

R. (No. 9)

v.

IAEA

128th Session

Judgment No. 4200

THE ADMINISTRATIVE TRIBUNAL,

Considering the ninth complaint filed by Mr R. R. against the International Atomic Energy Agency (IAEA) on 18 September 2018 and corrected on 16 November 2018;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal and Article 7 of its Rules;

Having examined the written submissions;

CONSIDERATIONS

1. In May 2017 the complainant filed a request for review regarding the outcome of a recruitment process, which the Director General rejected in April 2018. Against this decision, the complainant lodged an internal appeal with the Joint Appeals Board (JAB) on 5 April 2018, received by the JAB on 8 May 2018. The complainant subsequently challenged the composition of the JAB but was informed on 6 July 2018 that his objections were not justified.

2. On 18 September 2018 the complainant filed a complaint with the Tribunal under Article VII, paragraph 3, of the Tribunal's Statute, impugning an implied decision to dismiss his appeal. However, what the complainant actually argues is that the internal appeal process was paralyzed and that an exception should be made to the requirement, set

forth in Article VII, paragraph 1, of the Tribunal's Statute, that internal remedies must be exhausted before filing a complaint with the Tribunal. He submits that, although he had done his utmost to fulfil that requirement, the internal process was not completed. In this respect, his main argument is that the JAB was not able to reach its decision with the three-month statutory limit as required by Staff Rule 12.01.1(D)(9), and that this failure prevented the IAEA from rendering the final decision one month later as required by Staff Rule 12.01.1(D)(10).

3. The complainant's approach is mistaken. It is firmly established in the case law that the rules governing the receivability of complaints filed with the Tribunal are established exclusively by its own Statute (see, for example, Judgment 3889, consideration 3). The mere fact that the organization did not respect the time limits set out in its own Staff Rules does not mean that the internal procedure was necessarily paralyzed. There is nothing in the file indicating that on 18 September 2018 the internal appeal process was paralyzed and, in fact, the JAB had to deal first with the objection as to its composition, which is a preliminary question that had to be resolved before proceeding with the examination of the substance of the appeal. This was done on 6 July 2018. Even if the statutory time limit was not respected, which is doubtful in the present case, an argument based on an inordinate and inexcusable delay may only be accepted where the complainant "shows that the requirement to exhaust the internal remedies has had the effect of paralyzing the exercise of her or his rights. It is only then that she or he is permitted to come directly to the Tribunal where the competent bodies are not able to determine an internal appeal within a reasonable time, depending on the circumstances. A complainant can make use of this possibility only where [she or] he has done his utmost, to no avail, to accelerate the internal procedure and where the circumstances show that the appeal body was not able to reach a decision within a reasonable time [...]" (see Judgment 3558, consideration 9 (emphasis added), and the case law cited therein).

4. The complaint is therefore clearly irreceivable and must be summarily dismissed in accordance with the procedure provided for in Article 7 of the Rules of the Tribunal.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 23 May 2019, 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 3 July 2019.

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

HUGH A. RAWLINS

DRAŽEN PETROVIĆ