

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

**119th Session**

**Judgment No. 3443**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr B. M. against the International Criminal Court (ICC) on 10 April 2012, the ICC's reply dated 19 July and corrected on 2 August, the complainant's rejoinder of 11 December 2012 and the ICC's surrejoinder of 15 March 2013;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

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

A. In September 2008, the complainant, after successfully sitting a test in French, Lingala and Swahili, was recruited – under a three-month general temporary assistance contract starting on 1 October 2008 – as a data processing assistant within a unit of the Office of the Prosecutor. His appointment was extended on a number of occasions, the last being up to 30 June 2011.

At the end of May 2009, the complainant and several of his colleagues met with the new manager of the unit to which they were assigned, to complain of the bad working environment arising from racial discrimination and unequal treatment. The issue of quality control was raised, and the unit manager's subsequent proposal to organize benchmarking tests was accepted. These were held on 14 January 2010. The complainant obtained the following marks: 13 out of 20 in French, 15 out of 20 in Lingala, 18 out of 20 in Swahili A

and 15 out of 20 in Swahili C. On 20 January the complainant and one of his colleagues sat a test in Kinyarwanda, as there was an urgent need for transcriptions in this language; the complainant obtained a score of 10 out of 20, an overall performance considered not satisfactory enough for him to work on this type of transcription.

Between January and August 2010, a series of meetings and workshops were organized within the unit with a view to easing tensions and thereby improving the working environment.

On 31 August 2010 the complainant underwent an interim evaluation review, during which he was asked to concentrate his efforts on transcribing Kinyarwanda and French, especially on increasing his typing speed.

In February 2011 the complainant was informed that his contract would not be extended on account of the evolution of transcription needs. On 21 March he was invited, along with four colleagues, to sit a transcription test in Kinyarwanda and English to assess officially his skills, which would be taken into account in future recruitments for general temporary assistance positions in the two languages under consideration, for which new needs had been identified. The complainant took part in the test and obtained the marks 10/11 out of 20 in Kinyarwanda and 6.25 out of 20 in English.

On 28 June the complainant filed an appeal, challenging the decision of 19 May confirming that his contract would not be renewed on 30 June 2011. On 16 December 2011 the Appeals Board delivered its report. Although it recommended that the appeal should be dismissed, insofar as the decision not to renew the contract was not, from its standpoint, tainted with any flaws that might lead to its reversal, it nonetheless also recommended that the ICC provide the complainant with an opportunity to take the transcription tests again in the context of an objective procedure. In a letter dated 16 January 2012, which constitutes the impugned decision, the Prosecutor of the ICC informed the complainant that he had decided to accept the Appeal Board's first recommendation and reject the second.

B. The complainant argues that the decision not to renew his contract is tainted with many irregularities arising both from the organisation of the last test, which had no basis in law and was therefore improper, and from the way in which it was corrected, especially as the staff members taking it did not even have the possibility of appealing its outcome. The complainant submits that it was in fact an act of retaliation to censure him for having denounced the climate of favouritism prevailing in his unit, which particularly took the form of unequal access to training, biased performance appraisals, and an unfair distribution of tasks and deadlines imposed. He reproaches the ICC for taking advantage of his skills by making him work in languages for which he was not recruited, especially Kinyarwanda, and then deciding not to renew his contract.

The complainant claims moral and material damages, as well as costs.

C. In its reply, the ICC submits that the complainant has not adequately substantiated his allegations that there was favouritism in his unit. It explains that his contract was of a temporary nature, subject to the availability of budgetary funds and the requirements of the Office of the Prosecutor, and that it was entitled to terminate the contract in the light of these two considerations, which it did following a decline in the demand for Swahili. It points out that the complainant was only occasionally required to do transcriptions in other languages in the course of his work.

D. In his rejoinder, the complainant expands upon his arguments by providing additional information on the unhealthy atmosphere prevailing in his unit and denounces the flaws that, according to him, tainted the tests of 14 January 2010.

E. In its surrejoinder, the ICC maintains its position and strongly denies that the tests of 14 January 2010 were tainted with irregularities.

## CONSIDERATIONS

1. The complainant joined the ICC on 1 October 2008 as a data processing assistant within a unit of the Office of the Prosecutor, on the basis of a three-month contract. His appointment was subsequently extended a number of times.

In a decision of 19 May 2011, the complainant was informed that his contract would not be renewed upon its expiry on 30 June 2011.

2. On 16 January 2012 the Prosecutor of the Court dismissed the complainant's appeal against this decision. In so doing, he adopted the Appeals Board's main recommendation. However, he refused to accept another recommendation of the Board, namely that the complainant should be given the opportunity to re-sit the language transcription tests, the results of which had allegedly justified the non-renewal of his contract, but under more objective conditions. If he succeeded in these new tests, the complainant should be placed on the list of candidates eligible for duties of the nature he was performing before the non-renewal of his contract, or be provided with the same opportunities as any other eligible candidate.

The complaint, which seeks awards of compensation under various heads, is directed against the decision of 16 January 2012.

3. The person concerned by a decision not to renew a fixed-term contract upon its expiry is entitled to be given the reasons for that decision. However, the Tribunal grants organisations considerable discretionary authority in this area. It will set aside such a decision only if it is *ultra vires*, or shows a formal or procedural flaw or an error of fact or of law, or if a material fact has been overlooked, or if there has been abuse of authority, or if a plainly wrong conclusion has been drawn from the evidence. (See Judgments 230, under 1, 2916, under 3, and 2991, under 13.)

4. The complainant contends that the final renewal of his contract for a reduced period of six months and the subsequent organisation of a test were actions paving the way for his dismissal. He alleges that the

decision to dismiss him had been taken from the moment he protested, with other colleagues, about the discrimination to which they were subjected after the new manager of the unit entered the service. In his opinion, there could be no other explanation for his dismissal because the demand for transcribers in one of the languages for which he was recruited (Swahili) was constantly on the rise.

The complainant alleges that the disputed test was entirely unjustified. He had regularly worked in a satisfactory manner in one of the languages selected for this skills examination and had already been tested for another, neither of which moreover were languages for which he had been initially recruited. According to the complainant, the assessment of the results of this test were flawed, particularly insofar as an arbitrary distinction was made between the time granted to the various candidates to finish the transcription tasks they were given. The Court had wished to unduly favour external candidates who did not have higher skills than those of the complainant to perform tasks after 30 June 2011.

5. The ICC disputes all the complainant's interpretations of the reasons for holding a test and the non-renewal of his contract. It asserts that its decision not to renew his contract was entirely dictated by its requirements, which are described in considerable detail in its submissions.

6. The Tribunal finds the complainant bears the burden of proving that he was a victim of retaliation or unequal treatment. Although it seems clear that some difficulties did arise among the staff throughout 2009, there is no evidence in the file to establish that the decision at issue has anything to do with these. Neither is there any proof that the organisation of the disputed test was improper, that the assessment of its results was flawed or that the non-renewal of the complainant's contract involved an abuse of authority.

In the absence of any grounds liable to bring about the Tribunal's censure, the complaint can only be dismissed.

DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 7 November 2014, Mr Giuseppe Barbagallo, President of the Tribunal, Mr Claude Rouiller, Vice-President, and Mr Patrick Frydman, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 11 February 2015.

*(Signed)*

GIUSEPPE BARBAGALLO    CLAUDE ROUILLER    PATRICK FRYDMAN

DRAŽEN PETROVIĆ