Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

B.

v.

ILO

128th Session **Judgment No. 4184**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs C. B. against the International Labour Organization (ILO) on 16 April 2016 and corrected on 14 July, the ILO's reply of 16 September, the complainant's rejoinder of 28 November and the ILO's surrejoinder of 16 December 2016;

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:

The complainant mainly challenges the alleged misuse of short-term contracts in her case, the non-extension of her last contract and the allegedly incorrect classification of her job.

The complainant joined the International Labour Office, the ILO's secretariat, on 1 September 2011 as a secretary at grade G.2 – she was promoted to grade G.3 one month later – under a special short-term contract which, after extension, expired on 17 February 2012. From 18 February to 29 August 2012, she was employed on a short-term contract. This contract was subsequently extended, initially for the period from 30 August – when the complainant began to work part-time (50 per cent in the Cooperative Service and 30 per cent in the Green Jobs Programme) – until 31 December 2012. This extension was said

to be "an exceptional measure to meet the needs of [the said service] and the [aforementioned] Programme pending the opening of a competition at the Secretariat of [the same service]"*. Rule 3.5 of the Rules governing conditions of Service of short-term officials relevantly provides that, subject to a few exceptions, whenever the appointment of a short-term official is extended by a period of less than one year so that her or his total continuous contractual service amounts to one year or more, the terms and conditions of a fixed-term appointment shall apply to her or him as from the effective date of the contract which creates one year or more of continuous service. This rule was applied to the complainant as from 30 August 2012. A second extension of her short-term contract, covering the period from 1 January to 28 February 2013, was granted to her, again pending the opening of a competition at the secretariat of the Cooperative Service. The complainant obtained a third extension, covering the period from 1 March to 30 April 2013, "pending the implementation of the reform of the organizational structure"*, but she was informed that this was the last extension that the Office could offer her. The complainant therefore separated from service on 30 April 2013.

In October 2013 a grade G.4 secretary position, to be assigned to the Cooperative Service for 50 per cent and to the Green Jobs Programme for the remaining 50 per cent, was opened to competition. It was filled in April 2014.

In the meantime, in a grievance addressed to the Human Resources Development Department (HRD) on 26 June 2013, the complainant had requested the reclassification as fixed-term contracts of the "three [short-term] 3.5 contracts" which she had been granted from 30 August 2012. Noting that under Circular No. 630, Series 6, concerning the inappropriate use of employment contracts in the Office, the period of employment on short-term contracts could not exceed 364 days, she requested compensation for the damage suffered as a result of the granting of this type of contract. She also argued that the decision not to renew her last appointment had been taken for false reasons, and she expressed her wish to be reassigned to another service until the end of December

* Registry's translation.

2013, since she had "initially [been] led to believe"* that a job would be secured for her until the end of 2013. Lastly, the complainant contended that the grade assigned to her, namely grade G.3, did not correspond to the tasks that had been assigned to her or the qualifications required. She therefore requested an allowance equivalent to the difference in salary between grade G.3 and the "actual grade" of her post as from 30 August 2012.

As the complainant did not receive a reply to her grievance, she contacted HRD on 1 October 2013. On 3 October she was told that her grievance was being examined and that she would most certainly receive a reply from HRD. The parties agreed to extend HRD's deadline for doing so until the end of October 2013. However, the complainant did not receive a reply in the following months, despite the assurances she believed she had received, and on 19 November 2014, according to the complainant, HRD finally gave her to understand that she should no longer expect a reply from the Organization.

On 10 December 2014 the complainant lodged a grievance with the Joint Advisory Appeals Board (JAAB) against the rejection of her grievance of 26 June 2013, seeking compensation for the damage allegedly suffered as a result of the granting of short-term contracts governed by Rule 3.5 instead of fixed-term contracts, the non-renewal of her contract on 30 April 2013 while she had been assured of being employed until the end of 2013, the grade G.3 classification of the job she had held since 30 August 2012 and, finally, the delay in responding and unfair attitude of HRD, which had repeatedly postponed the deadline for responding to her grievance and ultimately failed to take any action. In its report of 18 December 2015, the JAAB considered that on 31 October 2013 – the deadline agreed between the parties for a reply from HRD – the complainant was faced with an implied decision rejecting her grievance but she had not acted within the one-month period set out in Article 13.3(2) of the Staff Regulations to continue the proceedings. It therefore recommended that the Director-General reject the grievance as inadmissible *ratione temporis*, while drawing his

* Registry's translation.

attention to the conduct of HRD during the internal appeal proceedings, which it described as "contrary to the rules"* and which, in its opinion, showed a clear lack of respect for the complainant.

By a letter dated 18 January 2016, which constitutes the impugned decision, the complainant was informed of the Director-General's decision to approve the JAAB's recommendation and, consequently, to reject her grievance as irreceivable.

The complainant filed a complaint before the Tribunal on 16 April 2016 seeking the setting aside of the impugned decision and payment of the compensation claimed before the JAAB, as well as compensation for the lack of respect shown to her by HRD before the JAAB and payment of the equivalent of the salary that should have been paid to her from May to December 2013. Lastly, she claims costs.

The ILO asks the Tribunal to dismiss the complaint as irreceivable for failure to exhaust internal remedies and, in any event, as unfounded.

CONSIDERATIONS

1. The complainant asks the Tribunal to set aside the decision of 18 January 2016 by which the Director-General dismissed as irreceivable *ratione temporis* her grievance seeking compensation for the injury she considers she has suffered as a result of being granted short-term contracts governed by Rule 3.5 instead of fixed-term contracts, the non-renewal of her last contract until the end of 2013, the incorrect classification of her job at grade G.3 as well as HRD's delay in responding and its unfair attitude towards her. She also claims costs.

2. The ILO asks the Tribunal to dismiss the complaint as irreceivable for failure to exhaust internal remedies and, in any event, as unfounded. It considers that the grievance before the JAAB was irreceivable *ratione temporis* because, since it had not replied to the complainant's grievance to HRD by 31 October 2013, its silence amounted to an implied decision to reject it. The complainant thus had

* Registry's translation.

until 30 November 2013 to bring the matter before the JAAB, but she did not do so until 10 December 2014.

3. The complainant, on the other hand, argues that her complaint is receivable because it was only on 19 November 2014 that HRD informed her that she would not receive a reply to her grievance, whereas she had been assured that such a reply would be sent to her.

4. The Tribunal, in Judgment 3704, in considerations 2 and 3, recalled that the time limits for internal appeal procedures and the time limits in the Tribunal's Statute serve the important purposes of ensuring that disputes are dealt with in a timely way and that the rights of parties are known to be settled at a particular point of time. The Tribunal's rationalisation of this general principle may be summarized as follows: time limits are an objective matter of fact and strict adherence to them is necessary to ensure the stability of the parties' legal relations. However, there are exceptions to this general principle laid down in the Tribunal's case law. One of them is the case where the defendant organisation misled the complainant, depriving him of the possibility of exercising his right of appeal in violation of the principle of good faith (see, for example, Judgment 2722, consideration 3, and Judgment 3311, considerations 5 and 6). The Tribunal also recalls that a complaint against an implied rejection may be deemed receivable, notwithstanding the expiry of the time limit for filing a complaint, if a particular step taken by an organisation, such as sending a dilatory reply to the complainant, might give that person good reason to infer that his or her claim is still under consideration (see Judgment 2901, consideration 10).

5. In the present case, in the e-mail of 3 October 2013 addressed to the complainant, the Organization wrote in particular that "[she] w[ould] most certainly receive a response from HRD" to her grievance. The Organization had even obtained the complainant's agreement to extend the time limit for its reply beyond that provided for in the Staff Regulations. The Organization therefore assured the complainant that it would respond to her grievance of 26 June 2013. The requirements of the principle of good faith and the abovementioned case law therefore

preclude the defendant from challenging the receivability of the complaint on this basis. The ILO's objection to receivability will therefore be rejected.

6. It follows from the foregoing that the impugned decision of 18 January 2016 must be set aside. The case will be remitted to the Organization so that the complainant's grievance, which has thus wrongly been declared irreceivable, may be examined by the JAAB and that a new decision may be taken by the Director-General on the complainant's grievance.

7. The complainant alleges that the Organization incorrectly assigned her grade G.3, while her workload went beyond the tasks set out in the job description of the grade G.4 post advertised in October 2013. She claims that she had the necessary skills to assume a G.4 position.

8. However, the Tribunal finds that, as the defendant rightly submits, the complainant did not challenge the classification of her post in accordance with the applicable procedure, namely that laid down in Circular No. 639 (Rev. 2) of 31 August 2005 concerning the job grading procedure. The complaint is therefore irreceivable on this point.

9. The complainant also denounces the excessive time taken to reply and the attitude, which she considers unfair, of HRD, which, in her opinion, misled her during the internal appeal proceedings by not clearly expressing its position. More generally, she complains that the Organization showed a lack of respect towards her during those proceedings by using dilatory methods. The defendant, for its part, considers that a failure to reply cannot be equated with an unfair attitude and maintains that, even if it is true that some difficulties were encountered during the internal appeal proceedings, they do not indicate any lack of respect.

10. According to the Tribunal's case law, staff members are entitled to expect their requests to be dealt with by the competent authorities within a reasonable period of time (see, for example,

Judgment 3773, consideration 5). In the present case, the complainant sent her grievance to HRD on 26 June 2013 and it was not until 19 November 2014 that HRD informed her that she should no longer expect to receive a reply from the Organization to her grievance. The Tribunal considers that the fact that the Organization did not give the complainant any reply and, moreover, that it waited more than a year to inform her that this would be the case, after having informed her that she would receive a reply, constitutes an unacceptable attitude on the part of the Organization, which reflects a lack of respect for the complainant. This has resulted in moral injury that requires compensation. The Tribunal considers it appropriate to award the complainant compensation of 5,000 Swiss francs on this account.

11. As the complainant succeeds in part, she is entitled to costs, set by the Tribunal at 750 Swiss francs.

DECISION

For the above reasons,

1. The impugned decision of the Director General of 18 January 2016 is set aside.
2. The case is remitted to the ILO for a decision on the complainant's grievance, as set out in consideration 6, above.
3. The Organization shall pay the complainant 5,000 Swiss francs in moral damages.
4. It shall also pay her 750 Swiss francs in costs.
5. All other claims are dismissed.

In witness of this judgment, adopted on 6 May 2019, Mr Patrick Frydman, Vice-President of the Tribunal, Ms Fatoumata Diakité, Judge, and Mr Yves Kreins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 3 July 2019.

(Signed)

PATRICK FRYDMAN FATOUMATA DIAKITÉ YVES KREINS

DRAŽEN PETROVIĆ