

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

**R. (No. 7)**

**v.**

**IAEA**

**136th Session**

**Judgment No. 4702**

THE ADMINISTRATIVE TRIBUNAL,

Considering the seventh complaint filed by Mr R. R. against the International Atomic Energy Agency (IAEA) on 4 September 2018 and corrected on 11 October, the IAEA's reply of 18 February 2019, the complainant's request for the production of additional documents of 17 March 2019, the President of the Tribunal's decision of 17 April to order the IAEA to produce certain documents and to suspend the time limit for filing the rejoinder pending their receipt by the complainant (on 5 August 2019), the complainant's rejoinder of 23 October 2019 and the IAEA's surrejoinder of 3 February 2020;

Considering the complainant's letter of 21 April 2023 to the Registrar of the Tribunal seeking the recusal of several judges;

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 appoint Mr K. to a position for which the complainant did not apply.

At the material time, the complainant was on a temporary reassignment as Nuclear Support Systems Analyst at grade P-3 to the Office of the Deputy Director General, Department of Nuclear Energy (O/DDG-NE), under the supervision of Mr K.

On 12 September 2016, the IAEA issued vacancy notice 2016/0559 for the position of Nuclear Support Systems Coordinator at grade P-5 within the Division of Planning, Information and Knowledge Management (NEPIK). On 15 March 2017, the complainant was informed that Mr K. had been appointed to the position.

On 29 April 2017, the complainant requested the Director General to review the decision to appoint Mr K. In his request he asserted that the harassment complaints he filed against Mr K. had not been taken into account, that Mr K.'s candidacy had been sponsored by a Member State in breach of the IAEA's Statute and that Mr K. did not meet the academic qualifications as specified in the vacancy notice. The complainant also explained that he did not apply for this position because he did not meet the academic qualifications as specified in the vacancy notice. Finally, he stated that the appointment of Mr K. resulted in the end of his temporary reassignment and his return to the Nuclear Information Section (NIS), which adversely affected him.

On 24 May 2017, the Director General replied that the harassment allegations raised by the complainant had been referred to the Office of Internal Oversight Services (OIOS) for investigation and that, as he was consequently not in a position to comment on the substance of this matter, he would revert to the complainant once he had reviewed the final investigation report.

On 21 June 2017, the complainant filed an appeal before the Joint Appeals Board (JAB) against the response of 24 May from the Director General.

In its report of 30 October 2017, the JAB recommended to dismiss the complainant's appeal as irreceivable on the ground that the complainant lacked a cause of action, since he had never applied for the position. In its report, the JAB also referred to two OIOS final investigation reports, which had concluded that the complainant's harassment allegations against Mr K. were unsubstantiated, as were his allegations about

Mr K.'s lack of appropriate qualifications for the post. OIOS had also found unsubstantiated the complainant's suggestion that Mr K. was responsible for the termination of his temporary reassignment, as the complainant remained on his temporary reassignment position.

By a letter dated 21 November 2017, the Director General informed the complainant that he had decided to dismiss his appeal as irreceivable pursuant to the JAB's recommendation.

On 30 April 2018, the Director General informed the complainant that he was now in a position to provide him with his decision with regard to his request of 29 April 2017 and that he found no basis to review the appointment of Mr K. The Director General enquired whether the complainant wished to file a complaint directly before the Tribunal, in light of the fact that the JAB had already heard an appeal with regard to this matter. Following confirmation by the complainant, the Director General informed him, by a letter dated 30 May 2018 (which he received on 7 June 2018), that he allowed him to challenge the decision of 30 April 2018 directly before the Tribunal.

On 4 September 2018, the complainant filed a complaint before the Tribunal impugning the decision of 30 April 2018.

At the Tribunal's request, the IAEA provided a copy of the complaint to Mr K. and invited him to make observations, which he did on 14 January 2019.

The complainant asks the Tribunal to set aside the impugned decision and the decision to appoint Mr K. He also asks the Tribunal to order that the recruitment for that position be carried out anew, while having him appointed to the position ad interim. He claims material damages in an amount equivalent to the difference in salary between the amount he would have earned had he been promoted to the contested position and the amount he actually earned. He also claims moral damages, consequential damages and exemplary damages, as well as costs, with interest on all sums awarded.

The IAEA requests the Tribunal to dismiss the complaint as irreceivable for lack of a cause of action and, subsidiarily, as entirely devoid of merit.

## CONSIDERATIONS

1. In both his brief and his rejoinder, the complainant admits that he did not apply for the post advertised in vacancy notice 2016/0559, but claims that he had been deterred from pursuing the post under duress, out of fear of retaliation by Mr K.

2. The complainant has not adduced any persuasive evidence to prove that he was prevented from pursuing the recruitment process by duress. On the contrary, the complainant admitted that the first reason why he started a draft application but never completed it was that he did not meet the requirement of an advanced university degree as stipulated by the vacancy notice.

3. As found by the Tribunal in another case by the same complainant, “[t]he Tribunal has stated, in consideration 2 of Judgment 3449, that ‘[a]ny employee of an international organisation who is eligible for a post may challenge an appointment to that post, regardless of his or her chances of successful appointment to it (see Judgment 2959, under 3). In order to be entitled to take such action, however, he or she must have applied for the post or, failing that, must have been prevented from doing so through no fault of his or her own.’” (see Judgment 4520, consideration 6). As the complainant, who did not apply for the contested post, provides no evidence that he was prevented from doing so through no fault of his own, he lacks a cause of action. The complaint must therefore be dismissed.

4. In another judgment given this session, Judgment 4701, the Tribunal has addressed the question whether two of the judges of this panel should recuse themselves. It was decided that they should not.

## DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 9 May 2023, Mr Michael F. Moore, President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 7 July 2023 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

HONGYU SHEN

DRAŽEN PETROVIĆ