

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**J.**  
**v.**  
**SPC**

**136th Session**

**Judgment No. 4673**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms A. J. against the Pacific Community (SPC) on 8 July 2021, SPC's reply of 7 January 2022, the complainant's rejoinder of 10 May 2022, corrected on 20 May, and SPC's surrejoinder of 1 August 2022;

Considering Articles II, paragraph 5, 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 challenges the decision to terminate her appointment during her extended probation period.

On 8 July 2020, SPC sent an email to the complainant, informing her that it wished to offer her the post of Finance and Administration Assistant. The email stated that the proposed contract was subject to six months' probationary service. The SPC Staff Regulations and Manual of Staff Policies were attached to that email.

On 24 July 2020, the complainant signed her contract of employment, which stated that the terms and conditions of employment set out in the Staff Regulations and the Manual of Staff Policies applied to her appointment and that her contract was for three years "subject to the

satisfactory completion of six (6) months' probationary service". The complainant took up her post on 3 August 2020.

On 16 December 2020, the complainant met with her supervisor, at the supervisor's request, for a "progress meeting, a little over halfway through [her] probation period". A probationary review meeting was held with the complainant on 21 January 2021, during which various areas of improvement, both technical and behavioural, were discussed and recorded in an appraisal report.

By letter of 29 January 2021, the complainant was informed that, following the assessment of her probationary performance, SPC was not able to confirm her appointment and that her probation period would therefore be extended until 2 May 2021. During February 2021, the complainant and her supervisor had various exchanges to draw up a performance improvement plan, the final version of which was signed on 22 February 2021.

On 9 April 2021, the complainant was informed of SPC's decision to end her appointment within the probation period, pursuant to Article 6.1 of Chapter XIV of the Manual of Staff Policies, and that 8 May 2021 would be her last day of service.

On 25 May 2021, the complainant wrote to the Deputy Director-General of SPC to submit a grievance and request a review of the decisions taken in her regard, namely the decision of 29 January 2021 to extend her probation period and the decision of 9 April 2021 to end her employment, stating that she was doing so pursuant to Chapters XI and XIII of the Manual of Staff Policies. On 7 July 2021, SPC replied to her, stating that her request for review was not only irreceivable, since it had been made out of time, but also manifestly unfounded. SPC also stated that the complainant's grievance could not be processed as it had not been submitted until after she had left the organisation, which therefore precluded any possibility of mediation.

In her complaint, the complainant seeks the setting aside of the decision of 9 April 2021. She asks the Tribunal to order SPC to pay her the whole of the remuneration which would have been payable to her until 2 August 2023, the date on which her contract of employment was due to expire. She also claims compensation of 1,500,000 CFP francs

(around 12,500 euros) for the moral injury she alleges she has suffered and the payment of 350,000 CFP francs (around 3,000 euros) for costs.

SPC asks the Tribunal to dismiss the complaint as irreceivable for failure to exhaust internal means of redress and, subsidiarily, as unfounded in its entirety.

### CONSIDERATIONS

1. The complainant seeks the setting aside of the decision of 9 April 2021 by which the organisation ended her probation period, pursuant to Article 6.1 of Chapter XIV of the SPC Manual of Staff Policies and determined that 8 May 2021 would be her last day of service. The complainant seeks payment of the whole of her remuneration until the date on which her contract of employment was due to expire, together with moral damages for the injury allegedly suffered and costs.

2. In the light of the written submissions and evidence on file, the Tribunal notes the following in relation to the context in which this complaint was filed.

3. In the first place, the contract of employment signed by the complainant on 24 July 2020 expressly referred to the fact that the other terms and conditions set out in the SPC Staff Regulations and Manual of Staff Policies applied to her appointment. The Regulations and the Manual had been sent to the complainant on 8 July 2020 together with SPC's offer to appoint her to the post of Finance and Administration Assistant.

4. In the second place, although the complainant's contract of employment referred to a probation period of six months from the date she took up her post on 3 August 2020, a letter sent to her by SPC on 29 January 2021 informed her that her probation period would be extended until 2 May 2021 since "[SPC] [was] unable to confirm [her] probation following [her] performance assessment".

This extension of the complainant's probation period was made pursuant to Articles 6.1, 6.2, 6.3(b) and 6.5 of Chapter IV of the SPC Manual of Staff Policies. The written submissions show that the complainant did not dispute the extension of the probation period at the time it was made, either by submitting a grievance or by requesting a review.

5. In the third place, the complainant confirmed in her grievance and her request for review that the letter of 9 April 2021 from SPC informing her of the termination of the probation period and the end of her service had been handed to her in person on 12 April 2021, in accordance with Article 6.1 of Chapter XIV of the Manual of Staff Policies. Article 6.1 of Chapter XIV, to which that letter referred, deals with termination of the contract during the probation period and specifies that the Director-General may, during that period, terminate a staff member's contract at any time without cause and with one month's notice.

6. In the fourth place, on 25 May 2021 the complainant sent to SPC what she described as a grievance and a request for review of the decisions of 29 January 2021 and 9 April 2021. She specified that the grievance and request for review were submitted pursuant to Chapters XI and XIII of the Manual of Staff Policies.

In relation to grievances, Article 3.6 of Chapter XI of the Manual provides as follows:

“3.6 If the grievance relates to a decision the **Director-General** made under a regulation or policy that adversely impacts the individual **staff member**, the **staff member** may request a review of the decision under *Chapter XIII Reviews and appeals*.”

In relation to reviews and appeals, Chapter XIII of the Manual sets out a three-stage process for administrative decisions concerning staff members. In this connection, Articles 1.1(b) and 1.3 in Part A of Chapter XIII, Articles 3.1 and 3.2 in Part B and Article 8 in Part C provide as follows:

- “A. Requests for review
1. Requests for review of administrative decisions (other than performance rating)
  - 1.1 A **staff member** may request a review of a decision, where:  
[...]
    - b. the **staff member**'s employment conditions have been adversely impacted by a decision made under a regulation or policy (paragraph XI.3.6), including the imposition of disciplinary actions under *Chapter XII Investigations and disciplinary actions*.  
[...]
  - 1.3 The **staff member** must make the request for review within 14 calendar days of notification of the original decision. The **Director-General** may, where circumstances warrant and in the interests of procedural fairness, extend the timeframe to request a review.  
[...]
- B. Review Panel
3. Right to request further review
  - 3.1 If a **staff member** is not satisfied with the outcomes of a review under XIII.A, the **staff member** may request a review by the Review Panel  
[...]
  - 3.2 The **staff member** must make the request in writing within 21 calendar days of notification of the decision to be reviewed. The **Director-General** may, where circumstances warrant and in the interests of procedural fairness, extend the timeframe to request a review.  
[...]
- C. Appeals
8. Appeals to the International Labour Organisation Administrative Tribunal (ILOAT)
  - 8.1 If following the Review Panel process the **staff member** remains unsatisfied with the outcome, the **staff member** may file an appeal to the ILOAT.  
[...]

7. Lastly, in the fifth place, SPC's response to the grievance and request for review was sent to her by email on 7 July 2021, to the email address used by the complainant when she submitted her grievance and

request for review on 25 May 2021. In that response, the organisation informed her that her grievance was time-barred since she was no longer in the service of SPC, while her request for review had not been made within the period laid down by the provisions of the Manual of Staff Policies, being 14 calendar days. SPC concluded that the request for review had been made one month after the permitted deadline, besides being manifestly unfounded in that it concerned separation from service during the probation period, pursuant to Article 6.1 of Chapter XIV of the Manual.

In the complaint filed before the Tribunal on 8 July 2021, the complainant did not mention that response from the organisation. She explains in her complaint that “[she has] not to this day heard back from [SPC]” and that “[a]s the deadline of [90] days from the notification of the impugned decision is approaching, waiting any longer for SPC’s response would mean that the exercise of my rights would be paralysed”.

She subsequently stated, in an email of 11 October 2021 addressed to the Registrar of the Tribunal, that she had received a letter from SPC “in response to the grievance that she had submitted [to the SPC] on 25 May 2021” and asked whether it was possible to add this to her complaint. In his response of 12 October 2021, the Registrar pointed out to the complainant that filing a complaint before the Tribunal did not absolve her from the requirement to exhaust internal means of redress, to which the complainant responded on 15 October 2021 in the following terms:

“The response from SPC in its letter indicated that it was unable to accept my claim and refused to initiate internal proceedings. Therefore, I did not pursue it.”

8. Given this sequence of events, SPC submits that the complaint is irreceivable as a result of the complainant’s failure to satisfy the requirements of Article VII of the Statute of the Tribunal.

The Tribunal finds that the complaint is indeed irreceivable.

9. First, the complainant has misinterpreted the meaning of Article VII, paragraph 3, of the Statute of the Tribunal. The claim she made to the Administration of SPC, in this case being her grievance and her request for review, was notified to the organisation on 25 May 2021. At the date on which her complaint was filed before the Tribunal, 8 July 2021, less than 60 days had elapsed from the date on which the Administration received notification of the complainant's claim.

Furthermore, SPC's response to that claim is dated 7 July 2021, the day before the complainant's complaint was filed before the Tribunal. Although, in her written submissions, the complainant submits that she had no knowledge of that response because she had no access to the internet as a result of recently moving house, her exchanges with the Tribunal nevertheless confirm that she sent an electronic version of her submissions to the Tribunal by email of 21 July 2021, using the same email address as that to which SPC's response had been sent.

Consequently, even if her explanation, about which SPC expresses certain reservations, can be accepted, it must be concluded that the complainant omitted to wait for the 60 days prescribed by Article VII, paragraph 3, of the Statute of the Tribunal to elapse, meaning that no decision had arisen by implication at the time she filed her complaint.

10. Secondly, the written submissions also show that, following the Organisation's decision of 7 July 2021 rejecting her request for review, the complainant, as the Organisation rightly points out, failed to avail herself of the internal means of redress allowing her to request a review by the Review Panel pursuant to Article 3.1 of Part B of Chapter XIII of the Organisation's Manual of Staff Policies, which, furthermore, she confirmed in her email of 15 October 2021 sent to the Registrar of the Tribunal, where she stated that she had not followed up on SPC's letter of response because the Organisation "was unable to accept [her] claim and refused to initiate internal proceedings".

11. Lastly, as SPC notes, in submitting her request for review on 25 May 2021, the complainant disregarded Article 1.3 of Part A of the aforesaid Chapter XIII, which provides that the staff member must

make the request for review within 14 calendar days of notification of the original decision. The decision to end the complainant's employment was taken on 9 April 2021 and notified to her no later than 12 April 2021, as she stated in her written submissions, so the deadline of 14 days had clearly expired when she submitted her request for review. The complainant's challenge to the decision of 29 January 2021 extending her probation period, made on 25 May 2021, in other words, more than three months after the prescribed deadline, was also time-barred.

12. The Tribunal has repeatedly emphasised the importance of the strict observance of applicable time limits when challenging an administrative decision. In Judgment 4103, consideration 1, the Tribunal stated the following in this regard:

“The complaint is irreceivable as the complainant failed to exhaust all internal means of redress in accordance with Article VII, paragraph 1, of the Tribunal's Statute. The complainant's grievance was time-barred when he submitted it [...] on 23 December 2014. Under Article VII, paragraph 1, of the Tribunal's Statute, a complaint will not be receivable unless the impugned decision is a final decision and the complainant has exhausted all the internal means of redress. This means that a complaint will not be receivable if the underlying internal appeal was not filed within the applicable time limits. As the Tribunal has consistently stated, the strict adherence to time limits is essential to have finality and certainty in relation to the legal effect of decisions. When an applicable time limit to challenge a decision has passed, the organisation is entitled to proceed on the basis that the decision is fully and legally effective (see Judgment 3758, under 10 and 11, and the case law cited therein).”

(See also Judgment 4426, consideration 9, in this regard.)

13. As the Tribunal also recalled in Judgment 4184, consideration 4, 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 (see also, to the same effect, Judgment 3704, considerations 2 and 3). The rationale for this principle is that time limits are an objective matter of fact and strict adherence to them is necessary to ensure the stability of the parties' legal relations.



14. In the present case, the complainant was mistaken when she wrote in her complaint on 8 July 2021 that she could not wait any longer for SPC's response because the exercise of her rights would be paralysed, or that the lack of response to her claim at that time allowed her to rely on an implied decision rejecting her claim for the purposes of Article VII, paragraph 3, of the Statute of the Tribunal. The complainant's claim did not go unanswered during the period of 60 days laid down by that provision. On the contrary, it was rejected on 7 July 2021, of which the complainant was, in all likelihood, made aware no later than 21 July 2021. Paragraph 3 only applies where the Administration does not respond to an initial claim within the stated period; it does not apply to situations where the Administration does respond to the claim within the 60-day period, as was the situation in the present case (see Judgment 4319, consideration 6).

15. In addition, the complainant misinterprets Article VII of the Statute of the Tribunal by asserting that she did, in any event, file her complaint before the Tribunal within the 90-day period provided for in that article. The Tribunal has consistently held that, under the requirement in paragraph 1 of that article, the person concerned must first exhaust such other means of redress as are open to her or him. Accordingly, before filing a complaint with the Tribunal, the complainant had first to challenge the decision of 9 April 2021 in the way prescribed in SPC's Staff Regulations and Manual of Staff Policies, in other words within the 14 calendar days laid down by Article 1.3 of Part A of Chapter XIII. She also had to make use of her right to request a review by the Review Panel, as provided for in Article 3.1 of the same chapter, by making the request in writing within 21 calendar days of notification of the decision to be reviewed, which she received no later than 21 July 2021, something which she clearly failed to do (see, by way of example, Judgment 4517, consideration 5).

16. The complainant cannot validly claim that, in the circumstances of the case, she was misled by the Organisation with regard to exercising her right of appeal. Although the Tribunal's case law recognises that there are some exceptions to the general principle that the time limits

set for internal appeal procedures must be strictly observed where an organisation has misled a staff member, depriving her or him of the possibility of exercising a right of appeal in violation of the principle of good faith (see aforementioned Judgment 4184, consideration 4), those exceptions are not applicable in the present case.

Although the complainant submits that she was verbally informed that the decision of 9 April 2021 was “irrevocable”, it is not, in any event, reasonable to infer from that that she could have been misled as to the potential exercise of her right of appeal, as she claims. Similarly, her assertion that she was not advised of the means of internal redress available to her is formally denied by the Organisation and is not supported by any evidence. Lastly, the evidence shows that the complainant was well aware of the provisions of SPC’s Staff Regulations and Manual of Staff Policies. The Regulations and the Manual had indeed been sent to her before she even signed her contract of employment and were specifically referred to in that contract. Furthermore, in her claim of 25 May 2021, she herself had clearly identified the relevant chapters of the Manual of Staff Policies on which she was relying, including Chapter XIII, which deals with reviews and appeals.

As the Tribunal has repeatedly stated, officials are expected to know the rules and regulations to which they are subject and ignorance of the law is no excuse (see Judgments 4324, consideration 11, and 4032, consideration 6).

17. It follows from the foregoing that the complaint must, in the circumstances, be dismissed as irreceivable for failure to exhaust the internal means of redress offered by the applicable provisions, without there being any need to rule on the pleas relating to the merits of the dispute nor on the organisation’s request for one item of evidence in the file to be declared inadmissible in these proceedings.

#### DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 11 May 2023, 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 7 July 2023 by video recording posted on the Tribunal's Internet page.

*(Signed)*

PATRICK FRYDMAN    JACQUES JAUMOTTE    CLÉMENT GASCON

DRAŽEN PETROVIĆ