

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

*Registry's translation,  
the French text alone  
being authoritative.*

**114th Session**

**Judgment No. 3169**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr A.T. A.-H. against the Centre for the Development of Enterprise (CDE) on 25 October 2010 and corrected on 1 December 2010, the CDE's reply of 17 March 2011, the complainant's rejoinder of 22 April and the Centre's surrejoinder dated 31 May 2011;

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, a Togolese national born in 1955, joined the Centre for the Development of Industry, which later became the CDE, in 1987. He was assigned to the Centre's Headquarters and appointed to the post of main expert at grade 2.B in 1991. On 1 March 2007 he was given a contract for an indefinite period of time. At the material time, he was performing the duties of sectoral coordinator and regional coordinator in the Operations Management Department, as well as those of deputy head of that department.

The CDE is an institution jointly administered by the African, Caribbean and Pacific Group of States (ACP) and the European Union (EU). In 2007 a study on the future of the Centre was conducted at the initiative of the European Commission. On the basis of the conclusions of the study, a joint ACP-EU task force was set up to discuss, in particular, the reorganisation of the CDE. At the same time, the Centre produced a strategy document setting out new priorities for its work, and drew up a budget for the year 2009 which included a planned staff reduction at Headquarters.

In June 2009 the ACP-EU Committee of Ambassadors adopted a revised budget proposal for 2009 which specifically concerned the Centre's "internal restructuring". The proposal made it plain that the purpose of the "budget amendments" was to pave the way for future operations to be largely decentralised to the Centre's regional offices and that only a "minimum complement" of core staff would be retained at Headquarters. The abolition of 18 posts was therefore proposed. In order to carry out this restructuring efficiently, the Centre decided to commission an organisational review from a firm of human resources consultants. The latter assessed each staff member's competencies in order "to obtain a clearer grasp of what [was] involved in the CDE's restructuring".

On 3 December the Director of the Centre called the complainant to his office and handed him a letter dated 2 December 2009 informing him that, following an Executive Board meeting on restructuring which had been held on that same date, his post was being abolished. As the complainant was exempted from having to serve a period of notice, he received compensation for redundancy in accordance with Article 34 of the Staff Regulations of the CDE.

On 14 December 2009 the complainant submitted a complaint under Article 66(2) of the Regulations, in which he mainly contended that the letter of 2 December 2009 showed that the Executive Board had taken the decision to abolish his post, but not the decision to terminate his contract, whereas under Article 3 of the Regulations that body was alone responsible for terminating the contract of staff at the 2.B level. Subsidiarily, he argued that the procedure leading to

his dismissal was tainted with flaws. As he received no reply, he resubmitted his complaint on 25 January 2010. On 2 February the Director replied that the complaint was “irreceivable” on the grounds that the decision to abolish his post had been taken by the Executive Board unanimously “further to” the approval of the budget for 2009.

The complainant then embarked on a conciliation procedure under Article 67(1) and Annex IV to the Staff Regulations. In his report, issued on 18 June 2010, the conciliator invited the Centre to reconsider the complainant’s case, as he was convinced that there had been some “irregularities” which might have flawed the restructuring process. Alternatively, he suggested that a settlement should be sought. At a meeting on 24 June the Centre explained that it was encountering difficulties in committing itself to “a final solution to the file” and the parties agreed to meet again in the presence of the conciliator in order to explore possible solutions to the dispute for one last time. At a second meeting on 13 October the parties agreed that the Centre would examine the possibility of assigning the complainant to a post in a regional office, at a grade lower than that of the position which he had held.

On 25 October 2010 the complainant filed this complaint with the Tribunal, in which he stated that he was challenging the implied rejection of his internal complaint of 14 December 2009.

By a letter of 14 December 2010 the Deputy Director of the Centre informed the complainant that a recruitment procedure, open only to former staff members of the CDE, was going to be initiated in order to fill three posts at a grade lower than that of his previous job. She also offered to pay him a sum equivalent to eight months’ gross salary if he applied for one or more of these posts without success, or if he did not apply. On 18 January 2011 the complainant told the conciliator that if the Centre remained wedded to “the principles which underpin[ned] its offer”, he could draw up a record of non-conciliation without any need to call the parties to a meeting. The next day the conciliator, who had contacted the CDE, noted that since each party maintained its position, it was impossible to arrive at a settlement of the dispute.

B. The complainant states that the decision to terminate his contract was not taken by the competent body. As he did in his internal complaint, he asserts that, although under Article 3 of the Staff Regulations the Executive Board was competent to adopt that decision, it only took the decision to abolish his post.

He further contends that the Centre did not pass on any information about the restructuring process either to the Staff Committee, to the CDE *Union syndicale*, or to the Recruitment/Promotion Committee or to its staff. In his view, by thus shrouding the process in “total opacity”, the Centre breached the adversarial principle. He considers that in accordance with this principle the Executive Board ought to have given him a hearing at which he could have proved that he could continue to serve the Centre, particularly on account of his experience.

The complainant also denies that his post has genuinely been abolished. Citing the Tribunal’s case law, he submits that, if it has been abolished, the Centre failed in its duty to explore with him all possibilities for reassigning him before his contract was terminated. He holds that the Centre did not look for a new post for him, did not propose one to which he could have been transferred and did not ask him if he was prepared to accept a position at a lower grade, if no post at his grade could be offered to him.

Lastly, he argues that the circumstances in which his dismissal occurred caused him moral injury, especially since he was notified of it with immediate effect in the presence of a bailiff and he was escorted from the premises by security guards.

The complainant asks the Tribunal to set aside the decision of 2 December 2009 and to order his reinstatement. Subsidiarily, he claims the payment of his salary until retirement age and moral damages in the amount of 7,500 euros. He also asks for costs in the amount of 7,500 euros.

C. In its reply the Centre states that, in accordance with Article 3(1) of the Staff Regulations, the Director adopts decisions to terminate contracts after the Executive Board has approved a draft decision. In

the instant case, as the Board has approved the abolition of the complainant's post, the Director decided to terminate his contract.

The Centre contends that neither its Staff Regulations nor its Internal Rules obliged it to consult the Staff Committee or the *Union syndicale* about the restructuring process, and that this matter did not fall within the terms of reference of the Recruitment/Promotion Committee either. It submits, however, that it heard the Staff Committee "on numerous occasions" and that the Committee itself consulted all the Centre's staff members as early as December 2008 by submitting a questionnaire regarding this process to them. The Centre also contends that the complainant's duties made him "particularly well placed" to know that decentralisation would result in the abolition of the department to which he was assigned. In its opinion, there is therefore no doubt that the complainant was informed of the "central features" of the restructuring process.

Moreover, the Centre states that it examined the possibility of assigning the complainant to a post which was vacant at the time of the restructuring exercise, or which was likely to become vacant shortly thereafter, either at Headquarters or in a regional office. The complainant's profile did not, however, match the "purely administrative functions" which had been kept at Headquarters. Although in August 2009 the Director had announced the opening of a shortlisting procedure reserved for internal candidates in order to fill four posts of head of a regional office, the complainant had shown no interest in any of them. Lastly, in the Centre's view, the fact that he turned down the opportunity offered to him on 14 December 2010 to apply for three vacant posts proves that he "[was] still uninterested" in a possible reassignment.

The Centre submits that the measures taken with regard to the complainant when his dismissal was announced did not target him personally and that, although they were "unusual", they were not unlawful. It explains that, since some 15 staff members were dismissed at the same time as the complainant, these measures were needed "to guard against possible acts of retaliation" which would only have

“exacerbated the difficult situation from which [it was] struggling to emerge”. The CDE is surprised that the complainant is asking to be reinstated and for the payment of his salary until retirement age, given that his duties have been abolished. It asks the Tribunal to order him to pay costs.

D. In his rejoinder the complainant points out that the revised budget proposal for 2009 made provision for the retention of six expert posts in the Operations Management Department and that he would have been suitable for five of them. He says that he therefore had “absolutely no reason” to imagine that the restructuring of the CDE would concern him and that was why he did not apply for any of the four posts of head of a regional office. He recognises that, during the conciliation procedure, the Centre took account of the fact that he was prepared to accept a post at a lower grade and made him some offers on that basis. He asserts, however, that the offer which he received on 14 December 2010 was not that of a new assignment, the prospect of which had been held out to him in October during the conciliation procedure, but an invitation to apply for certain posts, and he explains that he declined that offer because he had no certainty of being appointed to any of these posts. He reiterates his claims and also asks the Tribunal to order the CDE to defray the expenses which he and his family incurred on resettling in his country of origin, for which, he says, the Staff Regulations make provision.

E. In its surrejoinder the Centre holds that the revised budget proposal for 2009 envisaged several “scenarios” and that it was therefore plain that this document offered no guarantees that the complainant’s duties would be maintained and that his contract would “continue”. As for the offer of 14 December 2010, it submits that the complainant is wrong to allege that he had received an offer of reassignment and that it invited him to apply for three posts at a lower grade in order to ascertain whether he might be interested in them. Moreover, the Centre considers that the complainant’s request for the defrayal of his relocation costs is “not relevant”, because he did not

formulate it in his complaint and because he has not proved that he has in fact relocated. Lastly, it reiterates its claim that the complainant should be ordered to pay costs.

### CONSIDERATIONS

1. In 1987 the complainant was recruited by the Centre for the Development of Industry, which later became the Centre for the Development of Enterprise (CDE). He was appointed main expert in 1991 and on 1 March 2007 he was given a contract for an indefinite period of time. At the time of the facts giving rise to this dispute he was at grade 2.B, step 6, and was assigned to the Operations Management Department, where he was performing the triple duties of sectoral coordinator for wood and furniture, regional coordinator for West and Central Africa and deputy head of the department.

2. By a letter of 2 December 2009 the Director of the CDE informed him that at an Executive Board meeting held on the same date, concerning the Centre's restructuring, a decision had been taken to abolish his post. This letter, which in substance indicated that his appointment was consequently terminated, explained that he would receive compensation for redundancy in accordance with Article 34 of the Centre's Staff Regulations and that he was also exempted from having to serve his period of notice.

3. The adoption of the plan to restructure the CDE, which entailed the abolition of the complainant's post, led to the termination on the same date of 15 staff members' contracts and – leaving aside the contemporaneous dismissal of another staff member for unsatisfactory service – affected a total of no less than 16 staff members, or almost half of the staff complement of the organisation's Headquarters.

4. This restructuring was the culmination of a review process which had been under way since 2006 and which had been carried out at the request of the Member States of the European Union, the members of the African, Caribbean and Pacific Group of States and

the European Commission with a view to reducing the CDE's running costs and improving its efficiency. At that point, the Centre's closure was being contemplated unless a thorough reform was rapidly undertaken. Moreover, the European Commission had decided in December 2008 that the disbursement of the budgetary appropriations earmarked for the CDE for 2009 would be partly conditional on the approval by the Centre's Executive Board of a progress report on the restructuring. Apart from the abolition of posts, the strategy was to decentralise the Centre's operational activities by transferring them to its regional offices and to restrict the functions performed at Headquarters correspondingly to specific managerial or supervisory tasks. It also involved achieving a satisfactory match between staff members' profiles and their job content – some of which had therefore been redefined. To this end the Centre decided to call on the assistance of a firm of human resources consultants.

5. On 14 December 2009 the complainant challenged his dismissal under Article 66(2) of the CDE Staff Regulations. The Director decided to reject his internal complaint on 2 February 2010. This is the decision which must now be deemed to be impugned by the complainant, after the failure of the conciliation procedure for which provision is made in Article 67(1) of the said Regulations. In addition to the setting aside of the decision of 2 December 2009 from which the decision of 2 February 2010 stems, the complainant principally seeks his reinstatement in the CDE or, subsidiarily, the payment by the Centre of a sum equivalent to the total amount of the salary which he would have received until he reached retirement age, and moral damages.

6. The complainant has requested the convening of a hearing. In view of the abundance and sufficient clarity of the submissions and evidence produced by the parties, the Tribunal considers that it is fully informed about the case and does not therefore deem it necessary to grant this request.



7. Precedent has it that in order to achieve greater efficiency or to make budgetary savings international organisations may undertake restructuring entailing the redefinition of posts and staff reductions (see, for example, Judgments 2156, under 8, or 2510, under 10). However, each and every individual decision adopted in the context of such restructuring must respect all the pertinent legal rules and in particular the fundamental rights of the staff concerned (see, for example, Judgments 1614, under 3, or 2907, under 13).

8. The Tribunal will not accept the plea that the decision to dismiss the complainant was not taken by the competent authority because it was not approved by the Executive Board. Article 3(1) of the Centre's Staff Regulations states that "[t]he Executive Board shall be responsible for approving, on proposals from the Director, the [...] termination of staff contracts". It is therefore somewhat surprising that the Centre appears to argue in its submissions that in this case it was incumbent upon the Executive Board to approve only the post abolitions proposed by the Director, and not the dismissal decisions themselves. It is clear from the wording of the above-mentioned provision that the Board's competence extends to approving the termination of staff members' contracts. However, the excerpt from the minutes of the Executive Board's meeting on 2 December 2009 shows that it had approved a "[l]ist of staff leaving the CDE", which specified which staff members would have to work during their period of notice. This proves that the Board did decide, not only on the abolition of the posts in question, but also on the dismissals. As a result, this plea has no factual basis.

9. Nevertheless, the mere fact that the Executive Board dealt with the legally distinct decisions of abolishing a post and dismissing the post holder at one same meeting tends to substantiate the complainant's other plea, namely that before his contract was terminated no attempt was made to see if he could be reassigned to another job within the CDE.

10. The Tribunal's case law has consistently upheld the principle that an international organisation may not terminate the appointment of a staff member whose post has been abolished, at least if he or she holds an appointment of indeterminate duration, without first taking suitable steps to find him or her alternative employment (see, for example, Judgments 269, under 2, 1745, under 7, or 2207, under 9). As a result, when an organisation has to abolish a post held by a staff member who, like the complainant in the instant case, holds a contract for an indefinite period of time, it has a duty to do all that it can to reassign that person as a matter of priority to another post matching his or her abilities and grade. Furthermore, if the attempt to find such a post proves fruitless, it is up to the organisation, if the staff member concerned so agrees, to try to place him or her in duties at a lower grade and to widen its search accordingly (see Judgments 1782, under 11, or 2830, under 9).

11. Despite the CDE's denials on this point, it clearly failed in its duties prior to the disputed dismissal. In this connection, the Tribunal cannot fail to note that both the decision of 2 December 2009 terminating the complainant's appointment and that of 2 February 2010 rejecting his internal complaint against this measure, were couched in terms suggesting that his dismissal was a purely automatic consequence of the abolition of his post and did not mention any attempt to find a post to which he might possibly have been reassigned. In addition, as the conciliator rightly recorded in his report, it must be found that in the documentation regarding the context in which the decision to dismiss the complainant was taken there is no trace of any such search having been made.

12. The Centre tries to argue that on 12 August 2009 it advertised four posts of heads of regional offices and that the complainant showed no interest in those positions at that juncture. But at that point in time, the complainant had not been informed of his possible dismissal, and he therefore had no particular reason to apply for one of those posts. The Centre's allegations that, given his own role in preparations for the decentralisation process in the CDE, the

complainant could not have been unaware that his post in the Operations Management Department was going to be abolished, are not tenable, because they are based on mere supposition. Moreover, the complainant rightly draws attention to the fact that the Centre's revised budget proposal for 2009, which, having been circulated two months before this invitation for applications, was the most up-to-date source of information at the time, still foresaw six experts being retained in that department, which could hardly be regarded as an indication that his post was going to be abolished. At all events, in law the publication of an invitation for applications does not equate with a formal proposal to assign the complainant to a new position, issued specifically in order to comply with the duty to give priority to reassigning staff members holding a contract for an indefinite period of time.

13. The Centre also contends that on 14 December 2010, during the conciliation procedure, it suggested that the complainant should apply for three posts at a lower grade to his own and that he did not take up this offer. However, this event, which occurred after the impugned decision had been adopted, cannot have any bearing on the assessment of the lawfulness of that decision, and the complainant ought to have received such suggestions before his dismissal. Furthermore, apart from the fact that the complainant has convincingly explained in his reply why he thought that he should decline the offer in question, the Tribunal will not draw any consequences from this refusal, because Annex IV to the CDE Staff Regulations, which sets out the rules governing the conciliation procedure, specifies in Article 4(11) that when a dispute which has not been resolved by those means is referred to the Tribunal, "nothing that has transpired in connection with the proceedings before the conciliator shall in any way affect the legal rights of any of the parties to the Tribunal".

14. It is quite possible that, owing to the scale of the programme to abolish posts in connection with its restructuring, the CDE was unable to offer another post to the complainant at the time of the

disputed dismissal. But the Tribunal concludes from the foregoing considerations that the Centre has not discharged the burden of proving that it endeavoured to fulfil its duty to make the necessary efforts in that respect (see the above-mentioned Judgment 2830, under 9). This breach of a fundamental right of the complainant, which, as the conciliator emphasised in his report, may probably be ascribed to undue haste in carrying out that restructuring, therefore taints the impugned decision with unlawfulness.

15. Moreover, the complainant's contention that his dismissal breached the right which every international civil servant possesses, to be heard before any unfavourable decision concerning him or her is adopted, is also correct.

16. As the Tribunal has often stated in its case law, by virtue of the contractual relationship between an organisation and its personnel and the trust that therefore prevails between them, the Administration has a duty to inform the staff member concerned of its intention to dismiss him or her in order to enable that person to plead his or her cause (see, for example, Judgments 1082, under 18, or 1484, under 8).

17. In submitting that it did fulfil that duty in this case, the CDE confines itself to the statement that the complainant was, "like all the other staff members, aware of the central features of the restructuring". It refers in this connection to a questionnaire distributed by the Staff Committee, which asked staff members what direction they thought the forthcoming reform should take, and it again pleads that the complainant could not have been unaware of the imminent abolition of his post. Quite apart from what has already been said earlier on the latter point, the Centre does not thus show that it directly, clearly informed the complainant, as was its duty, that he was about to be dismissed, in order to give him an opportunity to comment.

18. It follows from the foregoing, without there being any need to consider the other pleas of the complaint, that the decision of the

Director of the CDE of 2 February 2010 and that of 2 December 2009 terminating the complainant's contract must be set aside.

19. In view of the nature and length of the complainant's appointment, the Tribunal will order the CDE to reinstate him in the Centre, to the full extent possible, as from the date on which his dismissal took effect, i.e. 4 December 2009, with all the legal consequences that this entails.

20. However, if the CDE considers, in view of its staff complement and budgetary resources, that it cannot actually reinstate the complainant, it shall have to pay him material damages for his unlawful removal from his post. In this connection the complainant has no grounds for claiming the payment of the whole of the salary which he would have received until he reached retirement age because, although his contract was concluded for an indefinite period of time, it did not guarantee him an appointment with the Centre until the end of his career, owing to the latter's very difficult financial situation. However, the damages in question may be fairly compensated by awarding the complainant an amount equivalent to the sum total of the salary, allowances and other financial benefits of any kind which he would have received if his contract had remained in force for five years as from 4 December 2009, less the compensation which he received on dismissal and any remuneration he may have received during this period.

21. The complainant also contends that the circumstances in which his dismissal occurred caused him serious moral injury. His submissions in this respect are manifestly well founded. On the one hand, the lack of information before the termination of his appointment and of any effort on the part of the CDE to reassign him to another post were an affront to his dignity. On the other hand and above all, the complainant contends, without being contradicted in any way by the Centre, that on being notified of the termination of his contract by the Director in the presence of a bailiff, his ground pass to the Centre's premises was immediately withdrawn and he was forthwith escorted from them by security guards. From its written submissions

the CDE appears to believe that such measures, “albeit unusual”, were “not in any way intrinsically unlawful” and were justified, “in view of the number of staff members whose contract [had been] terminated”, by the need “to guard against possible acts of retaliation”. The Tribunal considers on the contrary that they were brutal and humiliating. They were all the more shocking in the instant case because they were directed against a staff member who had served the Centre with uncontested professional merit for no less than 22 years. If the complainant is not actually reinstated – and solely in this case, since the complainant makes this request only in his subsidiary claims – in consequence of the foregoing the Centre shall pay him moral damages, which the Tribunal considers it appropriate to set at 7,500 euros, as requested by the complainant.

22. In his rejoinder the complainant asked the Tribunal to order the CDE to defray the relocation costs related to his return and that of his family to his country of origin. However, as the Tribunal has consistently held, a complainant may not, in his or her rejoinder, enter new claims not contained in his or her original complaint (see, for example, Judgments 1768, under 5, or 2996, under 6). This claim must therefore be dismissed.

23. As the complainant succeeds for the most part, he is entitled to costs, which the Tribunal sets at 5,000 euros.

24. The CDE entered the counterclaim that the complainant should be ordered to pay costs. It follows from the foregoing that this claim must obviously be dismissed.

## DECISION

For the above reasons,

1. The decision of the Director of the CDE of 2 February 2010 and that of 2 December 2009 terminating the complainant’s appointment are set aside.

2. The complainant shall be reinstated in the Centre to the full extent possible as from 4 December 2009, with all the legal consequences that that entails.
3. If the Centre considers that such reinstatement is impossible, it shall pay the complainant material damages calculated in the manner stated in consideration 20, above, and moral damages in the amount of 7,500 euros.
4. At all events, it shall also pay him costs in the amount of 5,000 euros.
5. The complainant's remaining claims are dismissed, as is the Centre's counterclaim.

In witness of this judgment, adopted on 9 November 2012, Mr Seydou Ba, President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 6 February 2013.

Seydou Ba  
Giuseppe Barbagallo  
Patrick Frydman  
Catherine Comtet