

109th Session

Judgment No. 2945

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr G. M. against the International Labour Organization (ILO) on 28 August 2008 and corrected on 5 November 2008, the ILO's reply of 16 February 2009, the complainant's rejoinder dated 2 April and the Organization's surrejoinder of 6 May 2009;

Considering Article II, paragraph 1, 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 Zambian national born in 1977, joined the International Labour Office, the ILO's secretariat, under a three-month short-term contract from 18 April to 17 July 2005 as finance and administrative assistant. He was assigned to the HIV/AIDS and Child Labour technical cooperation project in the ILO Office in Lusaka, Zambia. That project was initially subsidised under a cost-sharing agreement whereby the complainant's post was funded from another project financed by the Canadian Government. On 18 July 2005 his contract was retroactively converted to a one-year technical cooperation fixed-term contract from 18 April 2005 to 17 April 2006.

On 22 November 2005 the Chief Technical Adviser of HIV/AIDS and Child Labour forwarded to the complainant an e-mail which she had received from the Chief Technical Adviser of the Canada-funded project. In the e-mail it was stated inter alia that the latter project would keep on financing the posts of finance and administrative assistants in Zambia and Uganda until the end of 2007.

In February 2006 the programme officer backstopping HIV/AIDS and Child Labour at ILO headquarters undertook a review of the budgetary situation of the project. In her report she explained that limited amounts were available to support staff costs and that “[c]ost sharing of staff from the Canadian funded [...] project was not anymore envisaged”.

A letter dated 7 April 2006 was sent to the complainant’s bank in Lusaka in support of his application for a personal loan. That letter was signed by a named individual in a capacity as finance and administrative officer in the ILO Office in Lusaka; it indicated that the complainant was employed by the Organization, that he held a contract until December 2007, and that arrangements had been made for his salary to be transferred to his account.

The complainant was informed on 5 May that his contract would be extended until 31 December 2006 and on 16 May he accepted the contract extension. By a letter of 2 November 2006 he was advised that his contract would not be further extended beyond its expiry date due to budgetary constraints. Later that same month his supervisor completed his performance appraisal annual report for the period from 18 April 2005 to 13 November 2006, noting that he had been “informed in time (during the consultants visit in February and telephone calls in May/June and October 2006) that the meagre resources in the HIV/AIDS project budget were not going to cover the costs for a full time [f]inance and [a]dministrative [a]ssistant in Zambia for 2007”. The complainant however commented in the relevant section of the report: “the fact that I was informed about the non renewal of the contract came as a surprise [...] though I was told about the meagre resources I was not told about the agreement with [the Canada-funded] project which promised in writing to pay my

salary up to the end of the project (December 2007)”. The complainant was separated from service on 31 December 2006.

On 20 April 2007 he wrote to the Director-General’s cabinet, alleging breach of his employment contract for the period from January to December 2007. The Director of the Human Resources Development Department replied on 19 July that his communication had been treated as a grievance under Chapter XIII of the Staff Regulations of the Office and that it had been dismissed as devoid of merit. The complainant subsequently filed a grievance with the Joint Advisory Appeals Board, requesting payment of a sum equivalent to one year’s salary as well as damages, both with interest. In its report of 9 May 2008 the Board unanimously recommended that the grievance be dismissed. By a letter of 29 May 2008, which constitutes the impugned decision, the Executive Director of the Management and Administration Sector informed the complainant that the Director-General had approved the Board’s recommendation and that his grievance had accordingly been dismissed as devoid of merit.

B. The complainant contends that the Organization unilaterally terminated his employment contract on 31 December 2006 although the latter was “guaranteed up to the end of 2007”. He refers to the e-mail he received on 22 November 2005 and the letter of 7 April 2006 to his bank in Lusaka and asserts that he had a legitimate expectation that his contract would end in December 2007.

By way of relief, he indicates in the complaint form that he requests that “[t]he decision of the [Joint Advisory Appeals Board] be declared null and void and reversed”. Relying on the Tribunal’s case law, he recalls that damages for wrongful termination of a contract are confined to the amount necessary to put the injured party in the position he or she would have enjoyed if the contract had been performed and he claims payment of a sum equal to the salary and allowances he would have received from January to December 2007, had his contract not been terminated. He also claims damages, costs and interests, as well as “any other relief” deemed appropriate by the Tribunal.

C. In its reply the Organization denies that it terminated unilaterally the complainant's employment contract. It explains that he held a fixed-term appointment which ran its full course until its expiry on 31 December 2006. By signing his employment contract the complainant acknowledged that it was subject to Article 4.6(d) of the Staff Regulations, which provides that a fixed-term appointment "shall carry no expectation of renewal". He had been made aware of the process governing extensions of fixed-term appointments and given ample warning and detailed explanations about the fact that it would be impossible to extend his contract further, beyond its expiry date. The mission report issued in February 2006 indicated the budgetary constraints and limited resources of the project, which precluded the complainant's extension. In addition, in November 2006 he "acknowledged" in his performance appraisal annual report that he had been informed in May, June and October 2006 that the meagre resources of the project were not going to cover the costs of his post. Therefore, there was no room for legitimate expectations of renewal.

The defendant contends that the decision not to extend the complainant's contract was properly motivated by the budgetary constraints encountered by the project to which he was assigned, and it was duly notified to him by letter of 2 November 2006, consistent with the Organization's practice to provide a two-month written notice of non-renewal.

As to the communications to which the complainant refers, the Organization notes that the e-mail he received on 22 November 2005 was originally written in May 2005, that is one month after the beginning of his initial appointment and one year before a renewal decision was due, and it submits that the determination of funding availability to extend an employment contract is carried out at the time of the renewal decision. It contends that the letter of 7 April 2006 was not authorised by the Office and that, when it became aware that letters of this type were being issued, it took steps to remind its staff that statements to banks for the purpose of supporting personal loan applications were not permissible. It adds that the complainant had full knowledge that the information contained in the letter of

7 April 2006 was incorrect. Moreover, the letter does not contain all the essential terms of a contract extension and thus cannot be regarded as a valid commitment or promise.

D. In his rejoinder the complainant asserts that the ILO Office in Lusaka confirmed his employment status to the bank independently of him and that it did so precisely because the finance and administrative officer who signed the letter of 7 April 2006 believed that there was an agreement to the effect that the complainant's salary would be secured until December 2007.

E. In its surrejoinder the Organization maintains its position in full. It argues that the letter of 7 April 2006 was produced at the complainant's request. It notes that the complainant does not deny that he was fully informed that the cost-sharing agreement through which his post was funded had been deemed impracticable and abandoned in early 2006, and it contends that he has failed to provide evidence of the existence of an agreement which guaranteed his contract until December 2007.

CONSIDERATIONS

1. The complainant is a former official of the International Labour Office. At the material time, he was employed as finance and administrative assistant on the HIV/AIDS and Child Labour technical cooperation project attached to the ILO Office in Lusaka, Zambia. In February 2006 a report on the review of the project's financial and budgetary situation made it clear that previously anticipated funding to cover his post would not be forthcoming. The report noted the existence of "limited amounts available to support staff costs, in particular in Zambia". On 16 May the complainant signed a document extending his appointment until 31 December 2006. By a letter of 2 November he was formally notified that his contract would not be renewed beyond its expiry date, based on budgetary constraints. On 20 November 2006 he signed his performance appraisal annual report, which recorded *inter alia* that he had been "informed in time (during

the consultants visit in February and telephone calls in May/June and October 2006) that the meagre resources in the HIV/AIDS project budget were not going to cover the costs for a full time [f]inance and [a]dministrative [a]ssistant in Zambia for 2007”.

2. For the purpose of supporting the complainant’s personal loan application, a finance and administrative officer of the ILO Office in Lusaka sent a letter dated 7 April 2006 to the bank involved, confirming therein that the complainant was a “bona fide employee” of the ILO. The officer stated in the letter that the complainant was under contract up to December 2007 and that arrangements had been made to have his salary transferred to his account with that same bank, starting with his April 2006 salary. The bank replied by letter dated 19 April 2006 that the complainant’s loan application had been successful. It asked “that in the event of his employment status changing, [the ILO] will assign his benefits to [the bank] to redeem his loan”.

3. The question raised in this case is whether or not the letter from the Organization to the bank, stating that the complainant was under contract up to December 2007, could be considered as having created a legitimate expectation in the complainant’s view regarding the extension of his contract beyond the expiration date of December 2006. The Tribunal states that no legitimate expectation of contract renewal or extension could be derived from the letter for two reasons, each of them being decisive in its own right.

4. The complainant was fully aware of the Organization’s procedures and rules regarding contracts. He therefore cannot ignore that none of the usual steps in contract negotiation and finalisation had taken place regarding a contract renewal or extension to December 2007. The letter of 7 April 2006 stating that the complainant was employed with the ILO under a contract expiring at the end of December 2007 does not constitute an employment contract between the complainant and the Organization nor amount to a promise of employment made by the Organization to him. Neither does the letter

give rise to a legitimate expectation of a contract renewal. In regard to these matters it may be noted that none of the usual contracting procedures was followed and that it is not established that the letter was written by a person competent to negotiate and finalise employment contracts on behalf of the ILO. As held in Judgment 782, under 1, and confirmed in Judgments 1040, under 5, and 1560, under 9:

“According to the rules of good faith anyone to whom a promise is made may expect it to be kept, and that means that an international official has the right to [the] fulfilment of a promise by the organisation that employs him.

The right is conditional. One condition is that the promise should be substantive, i.e. to act, or not to act, or to allow. Others are that it should come from someone who is competent or deemed competent to make it”.

In this case, those conditions were not met. Furthermore, the Tribunal notes that, regardless of the substance, the letter was between the ILO and the bank. The complainant was only a third party to the communication. Therefore, nothing in the letter can be construed as creating any obligation other than between the bank and the ILO. Considering the above, any claim that the Organization is responsible for paying the bank for the whole or part of the outstanding loan balance is a matter between the bank and the Organization directly and is outside the jurisdiction of the Tribunal and, if submitted, will not be considered.

5. The Tribunal is of the opinion that the ILO properly exercised its discretion in deciding not to renew or extend the complainant’s contract and that this decision was properly motivated by budgetary constraints. It did so in accordance with the principle of good faith and treated the complainant with dignity. Considering the above, the complaint is without merit and is dismissed in its entirety.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 7 May 2010, Ms Mary G. Gaudron, President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Ms Dolores M. Hansen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 8 July 2010.

Mary G. Gaudron
Giuseppe Barbagallo
Dolores M. Hansen
Catherine Comtet