

The Administrative Tribunal,

Considering the complaint filed by Mr A. V. against the International Labour Organization (ILO) on 17 April 2002, the Organization's reply of 19 February 2003, the complainant's rejoinder of 16 April and the ILO's surrejoinder of 10 July 2003;

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

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

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

A. The complainant, a Finnish national born in 1946, worked for the International Labour Office (the ILO's secretariat) as a technical expert under a series of contracts spanning a period of approximately 18 years, the last of which expired at the end of December 2001. At the material time his duty station was Bangkok (Thailand).

In April 2001 he applied for the position of Labour Administration Specialist, at grade P.5, based in Bangkok. The vacancy announcement stated, *inter alia*, that officials serving on technical cooperation projects who had completed at least two years of service could apply as external candidates. It was in that capacity that the complainant applied for the position, using the Organization's on-line application process. He had already made clear to several ILO officials in Bangkok and at ILO headquarters his interest in the vacant position, and in September 2001 he followed up his application with a letter to the Director of the Human Resources Development Department, in which he emphasised that he hoped to be interviewed.

In November 2001 the result of the competition was posted on the ILO notice board, indicating that another candidate had been appointed to the post. As an external candidate, the complainant was not notified personally of this result.

The complainant's contract expired on 31 December 2001. By an e-mail of 11 January 2002 to the Director of the Human Resources Development Department the complainant enquired as to the progress of the recruitment procedure. He stated that he had heard rumours that the post had been filled, and that if that was the case he intended to challenge the appointment. That same day, the Director replied that he was unsure whether the competition was formally closed and suggested that the complainant should await formal notification of the result before drawing any "inappropriate conclusions".

On 7 February the complainant requested information regarding the time limits for challenging a decision before the Tribunal. Having received no reply he filed the present complaint on 17 April 2002.

The Organization subsequently decided to undertake a review of the competition file. In the light of that review the Director-General decided, on 19 August 2002, to set aside the result of the competition retroactively and to reissue the competition under the same conditions. The complainant was informed of this decision in a letter of 28 August 2002. The results of the new competition, for which the complainant is a candidate, are not yet known.

B. The complainant contends that the Organization breached Article 4.2 and Annex I of the ILO Staff Regulations by failing to interview him for the advertised position. Referring to his qualifications and professional experience, and particularly his many years of service with the ILO, he asserts that the vacancy "has not been filled by a candidate who has been selected by using the highest standards of competence, efficiency and integrity, and by fair and credible selection procedure".

He asks the Tribunal to order the ILO either to annul the appointment and renew the procedure from the interview

stage, "with the subsequent decision being made based on the highest level of competence"; or to offer him another post "with respective benefits"; or to pay him six years' salary, and benefits, representing compensation until his retirement at the age of 60.

C. In its reply the Organization notes that the impugned decision should, in principle, be the Director-General's decision of 15 November 2001 to appoint another candidate to the post, which was not challenged by the complainant within the ninety-day time limit provided for in Article VII of the Statute of the Tribunal. However, it acknowledges that the complainant received misleading information after the competition had been finalised and for that reason raises no objection to receivability based on time limits. It does, however, consider the complaint to be irreceivable under Article VII(1) of the Tribunal's Statute, arguing that since the disputed appointment has been set aside and that a new competition has been initiated, the results of which are still awaited, there is as yet no final decision for the complainant to challenge.

The candidate initially appointed to the post declined the Organization's invitation to comment on the complaint.

D. In his rejoinder the complainant dismisses the Organization's objection to receivability as creating "an open-end situation" in which the Organization makes an appointment in breach of the Staff Regulations, cancels the competition in the event of a complaint, retains the initial appointee pending the outcome of a second competition, which could likewise be cancelled and renewed in the event of a second complaint, and so on and so on.

He asserts that several officials responsible for human resources matters "wilfully lied" to him by failing to inform him, during discussions about the post in December 2001, that it had been filled since 15 November.

In view of the fact that, since filing his complaint, he has accepted a post in another organisation, the complainant confines his claims to the payment of one year and 12 days' salary, which he describes as his "actual loss".

E. In its surrejoinder the Organization observes that this is the first time that a competition has been retroactively cancelled by the Organization and replaced under the same terms and conditions "as at the date of the earlier competition". Consequently, it rejects as exaggerated the scenario described by the complainant in his rejoinder. It maintains its objection to receivability and dismisses the complainant's revised claim for damages on the grounds that the challenged competition has been annulled and conducted again on a retroactive basis. It also considers that his present claim for damages is inappropriate, since it relates not to the competition, but to the non-renewal of his contract.

Lastly, the Organization points out that the misleading information given to the complainant after the finalisation of the initial competition - for which it has apologised - affected only the timing of his complaint, regarding which it has raised no objection to receivability.

CONSIDERATIONS

1. The complainant had been working at the ILO's Regional Office in Bangkok under a two-year contract as a Chief Technical Adviser to a technical cooperation project since November 1999; he applied on 9 April 2001 for the vacant post of Labour Administration Specialist, based in Bangkok. On 31 December of the same year the complainant's contract expired.

2. Before and after submitting his application, the complainant had discussions with several ILO officials in Bangkok and at ILO headquarters concerning his interest in the position, furnishing them with all pertinent documents relative to his application and requesting that he be interviewed. On 20 September 2001 the complainant sent a follow-up letter to the Director of the Human Resources Development Department, reiterating his desire to be interviewed and to further discuss the post in question and his qualifications, but this letter went unanswered.

3. Having heard rumours that the post for which he had applied had been filled, he wrote again to the same Director on 11 January 2002, enquiring about the current state of the appointment process, since he had neither been contacted on the matter nor been invited for an interview. He also requested information about "when the selection board [had] made its final decision" and the grounds on which another candidate had been selected, adding that if the rumours he had heard were true, then he would have no option but to file a complaint with the Tribunal on the grounds that the Organization's "own guidelines would not have been followed".

4. The Director replied that he was unsure whether the competition referred to by the complainant was formally closed. In any event, he stated that "when final decisions are made the success or otherwise of individual applications are routinely notified to the people involved". He suggested, therefore, that the complainant await the formal notification and, if appropriate, ask for feedback on his application.
5. On 7 February 2002 the complainant requested information regarding the time limits provided for in Article VII of the Statute of the Tribunal. He pointed out that he had learned that the official appointed to the position to which he aspired had started working already. He received no reply to his enquiry.
6. The result of the competition, naming an external candidate from Japan, was posted on the ILO notice board soon after 15 November 2001. As an external candidate, the complainant was not personally advised of the result of the competition, in accordance with normal ILO practice. Indeed, the vacancy announcement stated that external applicants would be contacted "only if their candidature [was] under serious consideration".
7. In the absence of a personal notification, the complainant could only rely on rumours. Much as he wished to avail himself of the recourse to the Tribunal, he was at a loss to determine the date from which to count the period for filing a complaint, for lack of a decision adverse to his interests which he could impugn. This explains why on 7 February 2002, he wrote to the Director of the Human Resources Development Department requesting information regarding the time limits set forth in Article VII of the Statute. The Tribunal notes that there is no dispute between the parties on the issue of time limits.
8. Following the filing of the complaint on 17 April 2002, and upon realising that the complainant had been given misleading and incomplete information, the Organization undertook a complete review of the competition file. In the light of this review, the Director-General decided on 19 August 2002 to set aside the result of the competition in question and establish a fresh vacancy announcement as of the date of the "cancelled" competition, that is, April 2001. The new competition is under way and there appears to be no result as yet. The closing date for applications was 30 September 2002. The complainant is a candidate in the competition. Accordingly, given the cancellation of the earlier competition and its result, there is as yet no "final decision" for the complainant to contest. Thus, there is no cause of action and accordingly the complaint is irreceivable; any grievance which the complainant may have as a result of the cancellation of the old competition and the holding of the new one is outside the scope of the present complaint. His claim in respect of alleged salary loss following 31 December 2001 does not result from the old competition but rather from the non-renewal of his former contract.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 7 November 2003, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Vice-President, and Mrs Florida Ruth P. Romero, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 4 February 2004.

Michel Gentot

James K. Hugessen

Florida Ruth P. Romero

Catherine Comtet

