Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

H. (No. 2)

v.

WTO

133rd Session **Judgment No. 4462**

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr K. H. against the World Trade Organization (WTO) on 24 July 2019, the WTO's reply of 22 October, the complainant's rejoinder of 20 November 2019, the WTO's surrejoinder of 27 January 2020, the complainant's further submissions of 18 February 2021 and the WTO's final observations thereon of 25 March 2021;

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 Director-General's decision of 2 May 2019 not to modify his performance evaluation report for 2017 and not to renew his fixed-term contract.

The complainant joined the WTO in early January 2011 on a short-term contract. On 1 September 2011 he was awarded a fixed-term contract for two years and on 1 October 2012, at his request, he was transferred to the Registry, which is within the Official Documents and Records Section, itself part of the Languages, Documentation and Information Management Division (LDIMD).

From 2011 to 2015, the complainant received good performance evaluation reports every year (rating 3: "fully meets required performance standards"). However, the complainant only achieved the final overall rating of 2 ("partly satisfactory") in his performance evaluation report for 2016. The complainant's first complaint to the Tribunal against this decision was dismissed on the merits by Judgment 4144, delivered in public on 3 July 2019.

In the meantime, the complainant's contract was renewed on 30 August 2016 for two years, and on 4 May 2017 he was officially notified of his objectives for 2017. His attention was drawn to the need to improve the points on which he had been criticised in his performance evaluation report for 2016.

On 25 July 2017 the complainant also received three emails from the Director of LDIMD. The Director informed him that, on the basis of his "partly satisfactory" rating for 2016, he would not be recommended for a regular contract at this stage. He was also told that if he were to receive a "partly satisfactory" or "unsatisfactory" rating in his 2017 evaluation, his contract would be terminated with at least two months' notice. In addition, the complainant was notified that senior management was monitoring his professional conduct in view of potentially false accusations he had made against his supervisor and his disobedience to management.

The complainant was placed on sick leave on 31 July 2017.

On 19 January 2018 the Director of LDIMD invited the complainant to return to work but in another post, as the complainant had requested. After he refused and was informed that in these circumstances he was considered to have abandoned his post, he eventually agreed to return but initially on a part-time basis, for medical reasons, from 9 April to 3 July 2018. The WTO subsequently refused to validate the full-time sick leave claimed by the complainant.

On 21 March 2018 the complainant met his Chief of Section, as his second-level supervisor, to discuss his performance evaluation report for 2017.

On 18 June 2018 the Director of LDIMD endorsed the Chief of Section's evaluation report on the complainant for 2017, for which he was hence given a final overall rating of 2, "unsatisfactory".

The Appointment and Promotion Board subsequently issued a recommendation that the complainant's contract should not be renewed in the form of a regular contract on the ground that the conditions set out in Staff Rule 104.2(b) were not satisfied. This provision allows the Director-General to grant a regular contract to staff members upon completion of five years of continuous service under fixed-term conditions and who, by their qualifications, performance and conduct, have fully demonstrated, on the basis of their performance evaluation reports, their suitability and have shown that they meet the required standards of competence, integrity and efficiency.

By memorandum dated 3 July 2018, the Director of the Human Resources Division (HRD), referring, inter alia, to the emails of 25 July 2017, informed the complainant of the Director-General's decision, taken on 29 June 2018 on the recommendation of the Appointment and Promotion Board, not to grant him a regular contract and not to extend his fixed-term contract.

On 17 July 2018 the complainant requested the Director-General to reconsider the final overall rating of "unsatisfactory" in his performance evaluation report for 2017. This request for review was rejected on 14 August 2018. The complainant then contested that decision before the Joint Appeals Board.

On 27 August 2018 the complainant filed a request for review of the decision of 3 July 2018 informing him that his contract would not be renewed. This request was rejected on 26 September 2018. On 23 October 2018 the complainant likewise contested this decision before the Joint Appeals Board.

The complainant's appointment was terminated on 31 October 2018 following an extension of his contract of which he was notified on 9 July 2018 and which was intended to ensure compliance with the notice period prescribed in the Staff Regulations.

In its report of 3 April 2019, the Joint Appeals Board decided to join the complainant's two internal appeals. With regard to the evaluation report for 2017, the Board stated that it was unable to recommend that the Director-General change the complainant's overall rating. The Board considered, first, that the contested report was not tainted by the procedural or substantive errors alleged by the complainant and, second, that his conduct was the main cause for the deterioration of the working environment within the service. In respect of the decision not to renew the fixed-term contract, the Board found that this decision had a sound basis and that, in particular, it had not been established that it was motivated by prejudice, malice or abuse of authority on the part of the Director-General.

By letter of 2 May 2019, the complainant was informed of the Director-General's decision to endorse both the Board's recommendations and the grounds on which they were based and, as a result, to maintain the original decisions not to renew his fixed-term contract and not to review his performance evaluation report for 2017. That is the impugned decision.

The complainant requests the Tribunal to set aside the Director-General's decision of 2 May 2019. He also requests the cancellation of the overall "unsatisfactory" rating awarded in his performance evaluation report for 2017 and the removal of this report, and any references to it, from his file. The complainant seeks a five-year extension of his contract or, alternatively, an award of damages equivalent to five years' salary including all related emoluments. The complainant seeks compensation of 50,000 Swiss francs in moral damages and an award of 5,000 Swiss francs in costs. The complainant requests that the Tribunal order the Organization to pay interest at the rate of 5 per cent per annum from 3 July 2018 until the sums due are paid and that the Tribunal declare all sums paid exempt from taxation in Switzerland. Lastly, the complainant seeks such other relief and redress as the Tribunal may deem necessary.

The WTO requests the Tribunal to dismiss all the complainant's pleas and claims as unfounded.

CONSIDERATIONS

1. The complainant requests the Tribunal to set aside both aspects of the Director-General's decision of 2 May 2019.

He further seeks:

– the cancellation of the overall rating of "unsatisfactory" in his performance evaluation report for 2017 and the removal of this report, and references to it, from his file;
– a five-year extension of his contract or, alternatively, an award of damages equivalent to five years' salary including all related emoluments;
– the award of various sums in moral damages and costs.

2. The complainant requests oral proceedings. The Tribunal notes, however, that the parties have presented sufficiently extensive and detailed submissions and documents to allow the Tribunal to be properly informed of their arguments and the evidence. Accordingly, the application for oral proceedings is rejected.

3. The complainant has requested the Tribunal to order the WTO to produce Annex 7 to the performance evaluation report for 2017 and the Information Management Service "General Guideline" referred to by his supervisor in that report.

However, an examination of the performance evaluation report at issue shows that this Annex 7, entitled "Special Annex of 401 pages in Excel", is a document produced by the complainant himself during his overall performance evaluation for 2017. In these circumstances, the fact that this annex was not submitted by the WTO to the Tribunal is not such as to adversely affect him.

Furthermore, the WTO states that the Information Management Service "General Guideline" is an "uncodified practice". The Tribunal takes note of this and will consider, if necessary and in due course, what action should be taken in view of the absence of this document from the WTO's evidence.

4. In his rejoinder, the complainant also requests that the memorandum from the Head Doctor of the WTO's Medical Service be disregarded in the proceedings. It transpires, however, from an examination of the complainant's third complaint before the Tribunal, which is the subject of Judgment 4463, also delivered in public today, that the complainant was informed on 9 June 2020 that the WTO had decided unilaterally to remove the disputed document from wherever it might be held in the Organization's internal files and records, including the complainant's medical file.

In view of the above and the WTO's clearly expressed intention no longer to rely on this document, the Tribunal will therefore disregard it.

5. The complainant's pleas can be identified as follows:

(1) the wrongful limitation by the Joint Appeals Board of the scope of its review when considering his internal appeals;

(2) a breach by the WTO of its own procedures, including those set out in various provisions of Administrative Memorandum No. 967 concerning performance management, when drawing up the complainant's performance evaluation report for 2017;

(3) a breach of the duties of care and good faith, as the complainant was not given reasonable time to improve;

(4) errors of law affecting the decision to refuse to renew his fixed-term contract;

(5) a breach of the principle of proportionality when that decision was taken;

(6) the error of law – raised by the complainant in his further submissions – which the Director-General committed by terminating the complainant's fixed-term contract when he was on sick leave;

(7) the non-compliance with Staff Rule 111.2(a) of the date for the expiry of the notice period stated in the decision refusing to renew the fixed-term contract.

6. In his first plea, the complainant criticises the Joint Appeals Board for incorrectly confining itself, like the Tribunal, to a limited review of the lawfulness of the decisions challenged before it.

On this point, the Tribunal observes that, although the Board stated in its report that it would use, inter alia, the same criteria as the Tribunal in this area, the Board expressly pointed out that, pursuant to Article 17 of its Rules of Procedure, it could also base its conclusions on equity. This shows that the Board did not refuse to take into account considerations of equity when issuing its conclusions in this case.

The Board did make the entirely legitimate point in respect of the appraisal of an official's performance by her or his supervisors that it would not conduct a *de novo* review of that appraisal, which it could not do in any case, since it was not its task to appraise the official's performance in her or his job for itself.

However, the Board systematically analysed the errors of law, fact and assessment of the facts relied on by the complainant in his internal appeals and found, in particular, that the shortcomings for which he was criticised over the period in question were sufficiently proven and of such a nature as to establish that the contested decisions were lawful.

Lastly, after a full and thorough re-examination of the procedure involved in drawing up the performance evaluation report for 2017, the Board found that none of the legal and factual arguments directed against that procedure could be considered well founded and that the same applied to the objections which the complainant had raised specifically against the Director-General's decision.

That the Board did not misjudge the scope of its role as an internal appeal body is further confirmed by the report it drew up in connection with its review of the complainant's evaluation procedure for 2017, in which the Board referred several times to the numerous questions it had put during the proceedings to all the parties involved.

In the light of the foregoing, the first plea must be considered unfounded (see, to the same effect, Judgment 4144, consideration 4, delivered on the complainant's first complaint).

7. In his second plea, the complainant submits that the WTO failed to comply with its own procedures, in particular those laid down in various provisions of aforementioned Administrative Memorandum No. 967, when drawing up his performance evaluation report for 2017. He raises the following objections: (1) no mid-term review was undertaken in 2017, although Article 16 of the Memorandum states that such a review is mandatory in cases of underperformance by a staff member; (2) in breach of Articles 18 and 22 of the Memorandum and Annex 3 thereto, no performance improvement plan was put in place when the performance evaluation report for 2016 was finalised in May 2017 even though the complainant had only received an overall rating of "partly satisfactory" in that report; (3) in breach of Article 24 of the Memorandum and Annex 2 thereto, the complainant received no formal warning except the overall rating of "partly satisfactory" in his performance evaluation report for 2016; (4) since the improvement in the complainant's performance was assessed over a period of less than three months (from the beginning of May 2017, when he was notified of the evaluation for 2016, to 31 July 2017, when he went on full-time sick leave for the rest of 2017), the WTO did not comply with the timeframe prescribed by the Memorandum for the staff member concerned to improve her or his performance; (5) the author of the evaluation report in the 2017 evaluation procedure was not in a position to appraise the complainant properly since he had been appointed to that role less than one month before the report was drawn up; and (6) the fact that when evaluating the complainant, this person referred to an Information Management Service "General Guideline" which cannot be proven to exist in writing.

8. The Tribunal points out first of all that there are two aspects to the impugned decision in this case: the award of an overall rating of "unsatisfactory" to the complainant in his evaluation for 2017 and the non-renewal of his fixed-term contract. It follows that the content of the Joint Appeals Board's report of 3 April 2019, as well as its considerations, conclusions and recommendations, must be strictly analysed and interpreted according to whether the Board intended to refer to either the overall final rating awarded in the evaluation report

for 2017, or the non-renewal of the contract, or both. The Tribunal has taken care to proceed in this manner when considering the various contentions made by the complainant in support of his second plea, which, it should be made clear, concerns only the lawfulness of the final overall rating awarded in the evaluation report for 2017.

9. In this connection, the Tribunal recalls its case law in this area: "The principles governing the Tribunal's consideration of challenges to staff performance appraisal reports are well settled. Indeed, they are discussed in Judgment 3378, consideration 6. The Tribunal recognises that such reports are discretionary and will set aside or amend a report only if there is a formal or procedural flaw, a mistake of fact or law, or neglect of some material fact, or misuse of authority, or an obviously wrong inference drawn from the evidence" (see Judgment 3842, consideration 7). The Tribunal has also held that as a rule "he who approves [a staff member's appraisal report] will grant the reporting officer great freedom of expression. The official's observations on the report may in some cases serve to correct any error of judgment that may have been made. It will be right not to approve a report only if the reporting officer made an obvious mistake over some important point, if he neglected some essential fact, if he was grossly inconsistent or can be shown to have been prejudiced. And he need not be deemed prejudiced just because his assessment for one period is not the same as another reporting officer's opinion of the same official for an earlier or later period" (see Judgment 724, consideration 3; see also Judgment 2318, consideration 4).

It is in the light of this case law that the Tribunal will examine the complainant's contentions in his second plea.

10. The relevant provisions of the Staff Rules and Administrative Memorandum No. 967 are as follows:

"**[Staff] Rule 105.1**

Performance evaluation

(a) Performance shall be evaluated on the basis of the duties and responsibilities as set forth in the job description, the tasks performed, the professional conduct of the staff member and the staff member's potential to assume other responsibilities.

(b) The staff member and the supervisor shall maintain a continuing dialogue with respect to the staff member's performance. If necessary, the staff member and the supervisor shall identify in writing the areas where performance is less than satisfactory and the actions to be taken to improve performance."

Administrative Memorandum No. 967

"18 [...] If the overall performance is 'Partly Satisfactory (2)' or 'Unsatisfactory (1)', a performance improvement plan must be put in place. [...]"

"**Formal Performance Improvement Procedure**

Step 1: Face-to-face discussion

20. On any occasion in the course of the performance evaluation cycle where performance is below the required standard, the supervisor should draw this to the attention of the staff member, clearly explaining in what way the performance has failed to meet expectations, indicate the improvement needed, seek the staff member's comments, seek agreement on appropriate solutions and discuss any training support needed where applicable. Although this is a face-to-face discussion, the supervisor or director should make a note of the content and date of the discussion.

Step 2: Advance warning

21. Where, after the face-to-face discussion, performance is again or continues to be below the required standard, the supervisor should again raise the issue with the staff member, refer to the face-to-face discussion, further explain carefully the problems, specify the improvement needed, seek the staff member's comments, identify appropriate solutions and discuss any training needed if applicable. The supervisor shall clarify that this constitutes an advance warning. The advance warning shall be recorded in the form of a written note, separate from the [performance evaluation report] form. A copy of the advance warning note is provided to the staff member who should acknowledge receipt. It will be retained by the supervisor and the director of the Division concerned and will be also be sent to HRD. At this point, the staff member should be given a timeframe in which to improve his/her performance. Should the supervisor confirm improvement in the staff member's performance, the note will be removed from the staff member's official status file and destroyed.

Step 3: First formal warning [...]

22. If underperformance persists after the advance warning, the supervisor will issue a first formal warning, outlining in sufficient detail the performance gaps to be addressed. The staff member's comments should also be recorded in a note to file. The supervisor or director establishes a performance improvement plan [...] in consultation with the staff member, and assisted by the Human Resources Division as appropriate, with specific and measurable goals and targets for improvement over a defined review period. [...]

Step 4: Second formal warning

24. Should there be insufficient improvement in the staff member's performance after the first formal warning, a second formal warning will be issued by the supervisor. The performance improvement plan will be reviewed, and clear measurable targets must be set with specified timeframes. [...]

Step 5: Administrative decisions

25. Should there be insufficient improvement in performance after the second formal warning, the Human Resources Division will meet with the supervisor and director and the staff member concerned to determine the administrative measures to be taken.

[...]"

11. With regard to the first contention, concerning the failure to conduct a mid-year review in 2017, the Tribunal first observes that the evaluation process for 2016 lasted until the beginning of May 2017, at which point the complainant received the final overall rating of "partly satisfactory". It therefore stands to reason that his objectives for 2017 could not be formally set until May 2017, even though the complainant was placed on full-time sick leave from 31 July 2017. Furthermore, it is clear from the evidence and the above account of the facts that the complainant had, since 2016, been informed on several occasions of the unsatisfactory aspects of his professional conduct towards his colleagues. He had hence at least been informed of this objective for 2017, and it was the final overall rating for this very objective that led to the final overall rating of "unsatisfactory" awarded in the evaluation report for 2017. In such circumstances, the WTO cannot reasonably be blamed for not having organised a mid-year review. The complainant's first contention is unfounded.

12. Similar considerations apply to the second contention, which alleges a failure to draw up a performance improvement plan for 2017. Although the WTO does not provide formal proof that such a plan was established in consultation with the complainant and assisted by HRD as appropriate, pursuant to Article 22 of Administrative Memorandum No. 967, the evidence adduced by the Organization makes it possible at least to establish that the objectives to be achieved in 2017 were discussed at various meetings between the complainant and his supervisor in the early months of 2017. In addition, team-building sessions for the complainant and his colleagues were scheduled for August 2017, which the complainant was unable to attend on account of his health. Similarly, in an email dated 29 July 2017, the complainant complained about his working environment and sought a transfer to another department within the Division, with the aim of improving the overall final rating to be awarded in his 2017 evaluation.

The Tribunal further notes, first, that the complainant's actions did not include mentioning a performance improvement plan for 2017 and, second, that in a memorandum dated 21 August 2017, the Director of HRD informed him that the Director-General had instructed his Director of Division and his supervisor to discuss a performance improvement plan for 2017 with him.

Since the complainant was placed on full-time sick leave from 31 July 2017 until the end of that year, it can be considered that, even if no performance improvement plan for 2017 could be formally established, this does not in itself, in view of the specific circumstances of the case, constitute a sufficient ground to find the evaluation report for 2017 unlawful. There is no reason to believe that the Organization did not make every effort in this case to comply as far as possible with the procedure to be followed in this matter.

The second contention is also unfounded.

13. With regard to the third contention, it should first be recalled that, in aforementioned Judgment 4144, the Tribunal considered that the performance evaluation and the performance improvement plan – which must be preceded by "advance warning" and two "formal

warnings" – stem from two separate procedures and that it follows that these warnings cannot be regarded as a precondition for a final overall evaluation of the annual performance as "unsatisfactory". However, given that the Tribunal stated in the same judgment that this does not alter the fact that, whenever possible and useful, a written warning should be given before a non-positive performance assessment, it should be noted that, in this case, the complainant in fact received at least two written warnings in the first seven months of 2017: the first when he was notified in early May 2017 of the final overall rating in his evaluation for 2016, and the second when he received the emails from the Director of LDIMD dated 25 July 2017. It should also be borne in mind that the complainant was subsequently placed on full-time sick leave from 31 July 2017 to 21 March 2018. While this circumstance clearly cannot be blamed on the complainant, it made it impossible for the WTO in any case to send him further written warnings after 31 July 2017. The third contention is therefore not established.

14. Contrary to what the complainant alleges in his fourth contention, the actual period of work during which his performance could be assessed in 2017 was from 1 January 2017 to 31 July 2017, that is, seven months (which is one month longer than the minimum period of six months prescribed by Article 10 of Administrative Memorandum No. 967), not three months. It was not possible to evaluate the complainant over a longer period since he was on full-time sick leave from 31 July 2017. This contention is also unfounded.

15. With regard to the fifth contention, it is correct that the author of the evaluation report was not appointed to undertake that task until less than one month before the formal preparation of the report. However, this appointment was amply warranted by the continuity of the service and by the fact that the complainant's usual supervisor, namely his chief of service, considered it more appropriate to withdraw from the procedure after he was informed that the complainant had accused him of assault. Moreover, the author of the evaluation report was the chief of section and therefore the second-level supervisor of the service to which the complainant belonged, which implies that he was

not unaware of the complainant's situation, as is further evidenced by the various exchanges of emails that took place between him and the complainant before the evaluation report for 2017 was finalised. The fifth contention cannot therefore be upheld.

16. Lastly, in respect of the sixth contention, even assuming that the Information Management Service "General Guideline" – the existence in writing of which the WTO admits it cannot establish – should be disregarded, this would clearly not be sufficient on its own to warrant the setting aside by the Tribunal of the final overall rating awarded to the complainant for 2017. Apart from the fact that his supervisor expressly informed him that what was contained in this "General Guideline" merely expressed every staff member's general duty to do everything possible to respond constructively to requests made of her or him, the Tribunal notes that the overall final rating awarded in the evaluation report for 2017 is based on numerous other criticisms which by themselves are sufficient to support the conclusion that the award of the overall final rating of "unsatisfactory" does not appear unreasonable. The sixth contention is also not established.

17. It follows from all the foregoing considerations that the complainant's second plea is unfounded.

18. In respect of the complainant's third plea concerning the lawfulness of the non-renewal of his fixed-term contract, the Tribunal reiterates that, under its case law, an employee who is in the service of an international organisation on a fixed-term contract does not have a right to the renewal of the contract when it expires (see, for example, Judgment 3444, consideration 3). It is likewise well settled in the Tribunal's case law that "an organisation has a wide discretion in deciding whether to renew a fixed-term appointment and its right to refuse to renew can be based on unsatisfactory performance". It follows that "such a discretionary decision can be successfully impugned [only] if it is fatally flawed by, for example, procedural defects, a failure to take account of some essential fact, abuse or misuse of authority, or if it was based on an error of fact or of law" (see Judgments 1262,

consideration 4, 3586, consideration 6, 3679, consideration 10, 3743, consideration 2, and 3932, consideration 21).

The Tribunal has also consistently held that "an organisation cannot base an adverse decision on a staff member's unsatisfactory performance if it has not complied with the rules established to evaluate that performance" (see Judgment 3252, consideration 8, and the case law cited therein, Judgment 3932, consideration 21, and the case law cited therein, and Judgment 4289, consideration 7).

19. The complainant submits that the WTO breached its duties of care and good faith by not granting him reasonable time to improve his performance.

The Tribunal observes first of all that it has decided, in this judgment, to dismiss the complaint insofar as it is directed against the final overall rating of "unsatisfactory" awarded in the complainant's performance evaluation report for 2017, just as it previously dismissed a complaint directed against the final overall rating of "partly satisfactory" awarded in the evaluation report for 2016. The Tribunal also points out that the objectives for 2017 were set and notified to the complainant at the beginning of May 2017 and that the complainant was, at the very least, given almost three months (from 4 May to 31 July 2017) to improve. The Tribunal notes in this regard that the complainant subsequently went on full-time sick leave for the remainder of 2017 and the main part of 2018 that preceded the expiry of his contract, but that was a circumstance over which WTO had no control. In these circumstances, the Tribunal considers that the complainant was informed in good time of the need to improve his behaviour towards his colleagues and management.

This third plea is therefore unfounded.

20. In support of his fourth plea, the complainant alleges that various errors of law affected the decision of 29 June 2018 not to renew his fixed-term contract: (1) the decision was unlawful because it was based not only on the allegations of unsatisfactory performance but also on the complainant's request for a preliminary opinion from the WTO's Office of Internal Oversight (OIO) on 7 July 2017; (2) the complainant

should have been given an opportunity to be heard on the OIO's findings and to express his objections to them; (3) the OIO's investigation did not comply with the confidentiality rules prescribed in this matter; and (4) the OIO's decision did not state that it was appealable.

21. The Tribunal observes that the Director-General's reference to the OIO's letter is only one of the various reasons given for his conclusion that the complainant did not display the conduct necessary to have his fixed-term contract renewed and still less to receive a regular contract. These other reasons, including the evaluation reports for 2016 and 2017, are sufficient on their own to show that the Director-General's decision was well founded, hence all of the complainant's contentions in support of his fourth plea are irrelevant.

22. In support of his fifth plea, the complainant alleges a breach of the principle of proportionality in respect of the criticism on the basis of which his contract was not renewed.

The Tribunal reiterates the case law already quoted in consideration 18, above, under which "an organisation has a wide discretion in deciding whether to renew a fixed-term appointment and its right to refuse to renew can be based on unsatisfactory performance" (see Judgment 3743, consideration 2, and the case law cited therein). In this case, it transpires from the Tribunal's examination of the complainant's other pleas that the Director-General could reasonably consider that the complainant's fixed-term contract should not be renewed on the basis of the unsatisfactory nature of his conduct towards his colleagues. The Tribunal also notes that the Director-General merely followed the Appointment and Promotion Board's recommendations to that effect.

The fifth plea is therefore unfounded.

23. In his sixth plea, the complainant submits that the Director-General committed an error of law by terminating his fixed-term contract while he was on sick leave.

The evidence shows that when the Director-General took the decision on 29 June 2018 not to extend the complainant's fixed-term contract, the complainant had been working part-time for medical reasons since 9 April 2018 and continued to do so until 3 July 2018. He was therefore not on sick leave.

The fact that the complainant was deemed to be on sick leave on the date when his contract expired in any event has no bearing on the lawfulness of the decision of 29 June 2018, which is impugned in this complaint.

It follows that the complainant's sixth plea is also unfounded.

24. In his seventh and last plea, the complainant submits that the decision not to renew his fixed-term contract should be set aside because the date stated for the notice period to expire does not comply with Staff Rule 111.2(b), which provides that "[i]f a fixed-term contract is not to be extended, the expiration date shall be confirmed to the staff member in writing wherever possible three months beforehand, and in any event no less than two months beforehand".

The Tribunal notes, first of all, that the provision in question concerns only the determination of the date on which a fixed-term contract expires, not the date of the decision to terminate such a contract. Apart from the fact that the complainant does not state specifically how this provision was infringed in the present case, it appears in any event that the complainant acknowledges that he was informed on 3 July 2018 that his fixed-term contract would not be renewed with effect from 31 October 2018. The Tribunal therefore fails to see how this provision was not observed.

The seventh plea is also unfounded.

25. It follows from the foregoing that the complaint must be dismissed in its entirety, without there being any need to rule on the WTO's objections to receivability.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 22 November 2021, Mr Patrick Frydman, Vice-President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 27 January 2022 by video recording posted on the Tribunal's Internet page.

(Signed)

PATRICK FRYDMAN JACQUES JAUMOTTE CLÉMENT GASCON

DRAŽEN PETROVIĆ