

The Administrative Tribunal,

Considering the complaint filed by Mr M. M. against the International Centre for Genetic Engineering and Biotechnology (ICGEB) on 9 December 2006, the ICGEB's reply of 14 February 2007, the complainant's rejoinder of 27 March, the Centre's surrejoinder of 18 June, the complainant's further submissions of 9 September and the Centre's final comments of 16 October 2007;

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

Having examined the written submissions;

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

A. The complainant, an Indian national born in 1953, is a former staff member of the ICGEB who worked for the Centre under a series of contracts for more than 17 years. His final contract, which expired on 30 September 2006, was a fixed-term appointment as a Junior Scientist and Group Leader at level P1.

Pursuant to Article 7 of the Statutes of the International Centre for Genetic Engineering and Biotechnology, a Council of Scientific Advisers, an independent body composed of scientists and technologists, is responsible *inter alia* for evaluating the "medium and long-term prospectives of the Centre's programmes". In 2002 the Council decided to schedule an in-depth review, by a panel of experts, of the entire New Delhi Plant Molecular Biology Research programme, including the Plant Resistance Group headed by the complainant. In a report issued in September 2003 the review panel found that the complainant's group was "questionable", describing it as the weakest of the groups. In a letter of 5 December 2003 to the Director-General of the ICGEB the complainant disputed the comments in the report, asserting that the review of his group was based on a 2002 activity report and that the five-year report that he had submitted had not been considered, whereas other groups had been evaluated on the basis of their five-year reports. The Director-General subsequently established an Assessment Committee to conduct an in-depth evaluation of the complainant's group. In April 2005 the Committee issued a report in which it recommended, *inter alia*, that the group be asked to provide evidence of progress in a specific field of work. In a letter of 2 May 2005 to the Director of the New Delhi Component, to which the Committee's report was attached, the Director-General stated that the complainant had to provide evidence of progress by 30 September 2005.

On 20 September 2005 the complainant provided a response to the Director-General with respect to the Assessment Committee's report. By a letter of 10 November 2005 the Director-General informed the complainant that the Council of Scientific Advisers had recommended that his group's line of research should be abandoned.

By a letter dated 2 January 2006 the complainant was notified of the Director-General's decision to close the Plant Resistance Group. As a consequence, his post would be abolished and his contract would not be renewed upon its expiry on 30 September 2006. On 24 January the complainant requested, in writing, that he be allowed to pursue a new line of research or, alternatively, that he be permitted to continue with his current research programme until July 2008. The Director-General replied by e-mail on 30 January 2006 suggesting a meeting between the complainant and all the relevant ICGEB management. At a meeting on 15 February the Director-General confirmed his decision and offered the complainant a "goodwill payment" of 18 months' net salary.

On 2 March 2006 the Director of Administration and External Relations wrote to the complainant offering him 18 months' net salary in acknowledgement of his 17 years of service to the ICGEB. Referring to Staff Regulation 1.4, he informed the complainant that he should refrain from any action which the ICGEB might reasonably deem to be contrary to its interests or which might adversely affect the Centre. A series of exchanges between the complainant and the ICGEB's management ensued, in which he, *inter alia*, attempted to negotiate different terms for the offer. In an e-mail of 1 September 2006 he voiced his concerns about the terms of the offer and requested the Director-General to reconsider his decision regarding the closure of his group. The Director-General replied on 7 September stating that the goodwill offer was not negotiable and that it was not a "settlement". On 13 September the complainant accepted the offer.

On 22 September 2006 he wrote to the Director-General asserting that the decision of 2 January was based on “manipulated information”. He requested a promotion, asked for a copy of the recommendations of the Council of Scientific Advisers and again asked for a reconsideration of the decision. He reiterated some of these requests in a letter of 28 September. The Director-General replied on 12 October 2006, enclosing the relevant part of the Report of the Council of Scientific Advisers. He confirmed his decision of 2 January and stated that the time period for initiating an appeal had elapsed. He further advised the complainant that taking his grievances to any forum outside the ICGEB would breach the conditions attached to the goodwill payment. On 10 November the complainant’s lawyer informed the Director-General that his client would file an appeal against his decision of 12 October 2006 and he requested that the Director-General establish the Joint Appeals Board. By a letter dated 24 November 2006 the ICGEB informed the complainant’s lawyer that there was “no basis or cause of action for making any representation or establishing a Joint Appeals Board”. That is the decision indicated on the complaint form as the challenged decision.

B. The complainant argues that his cause of action first arose on 24 January 2006 and that it was revived on 1 September, 13 September, 12 October and finally on 27 November when he received the letter of 24 November from the ICGEB.

On the merits, he asserts that he has been harassed, humiliated and victimised by the Centre and in particular by the Director of the New Delhi Component of the ICGEB. He states that the Director’s harassment has resulted in mental stress and health problems.

He alleges that the Director “manipulated” a recommendation to the Council of Scientific Advisers that an in-depth review of the entire New Delhi Plant Molecular Biology Research Programme was necessary and that he acted in bad faith by deliberately withholding his five-year productivity report from the review panel in order to procure a negative evaluation of his group. The Director also delayed his promotion, objected to his travel budget, and discriminated against him by not providing adequate staffing levels for his group.

The complainant argues that the decision to close his group and not renew his contract is based on the Director’s “whims and fancies” and not on the basis of the review. He submits that the proper course of action was to reorient scientific objectives and/or to reallocate personnel, which means that his group should have been asked to take on a new line of research. Furthermore, he has been discriminated against because his contract was not renewed while the other scientists in his group are working on other projects and remain employed by the Centre.

He argues that the ICGEB violated the principles of natural justice because he was not given proper notice of the decision. He was unable to provide a reply or comments to demonstrate why his group should not be closed and why his contract should be renewed. He did not receive a copy of the Report of the Council of Scientific Advisers until 12 October 2006, after the expiry of his contract. Moreover, he was misled by the Director-General with respect to the time limits applicable to proceedings before the Joint Appeals Board.

He says that he was forced to accept the ICGEB’s offer of 18 months’ net salary instead of the payment he requested and that this is clearly “immoral” in light of the 17 years he has worked for the Centre.

The complainant asks the Tribunal to set aside “[t]he impugned Administrative Decision dated 12th October, 2006” and to order that he be allowed to continue his research until he reaches the age of superannuation. He wants to be reinstated with full arrears of salary to date and the benefits of promotion from 1 January 1998 to 30 September 2002. He asks for a salary at the P5 level from 1 October 2006 until he reaches the age of superannuation, that is to say 65. He asks the Tribunal to initiate an investigation into the “manipulations” of the review process by the Director of the New Delhi Component and to order the removal of this individual if he is found guilty. He claims damages in the amount of five million United States dollars for harm to his reputation; 500,000 dollars for past and future medical expenses; and costs in the amount of 100,000 dollars.

C. In its reply the ICGEB argues that the complaint is not receivable under Article VII of the Tribunal’s Statute. It asserts that pursuant to Staff Rule 12.02(b)(i), the complainant had to submit an appeal against the Director-General’s decision of 15 February 2006 to the Joint Appeals Board by 18 April 2006. Later exchanges between the complainant and the ICGEB’s management did not constitute a new decision reviving his right to appeal. The letters of 12 October and 24 November simply confirmed the decision of 2 January 2006. Confirmation of an administrative decision does not constitute a new decision for the purposes of the period for appeal. The fact that the complainant first received the recommendations of the Council of Scientific Advisers on 12 October 2006 does

not justify a new time period for appeal.

The Centre also argues that the complainant should be precluded from pursuing his claim by the principles of estoppel and good faith. He did not appeal the decision earlier because he wanted better terms for the goodwill payment, professional recommendations and the transfer to his new place of work of, inter alia, his laboratory and a research grant. He provided assurances to the ICGEB which induced the Director-General to revive the offer of a goodwill payment, pay the first instalment and assist the complainant with the relocation of his research. As a result the complainant waived any right to appeal. The ICGEB submits that some of his claims are not receivable because he failed to exhaust internal remedies.

Replying subsidiarily on the merits, it contends that the decision to close the Plant Resistance Group was made in response to a request from the Council of Scientific Advisers that appropriate action be taken to address the problem of the group's performance. The complainant had a fair opportunity to be heard in the review process. Furthermore, his fixed-term contract contained an express term that there was no expectancy of renewal. The decision not to renew his appointment was taken for proper reasons and he received notification of those reasons in writing. According to the ICGEB, the decision meets the requirements governing the exercise of discretion concerning the non-renewal of a contract.

The defendant denies that the decision of 2 January 2006 was the culmination of a pattern of harassment by the Director of the New Delhi Component. It submits that the complainant consistently confuses harassment with unwelcome management decisions or actions and it disputes his specific allegations, which, it points out, have not been established by the evidence.

D. In his rejoinder the complainant develops his pleas. He states that he was never informed of his right to challenge the administrative decision and, relying on the Tribunal's case law, that it was the duty of the defendant to guide him in that respect. He contends that the ICGEB has further discriminated against him because it excluded his name from an application for the grant of a patent. He asks the Tribunal to direct that his name be included in the list of inventors of this patent. He also argues that the ICGEB has failed to deposit examination fees for five additional patents with which he was involved and he views this as a deliberate, intentional and malicious attempt on the part of the Director of the New Delhi Component to ensure that the patent applications are abandoned. He asks the Tribunal to order the Centre to submit the examination fees for the five remaining patents.

E. In its surrejoinder the ICGEB maintains its position. In particular, it reiterates that the complaint is time-barred. It contends that it was clear that the decision not to renew the complainant's contract was final and it did not enter into further settlement discussions or negotiations with the complainant. It argues that an offer of a goodwill payment in instalments is a legitimate means of establishing a time-limited incentive for compliance with understandings on discretion, good conduct and waiver of claims, and not, as the complainant implies, illegal intimidation or threat of reprisal. In its view, it is too late for the complainant to argue that it breached a duty to inform him that he had a right to appeal. He was provided with the Staff Regulations and Rules and his behaviour indicates that he was aware of that right.

F. In his further submissions the complainant states that by a letter of 20 June 2007 he was informed that the ICGEB had decided not to pay the second instalment of its goodwill payment. He asserts that this is a "breach of the contract". He also asserts that an Administrative Circular dated 24 August 2007 provides evidence that, at the material time, the Centre had not established a Joint Appeals Board and that consequently there was no appellate body to examine his grievances.

G. In its final comments the ICGEB notes that the complainant's submission regarding its decision of 20 June 2007 appears to be a new claim. Consequently, it is not receivable. It states that if the complainant's first request to submit an appeal had been timely it would have acted to constitute a Joint Appeals Board.

CONSIDERATIONS

1. The complainant is a former staff member of the ICGEB. He specifies in his complaint that he challenges a decision embodied in a letter dated 12 October 2006 from the Director-General of the Centre. He seeks to have that decision quashed and seeks various forms of relief, including reinstatement, damages for injury to his reputation, compensation for medical expenses and costs. His claim for reinstatement is to be restored to his former position

but on the basis that he had been promoted on 1 January 1998 and, again, on subsequent occasions with payment of the salary difference from 1 January 1998. He also seeks a public hearing for the calling of witnesses.

2. So far as is presently relevant, the Director-General stated in his letter of 12 October 2006 that the complainant had been told by letter dated 2 January of that year that his post was to be abolished and that his contract would not be renewed when it expired on 30 September 2006. He also denied that the complainant had been treated unfairly and informed him that his request that his case be considered by a Joint Appeals Board could not be met as the time for initiating an appeal had lapsed.

3. It is well settled that a communication that merely confirms an earlier administrative decision does not constitute a new decision (see Judgment 1304). Moreover and as the Tribunal pointed out in Judgment 2011:

“The fact that discussions take place after a final decision is reached does not mean that the Organization has taken a new and final decision. A decision made in different terms, but with the same meaning and purport as a previous one, does not constitute a new decision giving rise to new time limits (see Judgment 586 [...]), nor does a reply to requests for reconsideration made after a final decision has been taken (see Judgment 1528 [...]).”

4. The complainant contends that, although it merely told him that he had been advised by a letter dated 2 January 2006 of the non-renewal of his contract, the letter of 12 October constituted a new administrative decision. He also suggests that a letter of 24 November 2006 to his lawyer constituted a new decision. To understand his argument, it is necessary to say something of the correspondence and events between 2 January and 24 November 2006.

5. The letter of 2 January informed the complainant that two evaluation committees and the Council of Scientific Advisers had decided to terminate the research being done by his group and that, in consequence, his post was to be abolished and his contract, which was to expire on 30 September 2006, would not be renewed. Thereafter, on 24 January 2006, the complainant wrote to the Director-General asking him to modify his decision by allowing him to start a new research programme or to continue in the same programme until July 2008. The Director-General replied by e-mail suggesting a meeting in February. A meeting took place on 15 February when, in response to the complainant’s request to continue with his programme until July 2008, the Director-General offered to pay the complainant 18 months’ net salary. A further meeting was intended for the following day but did not occur. Instead, on 17 February, the complainant sent an e-mail to the Director-General asking for an open letter of recommendation and stating that he was seeking other positions.

6. On 2 March 2006 the Director of Administration and External Relations wrote to the complainant referring to the letter of 2 January – which informed him that his contract would not be renewed when it expired on 30 September 2006 – saying that “in acknowledgement of [the complainant’s] 17 years of service [...], it ha[d] been decided to offer [him] an amount corresponding to one year and a half of [his] net salary”. One half of that sum was to be paid on “the expiry of [his] contract” and the other on “30 June 2007 (9 months after the expiry of [his] contract)”. Later, on 7 March 2006, the complainant declined to sign a document accepting that offer.

7. The Director of Administration and External Relations contacted the complainant by e-mail on 21 April to “confirm that [his] post [was] being abolished and [...] that [his] annual contract [would] not be renewed” when it expired on 30 September 2006. The complainant was asked to contact the Human Resources Unit. On 13 June the complainant asked to meet the Director to speak to him about the offer of 18 months’ salary. However, no meeting took place. Later, on 14 July, the complainant sent an e-mail to the Director-General attaching a message validating some of his research and asking that the decision to close his group be reconsidered. The Director-General replied by e-mail on 26 July stating that he did not see “any strong reason” to review the decision.

8. The complainant sent a further e-mail to the Director-General on 1 September 2006 detailing his difficulties with the offer of 18 months’ salary and asking for the transfer of his research material to his new placement. Again, he asked the Director-General to reconsider his decision to close the group and claimed that the Director of the New Delhi Component was conspiring against him. On 7 September the Director-General advised the complainant that he was prepared to maintain the offer on the same terms as before. The complainant accepted the offer on 13 September 2006.

9. The complainant wrote to the Director-General on 22 September 2006 claiming that the Director of the New Delhi Component had “manipulated” the information upon which the decision to close down his group was

based and had also “manipulated” his last two evaluation reports. He also claimed that the decision not to renew his contract was discriminatory and that, for the past eight years, the aforementioned Director had defamed him and otherwise treated him unfairly. He once again asked the Director-General to reconsider his decision. On 28 September he again wrote to the Director-General claiming bias, victimisation and harassment on the part of the Director of the New Delhi Component and complaining with respect to the denial of promotions. He reiterated his claim that the decision not to renew his contract was discriminatory and asked for a Joint Appeals Board to be constituted. These two letters resulted in the Director-General’s letter of 12 October 2006.

10. On 10 November 2006 the complainant’s lawyer wrote to the Director-General advising that he had been retained to file an appeal against the decision contained in the letter of 12 October 2006 which was characterised as a “reject[ion] [of] the representation [...] to review the [...] Administrative decision” to close down the complainant’s group and not to renew his contract. The lawyer also called upon the Director-General to establish a Joint Appeals Board. The ICGEB replied on 24 November denying various assertions and allegations made in the letter of 10 November and stating, amongst other things, that an appeal was time-barred and that, by virtue of his acceptance of the offer to pay him 18 months’ salary, the complainant had waived any right that he might otherwise have had. Thereafter, on 9 December 2006, the complainant filed a complaint with the Tribunal.

11. In its reply the ICGEB repeats the contentions made in the letter of 24 November 2006 that the complainant is estopped from bringing a complaint by virtue of his acceptance of the offer to pay him 18 months’ net salary and that, in any event, the complaint is irreceivable by reason that the complainant did not comply with the times set down for bringing an internal appeal.

12. As will later appear, the complaint is irreceivable. Accordingly, it is not necessary to consider the ICGEB’s argument that the complainant’s acceptance of the offer to pay him 18 months’ net salary constituted a waiver or surrender of his right of appeal. The complaint is not concerned with any other aspect of the agreement relating to that payment and, thus, issues raised with respect to it in the supplementary submissions filed by the complainant are not properly before the Tribunal. Those issues, if they are to be pursued, must be pursued in accordance with the ICGEB Staff Rules.

13. As to receivability, nothing occurred between 2 January and 12 October 2006 that could support the complainant’s argument that there was a new decision with respect to the non-renewal of his contract. The terms of the letter of 2 January were clear; nothing occurred thereafter to suggest a new decision had been or, even, might be taken on that issue; and the letter of 12 October 2006 did no more than reiterate that he had been told of the non-renewal of his contract by letter dated 2 January 2006. Moreover, there is nothing in the letter of 24 November capable of suggesting that a new decision had been taken with respect to the non-renewal of the complainant’s contract. Accordingly, and as the ICGEB contends, the question of receivability must be determined by reference to the decision of 2 January 2006.

14. Staff Rule 12.02(a) provides that, to pursue an appeal, a staff member must first request the Director-General to review the decision in question and that that request must be made within 60 days of the notification of that decision. The complainant’s letter of 24 January 2006 requested the Director-General to modify his decision by allowing him to start a new project or to continue in the same programme until July 2008. Contrary to the argument of the ICGEB, that is properly to be construed as a request that the Director-General review his decision not to renew the complainant’s contract, even if it was not formally so stated. However, when the Director of Administration and External Relations wrote to the complainant on 2 March offering him 18 months’ net salary, that letter made it clear that that decision was being maintained. Even if there were some ambiguity in the context of the discussions about payment of 18 months’ salary, that ambiguity was resolved by the e-mail of 21 April expressly confirming that the complainant’s contract would not be renewed.

15. Staff Rule 12.02(b) provides for the institution of an appeal against the answer to a request for review within 60 days of the receipt of that answer, or, if no answer is received within that time, within the following 30 days. Alternatively, if no reply is received within 60 days, a complaint may be filed with the Tribunal within the following 90 days.

16. On the view most favourable to the complainant, namely, that there was no reply to his request for review until he received the e-mail of 21 April, he had a further 60 days within which to file an internal appeal. There is nothing to indicate that that e-mail was not received shortly after the date it bears and, accordingly, the time for filing an internal appeal had expired by the end of June 2006. Even if it is assumed in favour of the complainant

that there was no reply to his request for review dated 24 January 2006 and that he was, therefore, entitled to come directly to the Tribunal, the time for doing so had also expired by the end of June 2006.

17. In his rejoinder the complainant suggests that the time for filing an internal appeal was suspended because of settlement negotiations. That suggestion is without merit. The discussions were clearly premised on the finality of the decision not to renew his contract. He also suggests in his rejoinder that the time limits were not applicable because the ICGEB failed in its duty of care to inform him of the applicable procedures. In his supplementary submissions, he states that “it [was] only towards the end of his term that [he] could procure the copies of the Rules and Regulations” and that, only thereafter, could he assert his right to lodge an internal appeal. Additionally, he claims in his supplementary submissions that he could not lodge an internal appeal because there was no Joint Appeals Board until it was constituted, for the first time, in 2007.

18. The argument that the complainant was not provided with the Staff Regulations and Rules must be rejected. It clearly appears from a letter, dated 21 December 1995, offering him a fixed-term appointment with the ICGEB, which had then become an autonomous organisation, that he was then provided with a copy of the Staff Regulations and Rules. Nor does anything turn on the failure of the Centre to constitute the Joint Appeals Board until 2007. It appears from the defendant’s final comments that it was not until then that a staff member had lodged a timely internal appeal. Strictly, the Board should have been constituted in September 2006 when the complainant so requested. However, any appeal with respect to the decision of 2 January 2006 was then clearly time-barred and, had the Board been constituted, it would have been obliged to find accordingly.

19. It follows that, so far as concerns the decision not to renew the complainant’s contract, the complaint is time- barred and is thus irreceivable. To the extent that the complaint is concerned with matters independent of the decision not to renew the complainant’s contract, it is also irreceivable. Even if the correspondence between the complainant and the ICGEB is treated as containing requests which were denied, thereby giving rise to administrative decisions, the complainant failed to exhaust internal remedies as required by Article VII(1) of the Tribunal’s Statute.

20. As the complaint is irreceivable, there is no occasion for the calling of witnesses at a public hearing.

DECISION

For the above reasons,

The complaint is dismissed as irreceivable.

In witness of this judgment, adopted on 5 November 2007, Ms Mary G. Gaudron, Presiding Judge for this case, Mr Giuseppe Barbagallo, Judge, and Ms Dolores M. Hansen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 6 February 2008.

Mary G. Gaudron

Giuseppe Barbagallo

Dolores M. Hansen

Catherine Comtet