

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

M.
v.
WHO

138th Session

Judgment No. 4911

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms F. M. against the World Health Organization (WHO) on 10 October 2023 and corrected on 3 November 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. The complainant joined WHO on 24 April 2018. At the material time, she was serving in the Regional Office for Africa (AFRO) under the supervision of Dr L. In March 2021, she reported to the Office of Internal Oversight Services (IOS) that she had been sexually assaulted by her supervisor on 24 January 2019. Following an investigation, IOS found that there was sufficient evidence to conclude that she had been “sexually harassed [by Dr L.] via sexual assault”. The matter was then referred to the Global Advisory Committee on Harassment (GAC), which, in June 2022, endorsed IOS’s findings and recommended, amongst other things, that disciplinary proceedings be initiated against Dr L.

On 2 March 2023, the complainant was informed about the outcome of the case, particularly the fact that a disciplinary measure had been imposed on her supervisor in accordance with the applicable rules. She received the IOS and GAC reports on 10 May 2023.

On 11 May 2023, the complainant submitted a claim seeking recognition of a service-incurred illness, namely the physical and psychological sequelae of the sexual assault.

By a letter of 15 June 2023, she wrote to the Director of Human Resources and Talent Management requesting details of the disciplinary sanction imposed on Dr L., full reimbursement of all medical costs incurred as a result of the assault, with no time limitation, and payment of an amount of 250,000 United States dollars in moral damages. The Administration acknowledged receipt of this letter on 20 June 2023. In August and September 2023, an exchange of correspondence ensued in which the complainant pressed for a final administrative decision whilst the Administration replied that it was still working on a response and would revert to her shortly.

2. Arguing that no express decision was taken on her claim of 15 June 2023 within the sixty-day time limit provided for in Article VII, paragraph 3, of the Statute of the Tribunal, the complainant filed the present complaint on 10 October 2023, requesting that her medical condition be recognized as service-incurred with all legal effects flowing therefrom, that she be reimbursed all medical or treatment costs incurred as a result of the assault and its sequelae, that she be awarded moral and exemplary damages, and that she be paid costs, together with 5 per cent interest on all amounts due.

3. Article VII, paragraph 3, of the Tribunal's Statute relevantly provides that "[w]here the Administration fails to take a decision upon any claim of an official within sixty days from the notification of the claim to it, the person concerned may have recourse to the Tribunal and her or his complaint shall be receivable in the same manner as a complaint against a final decision".

4. Firstly, the Tribunal considers that the complainant's reliance on Article VII, paragraph 3, of its Statute is misplaced. It is clear from her submissions that several responses were received from the Administration – specifically on 20 June, 8 and 9 August 2023 – within the sixty-day period following the notification of her claim of 15 June 2023. Whilst none of those responses conveyed a final decision, they were sufficient to forestall an implied rejection that could be impugned under Article VII, paragraph 3, of the Statute of the Tribunal (see, for example, Judgments 4621, consideration 2, 4620, consideration 2, 4494, consideration 4, 4174, consideration 4, and 3975, consideration 5).

5. Secondly, and even more fundamentally, under the Tribunal's settled case law, the provisions of Article VII, paragraph 3, must be read in the light of paragraph 1 of that Article and are not applicable where the official concerned can use internal remedies, in which case these must be exhausted, as required under paragraph 1, before a complaint may be filed with the Tribunal (see Judgments 4760, consideration 2, 4517, consideration 4, and 2631, considerations 3 to 5).

6. In the present case, Staff Rule 1225.2 relevantly provides that “[i]f a staff member has submitted a written request relating to the terms of his appointment, the request shall be deemed to have been rejected if no definitive reply is received within [...] sixty (60) calendar days [...]”. Under Staff Rule 1225.3, “[a] request for administrative review must be filed [...] within sixty (60) calendar days of a deemed rejection under Staff Rule 1225.2”. It is clear from these provisions that if, as the complainant contends, WHO failed to respond to her written request of 15 June 2023 within sixty days, that request was deemed to be rejected and it was incumbent on her to file a request for administrative review. In this regard, the Tribunal notes that the complainant expressly referred to Staff Rule 1225.2 in an email of 8 August 2023 and to a future request for administrative review in an email of 2 September 2023. Having not followed the internal procedure, she has failed to exhaust the available internal means of redress.

7. It follows from the foregoing that the complaint is clearly irreceivable and must be summarily dismissed in accordance with the procedure provided for 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