

The Administrative Tribunal,

Considering the complaint filed by Mr D. B. against the International Labour Organization (ILO) on 8 April 2005, the Organization's reply of 1 June 2005 and the complainant's communication of 9 January 2006 answering the reminder of the Registrar of the Tribunal dated 15 December 2005 and informing her that he did not wish to file a rejoinder;

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 German national born in 1946, joined the International Labour Office (ILO), the secretariat of the International Labour Organization, in 1981. He holds a P.5 post within the Department of Sectoral Activities. The ILO and the International Telecommunication Union (ITU) have a joint Staff Health Insurance Fund (SHIF). The complainant served as a substitute member of the Management Committee of the SHIF for the 2000-2002 term. This Committee is a joint body composed of representatives of the insured persons and representatives of the executive heads of the two organisations. On 4 July 2002 it appointed three scrutineers, two from the ILO and one from the ITU, to organise the election of the representatives of the insured persons for the period 2003-2005. The complainant, who had represented the insured persons, stood unsuccessfully for re-election.

The scrutineers distributed Circular SHIF/ELEC/02/ILO/V.1 dated 24 October 2002 announcing the election. Attached as an annex were the "statements of particulars" of all the duly nominated candidates. An additional annex included a joint statement by five candidates. Having noted that the reference to his personal website had been removed from his "statement of particulars", the complainant wrote an e-mail to the two ILO scrutineers on 29 October accusing them of censorship. He also stated that the joint statement of five other candidates having been published under a separate SHIF heading, those candidates were "privileged". On 31 October the two ILO scrutineers replied that the decision to omit the complainant's reference to his personal website was reasonable in view of the Rules for elections (Appendix II of the SHIF Regulations). They further indicated that the SHIF heading appeared on the joint statement of five other candidates only for technical reasons.

On 1 November 2002 the complainant submitted an appeal to the two ILO scrutineers, requesting that a new set of voting slips be sent out along with corrected statements. By an e-mail of 11 November 2002 the two ILO scrutineers reiterated their position and informed the complainant that any further appeal would have to be submitted to the Standing Subcommittee of the Management Committee. The complainant filed an appeal with the Management Committee on 25 November 2002. The Committee convened on 2 December 2002 and decided to consider the appeal after having submitted it to the Standing Subcommittee, which referred it back to the Committee in accordance with Article 4.11(2) of the SHIF Regulations. The Management Committee decided by a majority vote to reject the complainant's appeal on the grounds that the scrutineers had carried out the election procedure within the authority given to them by the SHIF Regulations and that the principle of equal treatment had been respected. The decision of the Management Committee was formally notified to the complainant on 18 December 2002. Meanwhile, on 4 December 2002 the complainant had asked the Management Committee to refer its decision to an Appeals Board of the SHIF pursuant to Article 5.3 of the SHIF Regulations. The Board dismissed the appeal by a majority decision of 7 September 2004. Two of its members issued a dissenting opinion.

The complainant filed a grievance with the Director of the Human Resources Development Department (HRD) on 31 January 2005 requesting that he review the decision of the SHIF Appeals Board. Alternatively, he sought the authorisation of the Director-General to appeal directly to the Tribunal. By a letter of 8 March 2005, which is the impugned decision, the Director of HRD informed the complainant that the Office had no authority to examine a matter adjudicated under the independent appeals procedure established by the SHIF, and that the decision taken by the SHIF Appeals Board to dismiss his appeal was final and binding.

B. The complainant contends that he was put at an “undue disadvantage” in the 2002 elections of representatives to the Management Committee since the reference he made to his personal website was removed from his “statement of particulars”. Firstly, he asserts that Paragraph 5 of the Rules for elections, which provides that “[c]andidates may furnish in support of their nomination brief particulars of relevant qualifications and experience”, is the only provision dealing with “statements of particulars”. He adds that the call for candidatures did not mention any restriction concerning “statements of particulars” other than a maximum of 250 words. In the absence of a provision prohibiting the reference to a personal website in a statement, he believes that he should have been informed of its removal and given a chance to redraft his statement. Secondly, he argues that some candidates were put at an advantage since they were allowed to supply along with their personal statement a collective statement, thus totalling more than 250 words. He adds that the layout of the joint statement in itself gave them an advantage since it was published under the official heading of SHIF, thus giving the impression that the SHIF Secretariat supported it.

The complainant also contends that the election procedure was flawed since only two scrutineers had seen his “statement of particulars” while Paragraph 1 of the Rules for elections provides that the elections shall be organised by three scrutineers. In this regard he refers to several e-mails exchanged between him and the two ILO scrutineers showing that only the two ILO scrutineers dealt with his candidature.

He rejects the majority decision of the SHIF Appeals Board and says he supports the dissenting opinion of two members. He points out that the responsibility of the scrutineers to organise the elections did not lie solely with them. Indeed, he asserts, the SHIF Secretariat acted independently from the scrutineers and without their knowledge; however, it had a duty to inform them of the applicable rules and regulations concerning elections. In his view, the failure of the SHIF Secretariat to ensure that the elections were conducted in conformity with the applicable rules is all the more serious for the fact that the Secretary acted as an official of the ILO Department of Human Resources Development.

He asserts that, being anxious to exhaust all internal remedies before turning to the Tribunal, he had appealed to the Management Committee, although he had considered that it was outside the terms of reference of this Committee to give a decision “on conflicts of interest between its members”. He further points out that a majority of the members representing the insured persons on the Committee were candidates in the election.

The complainant asks the Tribunal to rule on whether the SHIF Management Committee was competent to decide his appeal, and on whether the ILO, as his employer, is responsible for “ensur[ing] – through its representatives on the SHIF Management Committee, through the Secretary who is [an] HRD official, or otherwise – the application of [his] rights to participate in the Staff Health Insurance Fund as a counterweight to [his] obligation to be a member of it and contribute to it financially”. Alleging that he has been exposed to “manoeuvres like the manipulation of elections”, which “put a heavy moral burden on [him]”, he claims moral damages in the amount of 30,000 United States dollars.

C. In its reply the Organization contends that the Tribunal has no jurisdiction to hear the complaint insofar as the complainant alleges non-observance of the SHIF Regulations. It points out that the SHIF is an independent entity. It has its own dispute resolution procedure laid down in Article 5.3 of its Regulations, according to which, in cases other than those required to be submitted to a medical committee, an insured person may require a decision of the Management Committee concerning the application to him/her of these Regulations to be referred to an Appeals Board. It emphasises that, according to Article 5.3(4) there shall be no further appeal from the decisions of the SHIF Appeals Board.

The defendant asserts that there had been no irregularities in the election procedure and that the equal treatment of candidates had been ensured. Indeed the scrutineers were entitled to modify the complainant’s statement of particulars pursuant to Paragraph 5 of the Rules for elections, which provides that “each such ‘Statement of Particulars’ shall be subject to the control of Scrutineers”. It adds that the reference to the complainant’s personal website was removed pursuant to Circular SHIF/ELEC/02/ILO/E.1, which specifies that candidates may submit “brief particulars of relevant qualifications and experience of no more than 250 words [...]”. In its view the scrutineers could legitimately consider that the reference by one candidate to a personal website could have given him or her an undue advantage over other candidates. The complainant was not informed of the decision taken to remove it since the “suppression of the reference to the web site did not alter the substantive content of the statement”.

The Organization submits that the scrutineers' decision to accept the collective statement of five candidates fell within their discretionary power. In addition it explains that the SHIF heading appeared on the joint statement of particulars because it was produced as a separate annex to Circular SHIF/ELEC/02/ILO/V.1; by no means did it imply that the scrutineers or any other authority favoured the authors of the joint statement. It also asserts that the complainant's contention that the SHIF Secretariat acted in lieu of the scrutineers in removing the complainant's reference to his personal website from his statement of particulars is irrelevant since the scrutineers endorsed the aforementioned circular, which contained the said statement.

Contrary to the complainant's assertion, the Organization does not consider that the procedure was flawed because only two scrutineers signed the decisions of 31 October 2002 and of 11 November 2002. Firstly, it points out that the fact that the decisions were signed only by two scrutineers does not mean that the third one did not support these decisions. Secondly, it submits that the scrutineers whose function is to ensure that the Management Committee does not take part in the organisation of election in which some of its members, i.e. those who stand for re-election, have a particular interest, enjoy discretion in the sharing of their own responsibilities.

Subsidiarily it argues that the Management Committee was competent to deal with the complainant's case and "vigorously rejects" the complainant's accusation that there was a "manipulation of elections". It points out that since the SHIF Regulations and Administrative Rules did not provide for a specific procedure for complaints related to elections, the Management Committee had decided to take up the matter so that the decisions taken by the scrutineers could be reviewed and, ultimately, an appeal to the SHIF Appeals Board, for which a decision by the Management Committee was required, could be lodged. The decision to reject the complainant's appeal was taken by a vote and the members of the Management Committee who were standing for re-election abstained.

Lastly, the ILO submits that since the election was carried out in accordance with the applicable rules and "democratic principles", the complainant cannot claim moral damages for not having been elected.

CONSIDERATIONS

1. The complainant is a former substitute member of the Management Committee of the Staff Health Insurance Fund (SHIF) of the International Labour Office (ILO) and the International Telecommunication Union (ITU). He stood unsuccessfully for re-election for the 2003-2005 term and, alleging irregularities in the proceedings leading up to the election, appealed the election results in turn to the election scrutineers, to the Management Committee, and finally to the Appeals Board of the SHIF. All these appeals were dismissed. The complainant then filed a grievance with the ILO seeking to reverse these results. The Director of the Human Resources Development Department declined jurisdiction to entertain the grievance in a decision dated 8 March 2005. That is the impugned decision.
2. The SHIF is a fund set up to provide health insurance benefits for members and former members of the staff of the ILO and the ITU. It is run by a Management Committee which has representation from the insured persons and executive heads of both organisations. It is governed by its own Regulations which are not the rules of either the ILO or the ITU. As a staff member of the ILO the complainant is obligatorily a member of and contributor to the SHIF. Elections of insured persons' representatives to the Management Committee are run and supervised by scrutineers, two from the ILO and one from the ITU.
3. The SHIF Regulations have their own provisions for the resolution of disputes by means of an Appeals Board. These provisions state that there shall be no further appeal from the decisions of the Board.
4. The Organization argues that the complaint is irreceivable as the impugned decision correctly held that the decision of the Appeals Board was outside the field of competence of the Director-General and therefore could not be the subject of a grievance addressed to the latter or of any final decision by him. It is in part right. The organisational structure of the SHIF is such that it is independent of both the ILO and the ITU. Thus, the ILO was not in a position to entertain the complainant's grievance or to give him satisfaction.
5. That is not quite the end of the matter, however. The complainant argues that since his membership in and contribution to the SHIF is obligatory under Article 8.1 of the ILO Staff Regulations, the SHIF and its Regulations form part of his terms and conditions of employment and any breach of them would come within the Tribunal's competence. The point is not without merit, assuming that the SHIF could be made a party to any proceedings by

impleading both of its parent bodies. Nor is the final character of the Appeals Board decision necessarily an obstacle to the Tribunal's competence any more than the requirement placed on every complainant to exhaust the internal means of redress. The Tribunal only entertains complaints against final decisions.

6. Unfortunately for the complainant, the point does not and cannot arise for decision in this case. The complaint is directed against the decision of 8 March 2005, which, as the Tribunal has already indicated, correctly refused to entertain his grievance. However, even if this complaint could be interpreted as in reality attacking the decision of the Appeals Board it would be long out of time. The Appeals Board's decision was rendered on 7 September 2004; the complainant's grievance was filed on 31 January 2005, and the complaint was filed only on 8 April 2005, that is well outside the time limit provided in Article VII of the Tribunal's Statute.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 5 May 2006, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Vice-President, and Ms Mary G. Gaudron, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 12 July 2006.

Michel Gentot

James K. Hugessen

Mary G. Gaudron

Catherine Comtet