

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**L.**  
**v.**  
**WTO**

**120th Session**

**Judgment No. 3486**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr V. L. against the World Trade Organization (WTO) on 21 December 2011 and corrected on 16 January 2012, the WTO's reply of 20 March, the complainant's rejoinder of 19 April, the WTO's surrejoinder of 25 June, the complainant's further submissions of 20 July, the WTO's comments thereon of 24 August, the complainant's letter of 26 November 2012 enclosing an additional item of evidence produced by him and the final comments of the WTO of 13 March 2013;

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 may be summed up as follows:

The complainant challenges the decision to terminate his appointment as of 30 April 2011.

At the material time the complainant, who had held a regular contract since 2006, was a counsellor in the Appellate Body Secretariat of the WTO. On 3 February 2010 the Director of the Appellate Body Secretariat informed him that the members of the Appellate Body no longer wished him to be assigned to work on appeals and suggested that he should put his name on the WTO staff mobility roster. On

15 April the complainant asked the Director of the Human Resources Division (HRD) for a lateral transfer. On 7 June he told her that one of the reasons behind this request was that he had had some “differences of opinion” with the Director of the Appellate Body Secretariat in the first half of 2009 and that since June 2009 he had been subjected to “several humiliations”, which he listed.

He met with the Director of HRD on 29 June 2010 and on three further occasions during the summer of 2010. On 14 September 2010 he sent her a letter in which he alleged that he had been put under “considerable pressure” to resign during those meetings. On the same date he sent the Director-General a memorandum in which he requested the opening of an inquiry to determine whether he had been harassed. He also appealed against his performance evaluation report for 2009, which contained the overall rating “partly satisfactory” and which he considered to be tainted with bias. This appeal was dismissed on 6 October 2010.

On 5 October 2010 the Director-General advised the complainant that his letter of 14 September 2010 was “inappropriate” since, in the course of the meetings in the summer, which had involved “no pressure whatsoever”, he had been offered an “amicably settled separation” on advantageous conditions which he had been able to negotiate. The Director-General noted that all possibilities of mobility had been explored without success and he informed the complainant that, if by 12 October at the latest, he had not accepted an offer made to him at a meeting on the previous day, he would initiate the relevant procedures for separation from service under Staff Regulation 10.3.

On 8 October 2010 the complainant signed a mutual agreement which provided inter alia for the following:

- special leave with full pay from 1 November 2010 until 30 April 2011, then special leave without pay from 1 May 2011 until 31 October 2012, the date on which his separation from service would become effective;
- payment, on 30 April 2011 at the latest, of accumulated annual leave and a termination indemnity;

- payment of a separation grant, subject to the presentation of supporting documentation, and
- withdrawal of the negative comments from his personal evaluation report for 2009, alteration of the overall rating in the report to “fully satisfactory” and the inclusion of the revised version of the report in his personal file.

The agreement also specified that, by signing it, the complainant undertook not to disclose its terms, acknowledged that the agreement “solved to his complete satisfaction all claims and grievances he [might] have against the WTO and/or individual WTO officials”, “agree[d] to withdraw forthwith all pending complaints or appeals in relation such claims and grievances” and “agree[d] not to initiate in the future any appeal or complaint in relation to such claims and grievances or in relation to this mutual agreement”.

When his special leave on full pay was coming to an end, the complainant enquired about arrangements for the payment of the sums due to him under the mutual agreement. In an e-mail of 22 March 2011 he confirmed that his separation from service would take place on 30 April. By an e-mail of 18 April HRD sent him a Notice of Personnel Action recording his cessation of service as of 30 April.

On 27 April the complainant sent a request for review to the Director-General, with a copy to the Staff Council, seeking the cancellation of the decision to terminate his appointment and of the mutual agreement – which he said he had signed under duress – and his reinstatement. The Director of the Office of the Director-General informed the complainant in a letter of 10 May that the Director-General had decided to decline his request for review on the grounds that it was irreceivable *ratione temporis*, since he had submitted it nearly seven months after signing the mutual agreement. She expressed surprise that he had waited until the WTO had paid him all the amounts due to him under that agreement before challenging the latter’s validity. She also reproached him for having breached the terms of the mutual agreement by not only initiating appeal proceedings but also informing the Staff Council thereof.

On 18 May 2011 the complainant referred the matter to the Joint Appeals Board. He requested the cancellation of the mutual agreement and the decision to terminate his appointment as of 30 April 2011, reinstatement, redress for material and moral injury and exemplary damages in the amount of 75,000 Swiss francs. He also entered various subsidiary claims. Lastly he claimed costs of at least 10,000 francs.

In its report, which it submitted on 8 November 2011, the Board noted that the complainant had signed the mutual agreement on 8 October 2010 and found that the decision to terminate his appointment had been taken before that date. As he had not submitted his request for review until 27 April 2011, the complainant had not complied with the time limit of 40 working days laid down in Staff Rule 114.3(a), which had begun to run as from the date on which he had received written notification of the said decision. Since the appeal was therefore inadmissible, the Board did not make any recommendation. The complainant was informed by a letter of 11 November 2011 that in light of the Board's report, the Director-General had decided to maintain his initial decision to decline his request for review. That is the impugned decision.

In his complaint the complainant reiterates the claims which he presented to the Joint Appeals Board. He also asks the Tribunal to set aside the decisions of 10 May and 11 November 2011, to declare the Board's report invalid and to order the production of various documents. He increases his claim for costs to 20,000 francs.

The WTO submits that the complaint is irreceivable, but it states that if the Tribunal were to allow the complainant's claims, the benefits which he received under the mutual agreement amply compensate any material or moral injury which he might have suffered and that his reinstatement would be inappropriate.

## CONSIDERATIONS

1. The complaint is directed against the decision of 11 November 2011 by which the Director-General, acting on the basis of the Joint

Appeals Board's report, upheld his initial decision not to entertain the complainant's request for review because it was out of time.

2. The complainant has requested the convening of a hearing. However, in view of the abundant and sufficiently clear 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.

In response to the request that the Tribunal order the production of various documents, the President of the Tribunal asked the WTO to produce one of them. As far as all the others are concerned, the request must be denied because it amounts to a "fishing expedition" which, in accordance with the Tribunal's case law, cannot be accepted (see, for example, Judgments 2497, under 15, and 3345, under 9).

3. It is plain from the submissions that the complainant signed an agreement with the Organization which terminated his appointment subject to several guaranties and the payment of compensation. The essential question is whether, as the complainant submits, that agreement is flawed by a lack of consent.

4. This is manifestly not the case. The cessation of the employment relationship between the defendant organisation and the complainant was mutually agreed by the parties. There is no evidence in the file that the complainant signed this agreement as a result of misrepresentation, mistake or justified fear, or under the pressure of circumstances liable to vitiate his free consent (see, for example, Judgments 1075, under 11 to 14, and 1934, under 6 and 7).

Moreover, the agreement was the outcome of several weeks of negotiation at the end of which the complainant had obtained the compensation he wanted. The agreement defined this compensation in a fairly detailed manner, and although it set the date of cessation of service at 31 October 2012, it stipulated that the complainant should return his *carte de légitimation* on 30 April 2011, the date on which his special leave on full pay would end.

5. The e-mail of 18 April 2011 in response to the complainant's e-mail of 22 March 2011, in which he confirmed that he wished to separate from service on 30 April 2011, does not in any way modify the main points of the settlement reached between the parties under the agreement of 8 October 2010. This agreement specified that the complainant "agree[d] not to initiate [...] any appeal or complaint in relation to [his] claims and grievances or in relation to [the] mutual agreement".

This complaint is therefore irreceivable by virtue of the very terms of the agreement, as was, for the same reasons, the complainant's internal appeal (see Judgments 1934, under 7, and 2368, under 7).

6. The complaint must therefore be dismissed.

#### DECISION

For the above reasons,  
The complaint is dismissed.

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