

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

A. B. (E.K.) (Nos. 1 and 2)

v.

OACPS

137th Session

Judgment No. 4758

THE ADMINISTRATIVE TRIBUNAL,

Considering the first and second complaints filed by Ms E. K. A. B. on 15 June 2022 against the Organisation of African, Caribbean and Pacific States (OACPS) and corrected on 14 September, the OACPS's replies of 28 October 2022, the complainant's rejoinders of 23 December 2022 and the OACPS's surrejoinders of 9 February 2023;

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 of the Secretary-General to end her employment and the breach of a promise of employment allegedly made to her.

On 1 February 2016 the complainant joined the Organisation as private secretary to the Assistant Secretary-General of the Department of Political Affairs and Human Development in the ACP Secretariat, under a contract for an indefinite period. Article 11 of the contract stated that it was governed, inter alia, by the Belgian Law of 3 July 1978 on employment contracts and, consequently, the complainant was subject to the Belgian social security system. From 29 August 2016 she was temporarily transferred to the role of Secretary to the Internal

Auditor and the Financial Controller. She maintains that this transfer was due to the “derogatory, insulting and even bullying” behaviour of the Assistant Secretary-General. According to the complainant, this behaviour continued after she was reinstated to her post on 8 March 2020. After the Organisation began a restructuring exercise to offset the loss of subsidies and reduce its operating costs, the complainant, like other members of staff, received a letter dated 8 September 2020 notifying her that her contract would be terminated with effect from 27 December 2020. She claims that a promise was, however, made to her that she would be reappointed in around March or April 2021.

On 25 March 2021 the complainant was invited to the Organisation’s premises to return her key and clear her desk. It was then that her former supervisor allegedly told her that her post had been abolished. That same day, she contacted the Administration about the new contracts of appointment that had been offered to some of her colleagues and about the calculation of her termination entitlements. On 31 May 2021 the complainant, acting through her counsel, served a notice on the Secretary-General and the Chairman of the Committee of Ambassadors, primarily seeking her reinstatement. She also made allegations of harassment and asked for the sums paid on her dismissal to be corrected. The complainant’s claims were rejected by letter of 14 June 2021. However, the Organisation suggested holding a meeting with her to discuss opportunities should a post become vacant. By email of 15 June 2021, the complainant challenged the letter of 14 June and declared her intention to bring proceedings before the French-speaking labour court in Brussels “in the absence of a concrete [and] coherent offer”. By email of 21 June 2021, the Organisation again suggested meeting with the complainant and then, on 9 July 2021, made a bank transfer to her of 7,748 euros.

The complainant initiated proceedings before the French-speaking labour court in Brussels which, by a judgment delivered on 15 March 2022, declared that it had no jurisdiction to hear the claim and ordered the complainant to pay the costs of the procedure together with a procedural compensation of 1,200 euros. The complainant appealed

against that decision and proceedings were still pending at the time when the present complaints were filed.

On 15 June 2022 the complainant filed two complaints before the Tribunal impugning, respectively, the decisions of 8 September 2020 and 14 June 2021.

The complainant asks the Tribunal to set aside the decisions of 8 September 2020 and 14 June 2021 and to reinstate her to her post. She seeks an award of 17,886.72 euros, plus interest from 27 December 2020, by way of protection indemnity in connection with her request for educational leave. In addition, she claims the “provisional award of 76,018.56 euros” in damages for the material injury she considers she has suffered. The complainant also claims compensation of 50,000 euros for the moral injury resulting from what she considers to be the wrongful and discriminatory termination of her contract and for the failure to honour the promise of employment made to her. Subsidiarily and in the event of not being reinstated to her post, she claims material damages of 134,150.40 euros and moral damages of 50,000 euros. In addition, she claims compensation for the Organisation’s failure to manage the psychosocial risks to which she was exposed and the sum of 2,400 euros, being the amount payable under the Belgian collective labour agreement No. 10. The complainant also asks the Tribunal to order the payment of various sums, plus interest from 27 December 2020, less any sum already paid to her in this respect. These are as follows: “the provisional sum of one euro” for the balance of payment in lieu of notice and the “provisional sum of one euro” for arrears of pay due to the non-indexation of salaries, 430.97 euros for the outstanding balance of the additional allowance payable under the Staff Regulations, the outstanding balance of 901.26 euros for her end-of-year bonus, 245.28 euros for the outstanding balance of her remuneration for December 2020, 3,682.96 euros to reimburse her for deductions made without due cause and 3,000 euros by way of a bonus for additional duties undertaken. The complainant claims 25,000 euros in moral damages for having been deprived of an income. She further seeks the award of 7,500 euros in costs.

The OACPS asks the Tribunal to dismiss the complaints as irreceivable or, subsidiarily, as unfounded. It requests that the complainant be ordered to pay it the “provisional sum of one euro”, together with 7,500 euros by way of costs

CONSIDERATIONS

1. Apart from the setting aside of the OACPS’s decisions of 8 September 2020 and 14 June 2021, the complainant seeks, in each of her complaints, the payment of various sums intended to provide redress for the material and moral injury she alleges she has suffered as a result of the aforementioned decisions and, more generally, of the Organisation’s conduct towards her.

2. Given that the complaints essentially seek the same redress and are largely based on the same arguments, the Tribunal considers it appropriate that they be joined to form the subject of a single judgment.

3. Pursuant to Article VII, paragraph 1, of the Statute of the Tribunal, “[a] complaint shall not be receivable unless the decision impugned is a final decision and the person concerned has exhausted such other means of redress as are open to her or him under the applicable Staff Regulations”.

Consistent precedent has it that the issue of receivability of a complaint can be raised by the Tribunal of its own motion, even if it has not been raised by the Organisation, when irreceivability is clearly apparent from the evidence submitted (see Judgment 3648, consideration 5; see also, to the same effect, Judgments 3139, consideration 3, 2567, consideration 6, 1095, consideration 18, and 60, consideration 1).

The Tribunal notes that, in the present case, it is apparent from the evidence submitted that the impugned decision of 8 September 2020, of which the complainant was notified that same day, was not challenged in time under the means of internal redress available to OACPS staff pursuant to Article 22 of the Staff Regulations and

Annex VIII thereto, even though the complainant, who was still a member of the Organisation's staff at the time, had access to them.

The first complaint, against the decision of 8 September 2020, is therefore irreceivable for failure to exhaust internal means of redress, as the arguments raised by the complainant in it cannot invalidate this finding.

4. Under Article VII, paragraph 2, of the Statute of the Tribunal, “[t]o be receivable, a complaint must [...] have been filed within ninety days after the complainant was notified of the decision impugned”.

The Tribunal notes that the impugned decision of 14 June 2021 rejected an internal complaint lodged by the complainant even though she had not been a member of the Organisation's staff since 27 December 2020 and therefore no longer had access to the means of internal redress (see Judgment 4582, consideration 4). Given that the complaint against that decision was dated 15 June 2022, it was not filed with the Tribunal within the period prescribed therefor.

The second complaint, against the decision of 14 June 2021, therefore appears to be irreceivable for failure to comply with time limits.

5. Nevertheless, the complainant seeks to circumvent this irreceivability by arguing that the limitation period for appealing to the Tribunal could not run in her case. She relies on four elements to give credence to her argument.

6. In the first place, she submits that the means of legal redress were not brought to her attention in a sufficiently explicit manner for her to be able to actually make use of them.

However, the Tribunal notes that there is no notification requirement under its Statute or under the Organisation's own rules in relation to means of legal redress.

7. In the second place, the complainant considers that, in the present case, it was all the more important to notify her of the means of legal redress given that there was some uncertainty about the correct

legal means of challenging the impugned decisions. In this regard, she refers to precedent, including a judgment of the French-speaking labour court in Brussels of 12 September 2016 in which the court declared that it had jurisdiction to hear a similar claim, and to the approach taken by the Organisation in two previous cases before the Tribunal (which led to Judgments 3845 and 3984), and submits that the delay in filing her complaint before the Tribunal was the result of a legitimate belief that proceedings needed to be brought before the Belgian courts.

However, although there may have been some initial confusion on this point, this was clearly no longer the case by the time the impugned decisions of 8 September 2020 and 14 June 2021 were sent to the complainant. As she herself admits in her submissions, she could not at that time have been unaware of the aforementioned Judgments 3845 and 3984 in which the Tribunal confirmed that it was competent to hear “all disputes” arising between the Organisation and its staff.

8. In the third place, the complainant considers that the time limit for filing a complaint before the Tribunal was interrupted by her bringing proceedings before the French-speaking labour court in Brussels, within the time limit prescribed therefor.

However, since, as already explained, it was not because the complainant had been misled by the Organisation that she brought proceedings before the French-speaking labour court in Brussels, her doing so did not affect the time limit for filing the complaint before the Tribunal (see Judgment 727).

9. In the fourth and last place, the complainant submits that, at the time she filed her complaint with the Tribunal, she was still awaiting the outcome of the promise the Organisation had made to reappoint her and this was the reason why she did not file the complaint sooner.

However, in view of the Tribunal’s relevant case law (see, in particular, Judgments 4665, consideration 6, 4253, consideration 6, 3619, considerations 14 and 15, and 3148, consideration 7) and the evidence on file, there is nothing to indicate that, in the present case, a formal

promise was made to the complainant by the Organisation to reappoint her at a later date.

10. In the light of all the foregoing, it must be considered that the complaints are irreceivable in their entirety.

It follows that there is not, in any event, any need to grant the complainant's request for documents, which concerns the merits of the case.

11. On the basis of Article 7B of the Rules of the Tribunal and Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (GDPR), the Organisation requests that "all names of individuals (and all personal data) are anonymised when any decisions made in this case (judgments [and] orders) are published".

However, pursuant to paragraph 1 of Article 7B of the Rules of the Tribunal, only a complainant or intervener may request anonymity, since they are the only parties whose names are referred to in the Tribunal's judgments.

In addition, in view of its special nature and its specific Statute, the Tribunal is not, in any event, bound by the provisions of EU law, such as those contained in the GDPR (see Judgments 4493, consideration 10, 4167, consideration 7, and 3867, consideration 2).

As a consequence, it is not appropriate to grant the request made by the Organisation, given that this judgment has not led to the disclosure of the identity of any third parties or of any personal data relating to them.

12. Lastly, the Tribunal considers that, although the complaints are irreceivable, they are not vexatious. It follows that the Organisation's counterclaim for the complainant to be ordered to pay it the "provisional sum of one euro" together with 7,500 euros in costs must be dismissed.

DECISION

For the above reasons,

The complaints are dismissed, as is the OACPS's counterclaim.

In witness of this judgment, adopted on 31 October 2023, Mr Patrick Frydman, President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Mirka Dreger, Registrar.

Delivered on 31 January 2024 by video recording posted on the Tribunal's Internet page.

(Signed)

PATRICK FRYDMAN JACQUES JAUMOTTE CLÉMENT GASCON

MIRKA DREGER