

The Administrative Tribunal,

Considering the fourth complaint filed by Mrs M.P. V. N.-d.-S. against the International Labour Organization (ILO) on 18 August 2006, the Organization's reply of 21 November, the complainant's rejoinder of 19 December 2006 and the ILO's surrejoinder of 1 February 2007;

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 is a former official of the International Labour Office, the ILO's secretariat. Facts relevant to this dispute are set out in Judgment 2287 concerning the complainant's first complaint and in Judgment 2675, delivered this day, concerning her third complaint. It should be recalled that the competition following the publication on 23 May 2001 of Vacancy Announcement No. 2001/4, which was opened to fill the post of senior translator/reviser (Head of the Spanish Unit) at grade P.5, led to the appointment of Mr P. The complainant challenged that decision and was informed by a letter of 9 April 2003 that the competition had been cancelled because the Administration had recognised that it had not been held with the degree of "transparency and objectivity" which candidates were entitled to expect and that Mr P. did not have all the required qualifications in terms of professional experience. However, it was considered that Mr P. had not intended to deceive. After the cancellation of his appointment Mr P. performed the duties of acting Head of the Spanish Unit until 31 May 2005.

Judgment 2474, concerning the three complaints lodged by Mr P., was delivered on 6 July 2005. On 5 August the complainant filed a grievance in which she asserted that she had learnt, on delivery of the above-mentioned judgment, that the ILO had misled the Tribunal into believing that Mr P. was a bona fide candidate. She claimed that she had suffered injury because the Organization had not admitted before the Tribunal that Mr P. had been dishonest and because he had been appointed acting Head of the Spanish Unit. She denounced the "harmful consequences" of this situation for her career.

This grievance having been impliedly rejected, the complainant referred the matter to the Joint Advisory Appeals Board on 23 November 2005. She drew attention to the fact that she had earlier supplied evidence that Mr P. had made "false statements" during competition No. 2001/4 and she again deplored the fact that the Office had not admitted that he had been dishonest. She asked the Board to recommend that the Director-General acknowledge that Mr P. had cheated and demote him, that he redress the injury she had suffered and that he "rehabilitate" her vis-à-vis the Office and other international organisations.

The Board presented its report to the Director-General on 20 March 2006. In its opinion, the complainant could not claim that she had first learnt that Mr P. was regarded as a bona fide candidate when Judgment 2474 was delivered, because the letter sent to her on 9 April 2003 clearly indicated that Mr P. had not been found to harbour any intention to deceive. The Board therefore deemed the grievance to be time-barred and hence irreceivable on the grounds that the six-month period for lodging an appeal had started to run on 9 April 2003. It added that the complainant's arguments regarding Mr P.'s alleged intention to deceive had already been examined by the Tribunal and were therefore *res judicata*. It also recommended that her claims should be dismissed as ill founded.

By a letter of 22 May 2006, which constitutes the impugned decision, the Executive Director of the Management and Administration Sector notified the complainant that the Director-General had decided to follow the Board's recommendations and to reject her grievance.

B. The complainant accuses the Organization of adopting an ambiguous position because, although it had admitted that Mr P. had made false statements about his professional experience, it had not acknowledged that he had intended to deceive. In her opinion, Mr P. could not be regarded as a bona fide candidate on account of his

false statements. She submits that she has suffered “immense physical and moral injury” because the Office made “a number of serious mistakes” in order to protect Mr P.

The complainant holds that the *res judicata* rule is not applicable because the Tribunal has not yet ruled on her arguments concerning Mr P.’s intention to deceive. Furthermore, the appeal body was mistaken in saying that she had been informed by the letter of 9 April 2003 that Mr P. was considered to be honest: in that letter the Office admitted that he had supplied incorrect information when he applied for the post of Head of the Spanish Unit.

The complainant asks the Tribunal to set aside the impugned decision, to recognise that Mr P. made false statements and determine the relevant consequences, and to award her 40,000 Swiss francs in compensation for the moral injury suffered and 5,000 francs in costs.

C. In its reply the ILO accepts that the complaint is receivable insofar as the complainant has challenged the decision of 22 May 2006 within the time limits. On the other hand, it asserts that her pleas are irreceivable as they are time-barred. It contends that the complainant exceeded the deadline for filing her grievance almost 18 months because, like the Joint Advisory Appeals Board, it considers that the period of time within which it had to be filed started to run on 9 April 2003.

The Organization asserts subsidiarily that the complainant should have endeavoured to show that the Office’s contention that Mr P. was a bona fide candidate was flawed, that this contention injured her and that there was a causal link between these two elements. She has not, however, furnished the slightest evidence with respect to any of these matters.

D. In her rejoinder the complainant reiterates her pleas. She alleges that the letter of 9 April 2003 shows that the Administration did not regard Mr P. as honest. She therefore deems her complaint to be receivable as it was filed within the period of time allowed, which started to run on 6 July 2005.

E. The ILO maintains its position in its surrejoinder. It draws attention to the fact that the above-mentioned letter clearly stated that Mr P. had not intended to deceive which, in its opinion, was tantamount to saying that it considered him to be honest.

CONSIDERATIONS

1. On 22 March 2002 the complainant was notified that her application for the post of Head of the Spanish Unit had been rejected. As she was of the opinion that the successful candidate did not meet the selection criteria, on 14 May she filed a grievance in which she asked the Appeals Body to recommend that the Director-General of the Office cancel the appointment of the said candidate. After the Appeals Body had issued its opinion, she sent the Director-General documents from three international organisations which were intended to prove that the successful candidate had made false statements. In October 2002 the Director-General instructed the Human Resources Development Department to open an investigation in order to verify the complainant’s allegations.

Having not received notification of a final decision, on 3 March 2003 the complainant filed a first complaint with the Tribunal in which she challenged the appointment made after the disputed competition (see Judgment 2287). By a letter of 9 April 2003 she was informed that the Director-General had decided to cancel the competition and the ensuing appointment. Nevertheless, this letter made it clear that the investigation had shown “that there [had been] no intent to deceive on the part of the successful candidate” and that the inaccurate information supplied in his application “had no bearing on the assessment of his profile”.

2. In Judgment 2287 the Tribunal found that the complainant’s main claim that the appointment of the successful candidate should be cancelled had been deprived of substance because, after the complaint had been filed, the Director-General had cancelled both the competition and the disputed appointment. The Tribunal did, however, award her the amount of 5,000 Swiss francs in compensation for the moral injury suffered.

Shortly before the delivery of the above-mentioned judgment, the complainant was informed that the Director-General had granted her a personal promotion to grade P.5 with effect from 1 October 2003. As for the candidate whose appointment had been cancelled, he was assigned the duties of acting Head of the Spanish Unit until 31 May 2005.

3. Judgment 2474, concerning a dispute between the Organization and the candidate selected at the end of the competition, was delivered on 6 July 2005. In that judgment the Tribunal ordered the Director-General to promote the said candidate to grade P.5 with effect from 1 April 2003, noting inter alia that the Human Resources Development Department had “concluded that [he] had not ‘fraudulently misrepresented his qualifications’”.

Having taken cognisance of this judgment, the complainant considered that she had been injured by the finding that the successful candidate had been regarded as a bona fide applicant and she therefore filed a grievance on 5 August 2005. Since the latter met with an implied rejection, the complainant referred the matter to the Joint Advisory Appeals Board on 23 November 2005. On 20 March 2006 the Board recommended that the Director-General reject the grievance and all the complainant’s claims as being “clearly irreceivable and unfounded”. On 22 May 2006 the Executive Director of the Management and Administration Sector notified the complainant of the Director-General’s final decision adopting that recommendation.

4. In substance the complainant requests that the Tribunal set aside the decision of 22 May 2006, recognise that the candidate selected at the end of the competition made false statements and determine the relevant consequences.

She submits that the Director-General took a flawed decision in accepting the Joint Advisory Appeals Board’s recommendation. She claims that by deeming the above-mentioned candidate to be a bona fide applicant and by treating him as such, the Organization breached the terms of her appointment and made a number of serious mistakes which injured her and had repercussions on her own career.

5. In reply the Organization asserts that the grievance was irreceivable because it was time- barred, as the Board had established. It also submits that the complaint is manifestly unfounded.

6. Firm precedent has it that a complaint is receivable only if the complainant has a cause of action before the Tribunal deriving from a personal interest that is present and direct.

In the instant case the complainant offers no evidence that she has such an interest, since the competition and ensuing unlawful appointment were cancelled in response to the grievance which she filed on 14 May 2002. Nor has she proved that the treatment given to the candidate whose appointment was cancelled had repercussions on her own career.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 15 November 2007, Mr Seydou Ba, President of the Tribunal, Mr Claude Rouiller, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 6 February 2008.

Seydou Ba

Claude Rouiller

Patrick Frydman

Catherine Comtet