

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

H. (No. 3)

v.

WHO

138th Session

Judgment No. 4910

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Ms J. H. against the World Health Organization (WHO) on 23 September 2023;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal and Article 7 of its Rules;

Having examined the written submissions of the complainant;

CONSIDERATIONS

1. At the material time, the complainant was serving as a technical officer at WHO Headquarters. On 15 October 2019, she submitted a formal complaint of harassment and abuse of authority by her supervisor to the Office of Internal Oversight Services (IOS). In October 2020, following an investigation, IOS sent its report to the Director-General in which it found that the complainant's allegations were substantially founded. It recommended that administrative and/or disciplinary action be taken against the complainant's supervisor. On 3 June 2021, the complainant received the IOS report.

On 1 August 2021, the complainant submitted a request for redress for moral and material damages resulting from the harm she had suffered "as the result of [her] supervisor's behaviour and the unduly extended length of time of the investigation". Her request was rejected

on 9 November 2021 on the grounds that all adequate and necessary steps had been taken to address her formal complaint against her supervisor, who had been dismissed for serious misconduct.

On 5 February 2022, the complainant lodged an appeal with the Global Board of Appeal (GBA), challenging the decision of 9 November 2021. The GBA submitted its report to the Director-General on 7 December 2022. On 30 March 2023, the complainant sent an email to the Director-General's Office asking to be provided with a final decision on her appeal. Referring to Rule 670 of the GBA's Rules of Procedure, she pointed out that the Director-General ought to have informed her of his decision within 60 days following receipt of the GBA report. She reiterated her request directly to the Director-General on 24 April 2023, specifically asking that a final decision be taken by 28 April at the latest.

2. Arguing that no express decision was taken on her claim within the sixty-day time limit provided for in Article VII, paragraph 3, of the Tribunal's Statute, the complainant filed a complaint on 5 May 2023 (her second complaint), requesting that she be awarded moral and material damages.

3. On 2 June 2023, the complainant received the Director-General's final decision on her case, taken on the basis of the GBA report. In that decision, dated 11 May 2023, the Director-General endorsed the GBA's recommendations according to which the complainant should be awarded 9,000 Swiss francs in moral damages and 2,000 Swiss francs in costs. He indicated that this decision could be challenged before the Tribunal within 90 days of receipt. A copy of the decision of 11 May 2023 was submitted to the Tribunal by WHO on 17 August 2023 following a request by the President under Article 7, paragraph 2, of the Tribunal's Rules.

4. On 18 August 2023, the Registrar informed the complainant that the President had decided to apply the summary procedure set out in Article 7 of the Rules of the Tribunal to her second complaint, and drew her attention to the fact that she could file, if she so wished, a new

complaint impugning the Director-General's final decision of 11 May 2023. On 25 August, the complainant asked for clarification. The Registrar responded on 29 August, drawing her attention to the fact that she could impugn the express decision of 11 May, "duly taking into account the statutory time limits".

The complainant eventually filed her third complaint on 23 September 2023, that is to say 113 days after she received notification, on 2 June 2023, of the 11 May 2023 decision. Her second complaint was summarily dismissed in Judgment 4812, delivered in public on 31 January 2024.

5. Article VII, paragraph 2, of the Tribunal's Statute provides that "[t]o be receivable, a complaint must [...] have been filed within ninety days after the complainant was notified of the decision impugned". As the Tribunal has repeatedly stated, for example in Judgments 2722, 2463, 1466, 1106, and 602, time limits are an objective matter of fact and it should not entertain a complaint filed out of time, because any other conclusion, even if founded on considerations of equity, would impair the necessary stability of the parties' legal relations, which is the very justification for a time bar. However, as stated in Judgment 3687, in consideration 10:

"The case law also recognizes that in very limited circumstances an exception may be made to the rule of strict adherence to the relevant time limit. The circumstances identified in the case law are: 'where the complainant has been prevented by *vis major* from learning of the impugned decision in good time or where the organisation, by misleading the complainant or concealing some paper from him or her so as to do him or her harm, has deprived that person of the possibility of exercising his or her right of appeal, in breach of the principle of good faith' (see Judgment 3405, under 17; citations omitted); and 'where some new and unforeseeable fact of decisive importance has occurred since the decision was taken, or where [the staff member concerned by that decision] is relying on facts or evidence of decisive importance of which he or she was not and could not have been aware before the decision was taken' (see Judgment 3140, under 4; citations omitted)."

The Tribunal considers that in the present case there are no circumstances that would have prevented the complainant from filing her third complaint within the time limit set forth by the Statute of the Tribunal.

6. It follows that the complaint is clearly irreceivable and must therefore 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 2024, 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 8 July 2024 by video recording posted on the Tribunal's Internet page.

PATRICK FRYDMAN

JACQUES JAUMOTTE

CLÉMENT GASCON

MIRKA DREGER