

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

K.
v.
FAO

136th Session

Judgment No. 4733

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr C. K. against the Food and Agriculture Organization of the United Nations (FAO) 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;

CONSIDERATIONS

1. At the material time, the complainant was serving on a National Project Personnel (NPP) contract expiring on 31 December 2021 as a Finance and Administrative Assistant with the FAO Representation in Malawi. His contract expressly provided that he had “the legal status of an independent contractor and [was] not an official of [the] FAO” and that any dispute arising out of the interpretation or execution of the contract was to be settled by mutual agreement by the parties or, failing such agreement, by arbitration.

On 14 December 2021, the complainant was notified of the FAO’s proposal to terminate his NPP contract for unsatisfactory service. On 28 February 2022, after he had submitted his comments on the proposal,

he received the final termination decision of his contract, effective on the same day.

2. The complainant filed his complaint with the Tribunal on 25 May 2022, asking it to award him moral and material damages, as well as costs. In support of these claims, he contends, among other things, that the FAO breached his right to due process and disregarded its own rules and regulations and he asserts that he was subject to unequal treatment.

3. Pursuant to Article II, paragraph 5, of its Statute, “[t]he Tribunal shall [...] be competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials”. The Tribunal is therefore not competent to hear complaints filed by individuals who do not have the status of an official of an organization recognizing its jurisdiction (see Judgment 3049, consideration 4).

4. In his complaint, the complainant provides a copy of his NPP contract, which included general conditions as well as a specific clause on his legal status. In this clause it was clearly indicated that the complainant was retained to work as “an independent contractor” and not as “an official of [the] FAO”. Although certain other clauses in the contract were not incompatible with the existence of an employer-employee relationship (especially those referring to specific provisions of the FAO Administrative Manual), they cannot be construed as negating the clear indication in the specific clause on the complainant’s legal status. He is not an official and cannot invoke the Tribunal’s jurisdiction.

5. It follows from the foregoing that the complaint 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 24 May 2023, Mr Michael F. Moore, President of the Tribunal, Mr Patrick Frydman, Vice-President of the Tribunal, 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.

MICHAEL F. MOORE

PATRICK FRYDMAN

CLÉMENT GASCON

DRAŽEN PETROVIĆ