Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

S.

v.

UNESCO

124th Session **Judgment No. 3838**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr F. S. against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 17 October 2014 and corrected on 30 October 2014, UNESCO's reply of 5 March 2015, the complainant's rejoinder of 24 April and UNESCO's surrejoinder of 10 August 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 to terminate his appointment.

After having engaged the complainant under various contracts, UNESCO granted him an appointment of limited duration for a period of one year ending on 31 July 2007 as a project coordinator at grade P-3. The offer of appointment of 19 July 2006, to which the General Conditions Applicable to Appointments of Limited Duration were attached, specified that the appointment did not give rise to any expectation of renewal and would end automatically without prior notification. Similarly, the General Conditions stated that an appointment of limited duration "shall expire automatically and without notice or indemnity on the expiration date specified in the letter of appointment". The complainant

acknowledged that he was aware of the applicable rules and accepted the appointment as offered with no provisos.

In a memorandum of 28 June 2007, an administrator of the Bureau of Human Resources Management reminded the complainant that his appointment would end on 31 July 2007. He provided the necessary information on the various administrative formalities to be completed before the complainant's departure.

On 15 August 2007 the complainant lodged a protest with the Director-General against the "administrative decision not to renew [his] contract" of 28 June. He asked for the cancellation of the decision, reinstatement in a post commensurate with his professional qualifications and experience, and compensation for the moral and material injury that he considered he had suffered. By a decision of 15 October, his protest was dismissed as unfounded. It was explained to the complainant that the memorandum of 28 June had notified him of the expiry of his appointment on the date specified in the offer of appointment and not the non-renewal of his contract.

In his appeal to the Appeals Board dated 23 October 2007, the complainant repeated the claims made in his protest of 15 August 2007. The Appeals Board issued its report on 13 December 2013, having heard the parties. It found that there had not been a decision not to renew the complainant's contract but rather a notification of the expiry of the complainant's appointment, made by a person authorised to do so. Addressing the complainant's plea that no performance report had been drawn up for him, the Appeals Board found that this failure constituted a breach of the adversarial principle and it recommended that the complainant's performance be appraised as soon as possible.

By a letter of 18 February 2014, which constitutes the impugned decision, the complainant was informed of the Director-General's decision to endorse the Appeals Board's opinion. Since his former supervisor had retired and could no longer draw up a performance report, the complainant was given a certificate of service.

In his complaint filed on 17 October 2014, the complainant – who asserts that he received the impugned decision on 21 July 2014 – requests the Tribunal to set aside that decision, to order his reinstatement

in a post commensurate with his professional qualifications and experience and to order the defendant to redress the moral and material injury that he considers that he has sustained.

UNESCO requests the Tribunal to dismiss the complaint on the ground that it is irreceivable *ratione temporis* or, subsidiarily, that it is devoid of merit.

CONSIDERATIONS

1. Article VII, paragraph 2, of the Statute of the Tribunal provides that, to be receivable, a complaint must have been filed within 90 days of the complainant being 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 it 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 3304, under 2, 3393, under 1, 3467, under 2, and 3559, under 3).

2. The complaint before the Tribunal seeks the setting aside of a decision bearing the date of 18 February 2014. According to the Organization, the letter containing the decision was dispatched via an air courier company the following March for immediate delivery to the complainant's address in Yaoundé, Cameroon. The Organization hence submits that the complaint, filed on 17 October 2014, is time barred since there is no evidence to support the complainant's assertion that he was not notified of the impugned decision until 21 July 2014.

3. As the Tribunal has consistently held, it is for the organisation issuing and communicating the impugned decision to establish the date of receipt by the addressee. It may be that it is impossible to prove this, for example because the mode of delivery does not allow the date of receipt to be ascertained. If such is the case, the Tribunal will ordinarily accept the addressee's account concerning the date of receipt unless what she or he says is patently implausible. Thus, a complaint will be

deemed to have been filed within the time limit if it was submitted within 90 days of the date of receipt indicated by the complainant (see Judgments 447, under 2, 456, under 7, 723, under 4, 930, under 8, 2473, under 4, and 2494, under 4).

4. In the present case, it is evident that the defendant is not able to establish the date on which the complainant was notified of the decision of 18 February 2014. Apart from the fact that the air waybill, as submitted to the Tribunal, is barely legible, it contains no indication of the date on which the letter was delivered to the complainant or his duly authorised representative. Upon enquiry, the air courier company merely replied on 11 August 2014 that it "no longer ha[d] any proof of delivery available for that item[, as] records [were] kept for three months".

In these circumstances, the Tribunal must consider that the complainant was notified of the impugned decision on the date stated by him, dismiss the defendant's objection to receivability and examine the merits of the complaint.

5. The employment contract entered into by the complainant and the Organization was the first limited duration appointment concluded by them following various "contracts for service[s] and fee contracts" and consultancy contracts. The first clause of the offer of appointment dated 19 July 2006 that set out the conditions thereof reads:

> "**Duration of appointment**
>
> The appointment is for a period of one year commencing from the date of appointment, and it will automatically expire without advance notice. Should your appointment be terminated before the expiry date, you will be entitled to one month's written notice and a termination indemnity equivalent to one week's net pay for each month of service that is not completed. Neither advance notice nor an indemnity is required in the case of a summary dismissal."

6. It is a general principle of international civil service law that there must be a valid reason for the non-renewal of any contract, and the official must be informed of that reason explicitly in a decision against which she or he can appeal. This principle also applies to the non-renewal of a fixed-term appointment which, under the staff regulations or by agreement between the parties, ends automatically

upon its expiry. This approach is justified by the fact that international organisations frequently resort to fixed-term contracts and the fact that the legitimate career expectations of those entering the service of these organisations would otherwise be denied.

It follows that an official who holds a fixed-term contract that automatically ends upon expiry must be informed of the true reasons for not renewing that contract and must receive reasonable notice thereof (see for example Judgments 1154, under 4, 1544, under 11, 1983, under 6, 3368, under 11, and 3582, under 11).

7. The contested decision does not fulfil this requirement to provide reasons. It is true that the complainant received from the Organization a memorandum reminding him that his limited duration appointment would end on the date initially specified and giving him information on the administrative formalities to be completed before he left. However, the memorandum contains no indication of the reasons why the Organization was adhering strictly to the specified departure date, such as a reference to the fact that the duties for which the appointment had been made had come to an end, or to the fact that it was not possible to assign him to other duties.

In response to the complainant's contention that it failed to provide reasons, the defendant merely invokes the first clause of the offer of appointment, cited in consideration 5, above, and the provisions of the General Conditions Applicable to Appointments of Limited Duration, without providing the slightest justification as required by the aforementioned case law.

8. In view of the above, the complaint is well-founded and the impugned decision must be set aside, without there being any need to examine the complainant's other pleas.

9. Although, having regard to all the circumstances, the complainant could have little hope of his appointment being renewed, it cannot be said that his chances of obtaining a renewal were nil.

10. This is not an appropriate case in which to order the complainant's reinstatement, particularly in view of the passage of time.

However, it is appropriate to award him a global amount in compensation for all the injury which the impugned decision caused him. That compensation will be fairly set at 12,000 United States dollars.

DECISION

For the above reasons,

1. The decision of 18 February 2014 is set aside.
2. UNESCO shall pay the complainant compensation under all heads in the amount of 12,000 United States dollars.
3. All other claims are dismissed.

In witness of this judgment, adopted on 27 April 2017, 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 28 June 2017.

(Signed)

CLAUDE ROUILLER PATRICK FRYDMAN FATOUMATA DIAKITÉ

DRAŽEN PETROVIĆ