Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

N. (No. 4)

v.

ILO

120th Session **Judgment No. 3545**

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourth complaint filed by Mrs L. N. against the International Labour Organization (ILO) on 5 April 2012 and corrected on 1 August, the ILO's reply of 14 November 2012, the complainant's rejoinder of 15 January 2013 and the ILO's surrejoinder of 16 April 2013;

Considering Articles II, paragraph 1, and VII 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 may be summed up as follows:

Facts relevant to this case can be found in Judgment 3250, delivered on 5 February 2014, concerning the complainant's first complaint.

On 30 June 2010 the complainant's performance appraisal report for the period from 1 October 2007 to 31 December 2009 was signed by Mr H., Chief of OFFDOC, and by her immediate chief, Mr C., Head of the English Unit. The complainant provided her comments on that report on 28 July.

In July 2010 Ms W.-B. took over as Chief of OFFDOC and Ms A. was appointed as Acting Head of the English Unit.

The Reports Board provided comments and recommendations regarding the complainant's aforementioned performance appraisal which were transmitted to her on 4 October. Shortly thereafter, all staff members in OFFDOC were reminded to complete a "Beginning of Cycle" (BOC) form (a requirement of the ILO Performance Management Framework) by 29 October.

In an e-mail of 29 October 2010 the complainant notified Ms A. and Ms W.-B. that she was not able to complete the BOC form.

On 2 November the complainant attended a meeting of all staff of the English Unit, during which concerns were raised about her interactions with her colleagues.

In January 2011 Mr C. resumed his functions as Head of the English Unit. On 3 February the complainant met with Ms W.-B. and Mr C. regarding her BOC work plan for 2010 and 2011.

On 8 February 2011 the complainant filed a grievance with the Human Resources Development Department (HRD) in which she claimed that she had been subjected to retaliatory discrimination by the ILO and its representatives in the form of deliberate and humiliating mobbing in front of all of her Unit colleagues.

On 25 March the complainant filed another grievance with HRD in which she claimed that she continued to be subjected to retaliatory discrimination on the part of the ILO and its representatives in the form of ongoing, deliberate and humiliating public mobbing. This grievance was joined with her grievance of 8 February.

With the complainant's agreement, in April 2011 the ILO appointed an external investigator to conduct a fact finding investigation into her grievances. In her report of 23 June the investigator concluded that neither of the complainant's grievances was substantiated. On 24 June 2011 HRD replied to the joined grievances of 8 February and 25 March 2011 and notified the complainant of the results of the investigation. On 22 July she filed two grievances with the Joint Advisory Appeals Board (JAAB), which were subsequently joined by the JAAB. In its report of 8 November 2011 the JAAB unanimously recommended that the Director-General dismiss the complainant's grievances as devoid

of merit and encouraged both parties to consider alternative employment opportunities or other possible solutions, including a special negotiated settlement for the complainant.

By a letter of 16 December 2011 the complainant was informed that, in accordance with the recommendation of the JAAB, the Director General rejected her grievances as devoid of merit. That is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision. She seeks compensation for moral injury and requests costs in the amount of 2,000 Swiss francs.

The ILO asks the Tribunal to dismiss the present complaint as irreceivable for failure to comply with the time limits provided for in the Tribunal's Statute.

CONSIDERATIONS

1. The complainant impugns the Director General's decision, communicated to her by a letter dated 16 December 2011, to accept the unanimous recommendation of the JAAB to reject her grievances as devoid of merit.

2. Article VII, paragraph 2, of the Statute of the Tribunal provides that, to be receivable, a complaint must have been filed within 90 days after the complainant was notified of the decision impugned. As the Tribunal has repeatedly stated, this time limit is an objective matter of fact and the Tribunal will not entertain a complaint filed after that time limit has expired. Any other conclusion, even if founded on considerations of equity, would impair the necessary stability of the parties' legal relations, which is the very justification for the time bar (see Judgments 3393, under 1, 3304, under 2, and 3467, under 2).

3. The complainant declares on the complaint form that she was notified of the impugned decision on 5 January 2012. Considering that she filed her complaint on 5 April 2012 (the complaint was hand delivered

to the Tribunal's Registry on that date), and considering that 2012 was a leap year (there were 29 days in February), the complaint was not filed within 90 days as required by the Tribunal's Statute. It is therefore time-barred and hence irreceivable.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 15 May 2015, Mr Giuseppe Barbagallo, President of the Tribunal, Mr Michael F. Moore, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 30 June 2015.

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

HUGH A. RAWLINS

DRAŽEN PETROVIĆ