

**G. B.**

**v.**

**WTO**

**126th Session**

**Judgment No. 4021**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs L. M. G. B. against the World Trade Organization (WTO) on 13 June 2016 and corrected on 3 August, the WTO's reply of 10 October, corrected on 21 October 2016, the complainant's rejoinder of 26 January 2017 and the WTO's surrejoinder of 8 March 2017;

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 grant her local recruitment status.

In August 2011 the complainant, a Spanish national, moved from Barcelona (Spain) to Geneva (Switzerland) to be with her husband for the duration of his two-year master's programme. In January 2012 the Swiss authorities issued her a residence permit (B permit) which was due to expire on 30 September 2012. On 1 May 2012 she started working for the WTO under a Special Service Agreement (a consultancy contract), whereupon her B permit was replaced by a *carte de légitimation*, a Swiss identity document for international civil servants. Her employment under consecutive Special Service Agreements continued until May 2013.

On 14 June 2013 she was offered and accepted a short-term contract effective 29 May 2013. This contract indicated that she had been “recruited from Geneva”, thus designating her as locally recruited. She continued to be employed under short-term contracts until March 2015. Effective 1 April 2015, she was offered a fixed-term contract which again designated her as locally recruited. The complainant signed the offer of appointment on a fixed-term contract on 31 March 2015 with the reservation that she intended to appeal the determination of her recruitment status. On 2 June 2015 she submitted a request for review of the decision to assign her local recruitment status. By a memorandum of 29 June 2015, she was informed that her request for review had been rejected as time-barred because her recruitment status had been determined once and for all upon her initial recruitment as a staff member on 29 May 2013, and the conclusion of a fixed-term contract more recently did not constitute a new decision giving rise to a new right of appeal with respect to her recruitment status.

On 24 July 2015 the complainant filed an appeal with the Joint Appeals Board (JAB) against the decision of 29 June 2015, requesting that her recruitment status be reviewed and changed from local to international. The JAB issued its report on 30 November 2015. It found the appeal admissible but considered that it did not have all the necessary information to express a view as to whether the complainant was, at the time she was first employed by the WTO, “resident” within a radius of 75 km from the *Pont du Mont-Blanc* in Geneva, within the meaning of Staff Rule 103.1. It nevertheless concluded that the Administration had erred in the determination of the complainant’s recruitment status, because it had relied on an overly narrow set of criteria which did not accord with Staff Rule 103.1(a), and also because it had considered her situation in 2013 rather than when she first took up employment with the WTO in 2012. The JAB recommended that the Administration review the complainant’s recruitment status in light of the totality of the relevant elements pertaining to her residence and taking full account of her situation at the time she was first employed by the WTO.

By a decision of 11 December 2015, the Director-General endorsed the JAB's recommendation and instructed the Human Resources Division (HRD) to review and determine anew the complainant's recruitment status. The Director-General also gave the complainant the opportunity to submit any new comments or information which might assist HRD in its determination. The complainant did so on 1 February 2016. Further to the delivery of Judgment 3603 on 3 February 2016, she was given the opportunity to submit her views on the applicability of that judgment to her case, which she did on 17 February 2016. In a memorandum dated 18 March 2016, the Director of HRD notified the complainant of HRD's new determination of her recruitment status, also providing the reasons for it. That new determination, which formed part of the Director-General's final decision on the matter, was that the complainant was "resident within a radius of 75 km from the Pont du Mont-Blanc in Geneva" at the time of her recruitment, and had thus been properly designated as locally recruited. That is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision and to order the WTO to grant her international recruitment status with retroactive effect from 1 April 2015, and to pay her the salary, step increases, benefits and emoluments, including pension contributions, to which she would have been entitled had she been considered as internationally recruited from 1 April 2015 onwards and for as long as she remains a WTO staff member. She also claims costs and such other relief as the Tribunal deems necessary and equitable. Should the Tribunal deem it appropriate to award her damages, she asks that any amount awarded be paid in Swiss francs to the WTO Staff Assistance Fund.

The WTO asks the Tribunal to dismiss the complaint and all of the complainant's claims as unfounded.

## CONSIDERATIONS

1. The complainant applies for an oral hearing under Article 12, paragraph 1, of the Rules of the Tribunal. The Tribunal notes, however, that the JAB elicited relevant evidence from the parties, by way of specific questions, to which they responded. They were also given an

opportunity to comment on each other's response. Moreover, in view of the abundant and sufficiently clear submissions and documents, as well as the evidence which the parties have provided, the Tribunal considers that it is fully informed about the case and does not deem it necessary to hold an oral hearing. The application for a hearing is therefore dismissed.

2. The central question that arises on this complaint is whether the impugned decision to confirm the complainant's designation as "locally recruited", communicated to her by a memorandum of 18 March 2016, was unlawful. The impugned decision was taken on the recommendation of the JAB that the WTO reconsider the complainant's recruitment status taking full account of her situation at the time she was first employed by the WTO in May 2012.

3. The complainant had entered Switzerland on 14 August 2011 to be with her husband who commenced graduate studies there in September 2011. She applied for and was granted a residence permit (B permit) in January 2012 for the purpose of family reunification. She worked as a researcher for a university in Spain and a Geneva-based non-governmental organization before the WTO employed her under a series of Special Service Agreements from May 2012 until May 2013. As of 29 May 2013 the complainant was employed under consecutive short-term contracts which designated her as locally recruited. Before she signed the first of these short-term contracts, she sought clarification concerning her local recruitment status and only signed said contract on 14 June 2013, after she had met with various officials to discuss the matter. She obviously signed this and the other short-term contracts protesting the decision to designate her as locally recruited. When she signed a fixed-term contract with the WTO that was effective from 1 April 2015, she accepted the offer but reserved the right to appeal the decision regarding the determination of her recruitment status and submitted her request for review in June 2015.

4. In the WTO the recruitment status of short-term staff is to be determined pursuant to Rule ST03.1 of the Short-Term Staff Rules and that of staff recruited under fixed-term and regular contracts pursuant to Staff Rule 103.1. The complainant was first recruited under a contract subject to the Short-Term Staff Rules on 29 May 2013, and she continued to be employed under those rules until she received a fixed-term contract on 1 April 2015. Rule ST03.1 of the Short-Term Staff Rules provides as follows:

*“Recruitment*

(a) Recruitment under these rules shall normally be made locally. Staff members shall be considered as locally recruited if at the time of recruitment they are resident within a radius of 75 km from the Pont du Mont-Blanc in Geneva regardless of the duration of that residence, except that staff members who are transferred, seconded or loaned from an intergovernmental organization in Geneva and who had been internationally recruited to that organization shall retain that status.

(b) Exceptionally, where the required skills cannot be found locally, staff members may be recruited internationally. Staff members who are resident outside a radius of 75 km from the Pont du Mont-Blanc in Geneva at the time of recruitment shall be considered as internationally recruited.”

It is observed that the complainant’s employment was extended when she was granted a fixed-term contract on 1 April 2015.

Staff Rule 103.1 provides as follows:

*“Recruitment*

*Local recruitment*

(a) Staff members shall be considered as locally recruited if at the time of recruitment they are resident within a radius of 75 km from the Pont du Mont-Blanc in Geneva regardless of the duration of that residence, except that staff members who are transferred, seconded or loaned from an intergovernmental organization in Geneva and who had been internationally recruited to that organization shall retain that status.

*International recruitment*

(b) Staff members who are resident outside a radius of 75 km from the Pont du Mont-Blanc in Geneva at the time of recruitment shall be considered as internationally recruited.”

5. The present case is similar, in the material respects, to that which was the subject of Judgment 3603, in which the WTO was also the defendant. The Tribunal considers that the following analysis, extracted from considerations 19 and 20 of that judgment, is equally applicable to the present case:

“19. The critical factor for determining a staff member’s recruitment status is her or his residence at the time of recruitment, as provided in Rule ST03.1 of the Short-Term Staff Rules (for short-term staff) and Staff Rule 103.1 read together with Staff Rule 104.2 (for staff under fixed-term and regular contracts). Under the clear and unambiguous provisions of Rule ST03.1 of the Short-Term Staff Rules, the complainant’s recruitment status on recruitment on a short-term basis in 2002 was ‘local’. She was correctly so recruited as, at the time, she gave her ‘present address’ as Pully. That was perhaps convenient for her because she then benefitted from the provision of Rule ST03.1(a) to the effect that recruitment of short-term staff ‘shall normally be made locally’.

20. Under Staff Rule 104.2(a) she was recruited under the Staff Regulations and Staff Rules when she was given a fixed-term contract. Her place of residence at that time for the purpose of her recruitment status under Staff Rule 103.1 was Switzerland, as it also was at the time when she was given the regular contract. Therefore, the WTO was entitled to recruit her as a local staff member under her short-term, fixed-term and regular contracts and her claim that she was at any time entitled to international recruitment status is unmeritorious.”

6. As in the case leading to Judgment 3603, the WTO was entitled to recruit the complainant in the present case as a local staff member and her claim that that decision was unlawful is unsustainable. She was in fact resident in Geneva from 14 August 2011, when she first entered Switzerland to be with her husband. She obtained a residence permit and worked there before the WTO employed her. Her first WTO contract, which she signed on 16 April 2012, lists as her address an address at *Rue de Zurich* in Geneva. More importantly, however, the complainant resided in Geneva when she signed her first short-term contract commencing in May 2013 and was, therefore, at the time of recruitment “resident” within the specified radius to attract the “locally recruited” designation under Rule ST03.1 of the Short-Term Staff Rules. She then continued to reside in Geneva, as her address in her Personal History Form of April 2015 shows, and was, therefore, also at

the time when she commenced work under a fixed-term contract “resident” within the specified radius to attract the “locally recruited” designation pursuant to Staff Rule 103.1(a).

7. The WTO did not, as the complainant contends, violate its duty of care or its duty to act in good faith towards her by lawfully designating her as a locally recruited staff member. It is further determined that the complainant’s contention that the decision to so designate her was irregular because it subjected her to unequal treatment is unfounded, as there is no evidence to show that her recruitment circumstances were the same as for any of the categories of persons to whom she refers in her submissions.

8. As it has been determined that the complainant’s designation as locally recruited was lawfully made and there was no violation of the principle of equal treatment, the complaint is unfounded and will be dismissed.

#### DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 9 May 2018, Mr Giuseppe Barbagallo, President of the Tribunal, Ms Dolores M. Hansen, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 26 June 2018.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

HUGH A. RAWLINS

DRAŽEN PETROVIĆ