

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**B.**

**v.**

**WHO**

**122nd Session**

**Judgment No. 3683**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr L. B. against the World Health Organization (WHO) on 6 December 2012 and corrected on 22 April 2014, WHO's reply of 26 September 2014, the complainant's rejoinder of 5 January 2015 and WHO's surrejoinder of 28 April 2015;

Considering Articles II, paragraph 5, 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:

The complainant challenges the decision not to extend his temporary appointment beyond its expiry date.

The complainant entered WHO's service on 1 March 2004 as a staff member of the African Programme for Onchocerciasis Control (APOC) in Burkina Faso. He was granted a temporary appointment that was extended several times, the last extension covering the period from 17 February to 16 August 2007. By a letter of 29 June 2007 the Director of APOC notified him that his appointment would not be extended beyond its expiry date for two reasons, namely, his inadequate performance despite the "extraordinary opportunities" that he had been given to improve, and the "new contractual reforms" that would enter into effect on 1 July 2007.

On 2 August 2007 the complainant wrote to the Director asking her to review the terms of her decision, suggesting that only the second reason for non-extension be retained. He told her that he would return the acknowledgement of receipt for the letter of 29 June “when [his] concerns ha[d] been taken into consideration”. On 16 August 2007 his appointment ended without his having received a written reply.

On 27 December 2009 the complainant wrote a letter to the Director of APOC alleging that she had applied “the new Staff Regulations” in a discriminatory manner and treated his case wrongly. He acknowledged that he had made a mistake in thinking that it was not worth referring the matter to the appeal bodies “at the time”, as he had trusted the Director’s sense of fairness and justice, and he sought redress for the injury caused. On 10 February 2010 the Director of APOC referred the complainant to her letter of 29 June 2007 and told him that he should submit any claims to the appeal bodies.

On 17 February 2010 the complainant filed an appeal with the Regional Board of Appeal (RBA) challenging the decision of 29 June 2007. In its report of 17 December 2010 the RBA recommended that the appeal be found irreceivable as it had not been filed within the 60-day period provided for in WHO Staff Rule 1230.8.3. The Regional Director decided to follow this recommendation on 4 April 2011.

In his appeal to the Headquarters Board of Appeal (HBA), filed on 23 May 2011, the complainant submitted that he had been late in filing his appeal with the RBA because he had wished first “to exhaust all means to resolve [his] problem internally and amicably”. He sought compensation for the significant financial, professional and moral injury which he claimed to have suffered. The HBA recommended that his appeal be dismissed as irreceivable on the grounds that it had been filed with the regional RBA out of time. However, it observed that it was desirable for any final decision which adversely affected a staff member to mention the right to appeal and, with reference to the complainant’s letter of 2 August 2007, it recalled that the WHO had a duty to reply to questions from staff members within a reasonable time frame.

By a letter of 17 September 2012, which constitutes the impugned decision, the complainant was informed that although the Director-

General agreed with the HBA that the organisation should reply to questions from staff members within a reasonable time frame, she considered that as the complainant was the former president of the APOC staff association, he knew his rights in terms of appeals. She had hence decided to dismiss his appeal as irreceivable. However, the Director-General conveyed the HBA's general observations to the competent department "for information and any appropriate action".

In his complaint filed on 6 December 2012, the complainant seeks the cancellation of the impugned decision, his reinstatement, compensation for moral and material injury and costs.

WHO requests that the Tribunal dismiss the complaint on the grounds that it is time-barred and therefore irreceivable. In the alternative, it asks the Tribunal to dismiss the complaint as groundless.

#### CONSIDERATIONS

1. The file shows that in a letter of 2 August 2007 the complainant disputed the grounds for the decision of 29 June not to extend his temporary appointment beyond its expiry date. In so doing, he must be considered to have initiated an internal appeal. However, no action was ever taken on this appeal.

2. Under Staff Rule 1230.8.1, an action becomes final only when the staff member has received written notification thereof. Given that the above-mentioned appeal was filed, the final action for the purposes of this provision would be the decision to dismiss the appeal, but in this case written notification was not received because, as mentioned above, no such decision was ever taken. Accordingly, the time limit for an appeal to the RBA never began to run and the RBA was wrong to consider that the appeal filed with it on 17 February 2010 was irreceivable.

3. The decision of 17 September 2012 must hence be set aside and the case remitted to WHO for the appeal of 17 February 2010 to be examined on the merits by the RBA.

4. As the complainant succeeds in part, he is entitled to costs, set by the Tribunal at 500 euros.

5. In the present circumstances, there are no grounds for allowing the complainant's remaining claims.

#### DECISION

For the above reasons,

1. The decision of 17 September 2012 is set aside.
2. The case is remitted to WHO for the Regional Board of Appeal to examine the appeal of 17 February 2010.
3. WHO shall pay the complainant 500 euros in costs.
4. All other claims are dismissed.

In witness of this judgment, adopted on 26 April 2016, Mr Claude Rouiller, President of the Tribunal, Mr Patrick Frydman, Judge, and Ms Fatoumata Diakité, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 6 July 2016.

*(Signed)*

CLAUDE ROUILLER      PATRICK FRYDMAN      FATOUMATA DIAKITÉ

DRAŽEN PETROVIĆ