

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

A. (No. 2)

v.

CTA

120th Session

Judgment No. 3481

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr E. E. É. A. against the Technical Centre for Agricultural and Rural Cooperation (CTA) on 22 August 2012 and corrected on 22 January 2013, the CTA's reply of 23 May, corrected on 24 June, the complainant's rejoinder of 16 September and the CTA's surrejoinder of 9 December 2013;

Considering Article II, paragraph 5, of the Statute of the Tribunal;
Having examined the written submissions;

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

The complainant challenges the decision to terminate his contract with immediate effect during his trial period.

Facts relevant to this case are to be found in Judgment 3067, delivered on 8 February 2012 on the complainant's first complaint. Suffice it to recall that he joined the CTA on 11 May 2009 and that his appointment for an indefinite period of time included an initial six-month trial period.

On 6 August, at the end of the first three months of his trial period, his supervisor drew up an intermediate report on his ability and professional performance in which a number of shortcomings were noted. On the following day, the Director of the CTA informed the complainant orally that he had decided to terminate his contract

with immediate effect, as his service since the beginning of his appointment had been deemed unsatisfactory.

On 31 August the complainant sent the Director of the CTA a letter in which he requested the cancellation of the “oral decision of 7 August 2009”, which he considered to be unfounded, and asked for a copy of the decision. By a letter of 14 September the Head of the Administration and Human Resources Department replied that the CTA had taken due note of his letter of 31 August. He appended to this letter a copy of the decision in question.

On 11 November 2009 the complainant sent the Executive Board of the CTA a letter in which he requested the appointment of a conciliator. As this appointment was not made by the Executive Board within the 45-day time limit stipulated in Article 4(3) of Annex IV to the Staff Regulations, the complainant filed his first complaint with the Tribunal on 5 January 2010. The Director informed him by a letter of 8 February 2010 that his request for conciliation was “inadmissible”, because he had not previously lodged an internal complaint within the meaning of Article 66(2) of the Staff Regulations.

In Judgment 3067 the Tribunal found that the complainant had been unduly deprived of the benefit of the conciliation procedure for which provision is made in the Staff Regulations. It therefore decided to set aside the decision of 8 February 2010 and to refer the case back to the CTA in order that that procedure might be held.

Pursuant to Judgment 3067, the Executive Board appointed a conciliator at its meeting on 27 and 28 February 2012. In the statement of his case the complainant requested the cancellation of the decision to terminate his contract, material damages in an amount equal to five years’ salary, 40,000 euros in compensation for moral injury and costs in the amount of 1,250 euros. In its rejoinder to this statement the CTA reviewed the sequence of events during the complainant’s trial period and endeavoured to refute his arguments.

In his report of 25 June 2012 the conciliator concluded that the decision of 7 August 2009 was not tainted with any substantive flaw. He emphasised that it had been taken in accordance with the adversarial principle and that it involved no obvious error of judgement

or misuse of authority. He stated that he was therefore unable “to propose to the parties the terms of a settlement which might satisfy the claimant’s claims for compensation”.

On 22 August 2012 the complainant filed a second complaint with the Tribunal, impugning the “oral decision of 7 August 2009”. He requests the setting aside of that decision and claims material damages in an amount equivalent to five years’ salary and allowances. He also claims 40,000 euros in compensation for the moral injury which he considers he has suffered and costs in the amount of 4,250 euros. In his rejoinder he also asks for the payment of the special allowance which constitutes a guarantee fund under Article 30 of the Financial Regulation of the CTA.

The CTA submits that the complaint is unfounded and asks the Tribunal to order the complainant to pay costs. In its surrejoinder it asks the Tribunal to hear the parties on the subject of certain meetings that were held.

CONSIDERATIONS

1. By Judgment 3067, delivered on 8 February 2012, the Tribunal, ruling on the complainant’s first complaint, referred the case back to the CTA in order that a conciliation procedure might be held in accordance with Article 67 of the Staff Regulations and Annex IV thereto.

2. This conciliation procedure proved unsuccessful, as is clear from the conciliator’s report of 25 June 2012, and the complainant then filed a complaint with the Tribunal on 22 August 2012, in which he seeks not only the setting aside of the impugned decision, but also the payment of “five years’ salary and allowances as material damages”, 40,000 euros in compensation for moral injury and costs in the amount of 4,250 euros.

3. The CTA raises no objection to the receivability of the complaint but asks the Tribunal to dismiss it as unfounded and to order the complainant to pay the costs of the proceedings.

In its final submissions it asks the Tribunal to allow the parties to make oral submissions concerning the holding of certain meetings. The Tribunal will not grant this request, since the parties' written submissions are sufficient for it to reach conclusions on the matters at issue in the instant case.

4. As the Tribunal stated in Judgment 3067, under 23, the crux of this dispute lies in the complainant's challenging of the assessment of his performance during his trial period, which led to the termination of his appointment. This is why the Tribunal recalled that, according to firm precedent, it exercises only a limited power of review over such a decision. This decision will be set aside only if it was taken in breach of some rule of form or procedure, or if it rests on a mistake of fact or of law, or if it stems from an abuse of authority (see, for example, Judgments 987, under 2, 1817, under 5, or 2715, under 5). But so far as concerns the assessment of an official's merits, unless the Tribunal finds that clearly wrong conclusions have been drawn from the evidence, it will not substitute its own opinion for that of the executive head of the organisation. (See Judgment 3067, under 23.)

5. The complainant was undergoing a six-month trial period when the Director decided to terminate his appointment. In this connection, it is appropriate to recall that, according to the case law, there is no general principle of law that requires an international organisation to retain a staff member in its service throughout that person's trial period if, before that period expires, the competent authority has come to the final conclusion that the staff member concerned is unsuitable for the post to which he or she was assigned (see, in particular, Judgment 197, first paragraph). Moreover, Article 35(a) of the Staff Regulations of the CTA makes provision for the termination of a staff member's appointment during his or her trial period.

6. Furthermore, it is trite law that an organisation must give its staff members, especially those undergoing a trial period, guidance, instructions and advice as to the performance of their duties and that it must warn them in specific terms if they are not giving satisfaction and are at risk of dismissal; a staff member whose service is not considered satisfactory is entitled to be informed in a timely manner as to the unsatisfactory aspects of his or her service so that steps can be taken to remedy the situation. Moreover, he or she is entitled to have objectives set in advance so that he or she will know the yardstick by which future performance will be assessed (see Judgment 3128, under 5, and the case law cited therein). These are fundamental aspects of the duty of an international organisation to act in good faith towards its staff members and to respect their dignity (see Judgment 2529, under 15).

7. The Tribunal considers that it is clear from the evidence in the file that the crucial factor leading to the decision to terminate the complainant's trial period before its expiry is the intermediate report of his supervisor of 6 August 2009. As the CTA itself admits, this report was not forwarded to the complainant "by e-mail or by letter". It was not examined until the following day and it was on the same date, 7 August 2009, that the decision to terminate the complainant's appointment was taken.

In these circumstances the complainant's right to be heard was plainly breached, since he was not given sufficient time to express an opinion on the crucial factor which led to the termination of his appointment before the end of his trial period.

Furthermore, although the CTA submits that it had repeatedly informed the complainant of the unsatisfactory aspects of his service, it provides no evidence of these warnings and does not even allege that, as the above-mentioned case law requires, they included a specific warning as to the consequences which his unsatisfactory performance might have on his continued employment.

In these circumstances the impugned decision must therefore be set aside for these reasons, without there being any need to rule on any other plea.

8. As far as compensation for the material injury suffered by the complainant is concerned, in view of the circumstances of the case, it cannot be said that, if the procedure had not been flawed, the complainant's appointment would have been confirmed at the end of the trial period. The Tribunal therefore considers that he should be awarded compensation equivalent to the sums which he would have received had the trial period continued until its expiry.

As the complainant took up his duties on 11 May 2009, his trial period ought to have expired on 11 December* 2009. He received his full pay for August 2009, payment in respect of outstanding days of annual leave as at 7 August 2009 and a sum equivalent to 2 months and 17 days of his rent.

He will therefore be entitled to the payment of the difference between the sums which he should have received had the trial period continued until its expiry and those which he actually received.

9. The complainant is also entitled to 5,000 euros in compensation for the moral injury resulting from the suddenness of the premature termination of his trial period.

10. The complainant also requests the payment by the CTA of the "special allowance constituting a guarantee fund under Article 30 of the Financial Regulation of the CTA". This claim, which was formulated for the first time in the complainant's final submissions to the Tribunal, must in any event be dismissed as irreceivable, since internal means of redress have not been exhausted.

11. As he succeeds in part, the complainant is entitled to costs which the Tribunal sets at 1,000 euros.

12. The CTA asks that the complainant be ordered to pay costs. It follows from the foregoing that this claim must obviously be dismissed.

DECISION

For the above reasons,

1. The impugned decision is set aside.
2. The CTA shall pay the complainant material damages calculated as indicated under 8, above.
3. It shall pay him 5,000 euros in compensation for moral injury.
4. It shall also pay him costs in the amount of 1,000 euros.
5. All other claims are dismissed, as is the CTA's counterclaim.

In witness of this judgment, adopted on 7 May 2015, Mr Claude Rouiller, Vice-President of the Tribunal, Mr Seydou Ba, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 30 June 2015.

(Signed)

CLAUDE ROUILLER

SEYDOU BA

PATRICK FRYDMAN

DRAŽEN PETROVIĆ

* *Recte*: November; a clerical error corrected by the Tribunal at the request of the defending organisation and with the consent of the complainant.

(Signed) DRAŽEN PETROVIĆ