

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

P.
v.
IOM

136th Session

Judgment No. 4735

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr A. S. P. against the International Organization for Migration (IOM) on 10 September 2022 and corrected on 25 October 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. The complainant is a former staff member of IOM, at its Country Office in Kabul (Afghanistan), who resigned from his post with effect from 16 August 2017. His resignation took place in the context of an ongoing investigation undertaken against him for alleged “acts [of] fraud or abuse of assets or funds”. Before leaving IOM, he had applied for the position of Senior Treasury Assistant, for which a vacancy notice had been published in February 2017, but which was ultimately abolished in September 2017 due to internal restructuring.

On 17 August 2017, the complainant joined the United Nations Children’s Fund (UNICEF) Office in Kabul. On 7 December 2017, while the IOM investigation procedure had ended and had resulted in a withholding of his final emoluments by the Organization to obtain

partial compensation for the losses it suffered, the complainant requested the Director General of IOM to take a final decision on his disciplinary case and asked to be provided with the result of the competition regarding the Senior Treasury Assistant position. Having received no reply, on 10 February 2018, he reiterated his requests.

In April 2018, UNICEF allegedly received anonymous reports from IOM denouncing the complainant's behaviour before leaving service. On 14 June 2018, the latter was placed on special leave without pay and then dismissed by UNICEF with effect from 23 September 2018.

2. In the present complaint, the complainant asserts, among other things, that the IOM position of Senior Treasury Assistant, which was finally readvertised on 28 July 2022 after its temporary abolition, should be assigned to him "as [he] was the front-runner and first candidate" in the previous selection process and had "score[d] 100 marks in the interview".

3. In the complaint form, the complainant identifies the impugned decision as being the implicit rejection of his claims contained in a letter he addressed to IOM on 29 July 2022, that is, the day after the new vacancy notice for the position of Senior Treasury Assistant was published, in which he claimed "[his] right to continue with [the] previous recruitment stage" for the position in question.

4. The Tribunal notes that, at the time when he filed his complaint, the complainant was a former official of IOM. Although the Tribunal is open to former officials of international organizations recognising its competence, a complaint filed by a former official must, like any other complaint, invoke non-observance, in substance or in form, of the terms of the complainant's appointment and/or of provisions of the Staff Regulations, as required by Article II, paragraph 5, of the Tribunal's Statute (see, for example, Judgments 4201, consideration 3, 2333, consideration 8, and 1105, consideration 2). In this case, however, the complainant relies on an alleged "right" to recruitment arising out of his former employment which does not exist in any form whatsoever.

Moreover, he does not put forward any arguments deriving from a breach of his former contract (see, for a similar case, Judgment 1941, consideration 6). The Tribunal is therefore not competent, under Article II of its Statute, to hear this complaint.

5. It follows from the foregoing that the complaint must be summarily dismissed in accordance with the procedure provided for in Article 7 of the Rules of the Tribunal.

6. In these circumstances, the oral proceedings requested by the complainant would serve no useful purpose and his application to that effect is rejected.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 25 May 2023, 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 7 July 2023 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

PATRICK FRYDMAN

HONGYU SHEN

DRAŽEN PETROVIĆ