

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

T. (No. 9)

v.

IOM

135th Session

Judgment No. 4651

THE ADMINISTRATIVE TRIBUNAL,

Considering the ninth complaint filed by Ms C. T. against the International Organization for Migration (IOM) on 25 May 2022;

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

Having examined the written submissions of the complainant;

CONSIDERATIONS

1. The complainant, who is represented by counsel, has filed a complaint directly with the Tribunal, impugning what she considers to be the implied rejection of an appeal that she lodged with the Joint Administrative Review Board (JARB) on 11 February 2022 concerning an earlier decision, based on the conclusions of an investigation, to reject as unsubstantiated the allegations of harassment, retaliation and abuse of authority she had brought against her supervisor.

2. The complainant contends that her complaint is receivable under Article VII, paragraph 3, of the Statute of the Tribunal, which provides that “[w]here the Administration fails to take a decision upon any claim of an official within sixty days from the notification of the claim to it, the person concerned may have recourse to the Tribunal and

her or his complaint shall be receivable in the same manner as a complaint against a final decision. [...]”.

3. At this stage of the internal procedure, however, the provisions of Article VII, paragraph 3, were in any case inapplicable (see, for example, Judgment 4271, consideration 3, and the case law cited therein). It is clearly established in the case law that where the Administration takes any action to deal with a claim, this step in itself constitutes a decision upon the claim within the meaning of Article VII, paragraph 3, of the Statute, which forestalls an implied rejection that could be referred to the Tribunal. In particular, when an organisation forwards a claim before the expiry of the prescribed period of sixty days to the competent authority, this step in itself constitutes a decision upon the claim within the meaning of this provision.

4. The complainant also seeks to establish that the appeal process is paralysed and that she is therefore entitled to bring her complaint directly before the Tribunal, in accordance with the case law.

This argument must be rejected. It is true that, notwithstanding the provisions of Article VII, paragraph 1, of the Statute, if the competent authority is not able to determine an internal appeal within a reasonable time, depending on the circumstances, an official may file a complaint directly with the Tribunal, but this applies only where the official has done her or his utmost, to no avail, to accelerate the internal procedure and consequentially establishes that the appeal process is paralysed (see, for example, Judgment 3558, consideration 9, and the case law cited therein). In the present case, the complainant’s counsel did exactly the opposite: by raising objections based, in particular, on the Administration’s failure to comply with the time limits for proposing the composition of the JARB, or for forwarding the appeal to the JARB, he has effectively stalled the process, whereas there is no evidence to suggest that the JARB is not willing to examine the complainant’s appeal or that a decision on the appeal will not be taken within a reasonable time.

The appeal process should be continued and any steps in the process may be challenged before the Tribunal only in the context of a complaint impugning the decision to be taken at the end of the internal appeal procedure (see, for example, Judgment 4570, consideration 3, and the case law cited therein).

5. Since the complainant has not exhausted the internal remedies available to her, as required by Article VII, paragraph 1, of the Statute of the Tribunal, her complaint is clearly irreceivable and must be summarily dismissed in accordance with the procedure set out 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 11 November 2022, Mr Michael F. Moore, President of the Tribunal, Mr Patrick Frydman, Vice-President of the Tribunal, and Ms Hongyu Shen, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 1 February 2023 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

PATRICK FRYDMAN

HONGYU SHEN

DRAŽEN PETROVIĆ