yet recognised the Tribunal's jurisdiction, which, moreover, it did not do until well after the expiry of the "ninety days after the complainant was notified of the decision impugned" in which complaints must be filed pursuant to Article VII, paragraph 2, of the Statute of the Tribunal.

5. Referring to several judgments of the Tribunal, the complainant contends that her complaint is receivable, even though it was filed after that time limit had expired.

6. To begin with, the complainant cites Judgment 2582. In the case which gave rise to that judgment, the defendant organisation – the International Olive Council (IOOC) – had recognised the jurisdiction of the Tribunal by a letter of 19 September 2003 addressed to the ILO's Director-General. It is true that the Tribunal stated in consideration 5 of that judgment:

"Although the complainant's appointment with the IOOC ended prior to that recognition, which was approved by the ILO's Governing Body at its 288th Session in November 2003, the Tribunal considers that it may properly hear the present case brought by a former official of the IOOC who, subsequently to that recognition, has alleged a breach of statutory provisions."

However, in that case, unlike the present case, the complainant was challenging a decision taken in his regard after the IOOC had recognised the Tribunal's jurisdiction.

7. The complainant next refers to Judgment 2798. Admittedly, consideration 8 of that judgment states that the official concerned had 90 days to file her complaint from the date on which she had learned that her former employer – the International Organisation of Vine and Wine (OIV) – had recognised the Tribunal's jurisdiction. However, the

complainant disregards the content of consideration 4 of the same judgment, in which the Tribunal considered that it had jurisdiction in that case because the contractual relationship between the parties ended after the Director General of the OIV had been notified of the decision by the ILO's Governing Body to approve the recognition of the Tribunal's jurisdiction, a condition which is not met in this case.

8. Lastly, the complainant quotes Judgment 298, in which, according to her, the Tribunal declared that "recourse to a national court, which does not have jurisdiction, might be regarded as postponing the time limit for appeal to the Tribunal". However, the complainant's contention rests on a distortion of the content of that judgment, in which the Tribunal, in stating that "even if recourse to a national court, which does not have jurisdiction, might be regarded as postponing the time limit for appeal to the Tribunal", was merely entertaining a hypothesis.

9. The complaint is therefore clearly irreceivable because the Tribunal does not have jurisdiction to hear it. The Tribunal will therefore summarily dismiss it in accordance with the procedure provided for in Article 7 of its Rules.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 13 July 2020, Mr Patrick Frydman, President of the Tribunal, Ms Dolores M. Hansen, Vice-President of the Tribunal, and Mr Giuseppe Barbagallo, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 24 July 2020 by video recording posted on the Tribunal's Internet page.

(Signed)

PATRICK FRYDMAN DOLORES M. HANSEN GIUSEPPE BARBAGALLO

DRAŽEN PETROVIĆ