Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

R. M.

v.

South Centre

139th Session **Judgment No. 4919**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms I. T. R. M. against the South Centre on 28 March 2022 and corrected on 11 May 2022, the Centre's reply of 12 September 2022, corrected on 10 February 2023, the complainant's rejoinder of 22 May 2023, the Centre's surrejoinder of 21 August 2023, the complainant's additional submissions of 20 October 2023 and the Centre's final comments of 20 March 2024;

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 not to renew her short-term contract, not to reclassify her position and to reduce her salary in December 2020.

The complainant joined the South Centre on 14 January 2019 as a P-3 Senior Program Officer under a short-term contract expiring on 10 January 2020. She was granted a second contract on 14 January 2020 until 10 January 2021, which she did not sign until 13 March 2020 when the Centre closed due to the COVID-19 pandemic. She initially refused to sign it as it was not, according to her, in line with the promise she was given upon recruitment.

On 26 February 2020, the complainant wrote to her supervisor pursuant to a discussion they had regarding her contract. She formally requested that her position be reclassified from P-3, step 1, to P-4, step 1. Her supervisor replied the following day that she had taken note of the complainant's request and would reply "at earnest".

On 6 May 2020, the complainant wrote to the Executive Director complaining about the toxic work environment alleging inter alia that her supervisor systematically belittled her work. The Executive Director asked the Human Resources Department (HRD) to examine the issues concerned and recommend any further action taken. On 15 May 2020, the Director of HRD informed the Executive Director that a meeting had been organised with the complainant and her supervisor following which the complainant had withdrawn her allegations of working in a toxic environment and both the complainant and the supervisor apologised for any misunderstanding and miscommunications. The matter was therefore closed. On 14 September 2020, the complainant was placed on sick leave and returned to work a few weeks later.

By email of 3 November 2020, the complainant was informed that her short-term contract would not be renewed upon expiry due to the need to reprofile the activities and priorities of the project under which her contract had been issued. She would be paid three months' notice, with the notice period starting as of the date of the email. On 2 December 2020, she filed her first appeal contesting that decision.

Meanwhile, in mid-November 2020, the complainant asked the Administration to take a decision, within ten days, on her reclassification request of 26 February 2020. Based on Staff Regulation 4.1.6, her short-term contract should have been converted into a fixed-term contract as she had served continuously for more than 12 months. She therefore requested the payments, with retroactive effect to 14 January 2020, of all entitlements due to staff holding a fixed-term contract.

On 19 November 2020, the complainant was informed that her request for reclassification was rejected on the ground that her short-term contract was funded from the budget of a project that contemplated a P-3 short-term position and that the position was advertised as such. Hence, she accepted the employment offer knowingly. She was asked

to give the basis for her claim for retroactive payment of benefits owed to fixed-term staff in particular since she had signed her short-term contract without raising that issue. Upon receipt of the information she sent, the Centre informed her, on 1 December 2020, that she was not in continuous employment since there was an interruption between her two contracts. It was again noted that she had not made her request for retroactive payment of fixed-term staff benefits when she signed her second short-term contract, and she was therefore asked to provide the reason for making such request at that point in time, as well as the contractual basis therefor. In mid-December 2020, she filed a second appeal challenging the decisions of 19 November 2020 and 1 December 2020 asking that her post be reclassified at the P-4 level and her short-term contract be converted into a fixed-term contract, effective 14 January 2020 until 10 January 2021, and that she be paid inter alia all legal entitlements for that period.

On 21 December 2020, the complainant became aware that the amount of approximately 850 Swiss francs had been withdrawn from her December 2020 salary, and asked the Administration to pay back that amount as soon as possible. It appears from the record that this deduction was made as a result of the three-day break between her successive contracts. In early January 2021, the Administration replied to the complainant that, for short-term contract staff, the adjustment was made at the end of the year or at the date of departure, whichever was the earlier. This was a standard practice. The Administration rejected the complainant's allegation that the deduction was somehow associated with her filing internal appeals. The three-day period deduction was a "financial adjustment" based on the factual information she had provided. The amount was calculated pro rata on the basis of the basic salary, post adjustment and medical subsidy for the period 1 January 2020 to 31 January 2020. However, the deductions made regarding the medical insurance were for the full month and not on a pro rata basis because it was an "external liability of the Centre on behalf of staff" with the insurer. In January 2021, she filed her third appeal contesting the decision of 21 December 2020. She alleged that her short-term contract should have been converted into a fixed-term contract as of 14 January 2020, and that she should have been paid all the fixed-term

entitlements for the period 14 January 2020 to 10 January 2021. She sought reimbursement of 850 Swiss francs with interest and moral damages for the Centre's failure to abide by its duty of care. She also claimed legal fees.

In its report of 30 December 2021, the ad hoc Appellate Body rejected the complainant's three appeals on the grounds that the Administration acted lawfully, in good faith and complied with its duty of care. Regarding the first appeal, it found that the complainant's claim that she had worked continuously for more than 12 months was not supported by any evidence. Regarding the second appeal, it found no grounds warranting a reclassification of her post to the P-4 level. A reclassification is based on changes in the original job description and a reclassified post needed to be advertised, which had not been the case. Regarding the third appeal, the ad hoc Appellate Body concluded that the Administration's response on the contested payment was in line with established practice. More generally, it found that the complainant's claim that she signed her second short-term contract under duress was not substantiated, neither was the claim for moral damages. Indeed, it was not possible from the documents the complainant had submitted to "tease out incidents or language of discourse" that could have caused her moral damages. It stressed that moral injury should not be confused with a demoralising work environment or "job dissatisfaction". It also rejected the claim for reimbursement of legal fees. The ad hoc Appellate Body's decision was transmitted to the complainant on 30 December 2021.

Sections B and C of Annex VII to the Staff Regulations provide that the decision of the ad hoc Appellate Body shall be final and executory and can be impugned before the Tribunal. Accordingly, the complainant impugns the decision of 30 December 2021 before the Tribunal.

The complainant asks the Tribunal to find that the decision to "prematurely terminate" her contract on 3 November 2020 was unlawful, and order that her contract be extended from 11 January 2021 until 10 January 2022. Alternatively, she seeks compensation in an amount equivalent to 12 months' gross salary, for the loss of a valuable

opportunity to have her contract renewed. She also asks the Tribunal to find that the decision not to convert her short-term contract into a fixed-term contract as of 14 January 2020 was unlawful, and to order, as a consequence, that her contract be considered as a fixed-term contract retroactively to 14 January 2020. She also claims payment of all legal entitlements (such as child allowances, medical insurance premiums, education grant and pension fund contributions) for the period from 14 January 2020 to 10 January 2021, which would have derived from a fixed-term contract. She further asks the Tribunal to find that the decision to reduce her salary was unlawful, and to order that she be paid 850 Swiss francs immediately, with 5 per cent interest from 21 December 2020 until such amount is fully paid to her. Lastly, she claims moral damages and costs.

The South Centre asks the Tribunal to reject the complaint as devoid of merit.

CONSIDERATIONS

1. The complainant was notified by an email dated 3 November 2020 that her short-term contract would not be renewed upon its expiry on 10 January 2021. The stated reason was the need to reprofile the activities and priorities of the project under which her contract was issued. She was informed she would be paid three months' notice. On 2 December 2020, she lodged her first appeal challenging the 3 November 2020 decision. In mid-December 2020, she lodged a second appeal, challenging the decisions of 19 November and 1 December 2020, which respectively rejected her requests for reclassification of her post as well as for conversion of her short-term contract into a fixed-term contract from 14 January 2020 to 10 January 2021, and for retroactive payment of fixed-term staff benefits. In January 2021, she lodged a third appeal, challenging the decision of 21 December 2020 not to pay her salary in full.

The ad hoc Appellate Body rejected the complainant's three appeals in its report dated 30 December 2021, on the grounds that the Administration had acted lawfully, in good faith, and in compliance with its duty of care. Sections B and C of Annex VII to the Staff Regulations provide that the decision of the ad hoc Appellate Body shall be final and executory and can be impugned before the Tribunal. Accordingly, the complainant impugns the 30 December 2021 decision by the ad hoc Appellate Body before the Tribunal. That is the impugned decision.

In the present case, the complainant no longer pursues the non-reclassification issue before the Tribunal.

2. The complainant puts forward five pleas challenging the impugned decision. The Tribunal finds it convenient to consider them in the following order:

(1) The decision not to renew her contract was unlawful.

(2) The decision not to convert her short-term contract into a fixed-term contract was unlawful.

(3) The organization violated its duty of care toward her.

(4) The decision to reduce her salary was unlawful.

(5) The impugned decision violated fundamental principles of law.

3. In her first plea, the complainant challenges the decision not to renew her contract on the grounds that the reasons for non-renewal were vague; the decision was made one day after her return from certified sick leave; she had an expectation that her contract would continue well beyond June 2021; the decision was taken for improper motives; and she was notified of the decision after the deadline provided in the applicable rules.

4. The complainant's first plea is unfounded. According to the Tribunal's firm precedent, a decision not to renew the appointment of a staff member of an international organisation lies within the discretion of its executive head and is therefore subject to only limited review. It may be set aside only if it was taken without authority, or in breach of

a rule of form or of procedure, or was based on a mistake of fact or of law, or if some essential fact was overlooked, or if clearly mistaken conclusions were drawn from the facts, or if there was abuse of authority (see, for example, Judgment 4654, consideration 16, and the case law cited therein). Meanwhile, the case law also repeatedly held that the reason for the non-renewal must be valid (and not an excuse to get rid of a staff member) and be notified within a reasonable time (see Judgments 4503, consideration 7, 3769, consideration 7, 3626, consideration 12, 3586, consideration 10, and 3582, consideration 9).

5. In the present case, the complainant was informed that her contract was not being renewed due to the need to reprofile the activities and priorities of the project under which her contract had been issued. Thus, the Tribunal considers that the complainant's argument that the reasons given for the non-renewal of her contract were vague is not founded. According to the complainant's terms of reference, her position as Senior Program Officer was explicitly tied to a project on the use of "TRIPS [Trade-Related Aspects of Intellectual Property Rights] flexibilities" for access to medicine. The Centre further explained that the project's funding from an external source underwent substantial changes in response to the COVID-19 pandemic, including budget cuts and restructuring. As the complainant's contract expired, it was within the Centre's discretion to decide not to renew her contract in response to the changing needs of the project's implementation. The Tribunal cannot substitute its judgment for that of the Centre, which, after evaluating the project's donor instructions and budgetary constraints, determined that the reprofiled activities and priorities of the project no longer required the complainant's continued employment.

6. Additionally, contrary to the complainant's allegation that she had an expectation that her contract would continue "well after June 2021", there was no objective basis for such an expectation. The two short-term contracts signed by the complainant expressly stated that "[t]his contract [did] not carry any expectancy, legal or otherwise, of renewal". Therefore, she could not expect her contract to be renewed beyond the expiry date.

Staff Regulation 4.1.7 provides that "[f]ixed-term and short-term appointments may carry no assurance of renewal. Staff should be advised in writing about renewal, or non-renewal of their appointment at least three months before the end of their contract". Regulation 9.1 relevantly provides that "[a]ppointments, unless extended, shall terminate on the termination date set out in the Letter of Appointment. Staff members so terminated shall be informed in writing at least three months in advance of the termination date that the appointment shall not be extended." The Tribunal notes that, although the Centre did not inform her three months in advance of the termination date as required by Regulation 9.1, she was paid the equivalent of three months' salary. The Tribunal further notes that while Regulation 9.1.2 mandates three months' advance notice in cases of premature termination when the Centre's interests necessitate it, the provision also allows for an equivalent payment in lieu of notice when justified (Regulation 9.1.2(b)). As Regulation 9.1.2 anticipates the possibility of compensatory payment in lieu of notice under certain conditions, it was open to the Centre to resort to this possibility to provide the compensation in lieu of the three months' advance notice for non-renewal of the complainant's short-term contract.

Regarding the complainant's allegation that the non-renewal decision was taken for improper motives, namely retaliation for her having complained of a toxic working environment, she fails to meet the burden of proof to support such allegations.

Finally, the complainant's argument that the decision was adopted one day after her return from certified sick leave does not establish any flaw.

7. In her second plea, the complainant contends that the decision not to convert her short-term contract into a fixed-term contract was unlawful, citing "Staff Rule 4.1.6". She interprets this provision to mean that short-term appointments exceeding 12 months of continuous service should automatically be converted to fixed-term contracts, making the duration of service the sole condition for conversion without any additional formality. She also asserts that the break between her

two appointments was artificial, as her payslips, leave record, and other relevant documents indicated no actual interruption in her employment.

8. Staff Regulation 4.1.6 relevantly provides as follows:

> "[...] Should a short-term appointment be extended in a manner such that the staff member concerned serves for 12 months or more continuously, the appointment shall be considered a fixed-term appointment from the date 12 months continuous service is reached, as far as the applicability of the Rules is concerned, and related entitlements shall be granted effective as of that date and without retroactivity."

As correctly asserted by the Centre, no uninterrupted contractual relationship exceeding one year existed in this case. The duration of the first contract was from 14 January 2019 to 10 January 2020, and the second contract spanned from 14 January 2020 to 10 January 2021, with neither contract exceeding one year.

9. Regarding the complainant's contention of a "fictitious break" in her contract introduced by the Centre, she argues that the Centre inserted a short break of two weekend days and one weekday between the two contracts. She contends that this was not evidence of a genuine break, but rather that the short break was "designed to avoid the application of the internal rules on conversion of contracts and not to allow [her] to benefit from the advantages related to the conversion of her contract".

10. The Tribunal recalls its precedent that successive short-term contracts, issued without notable breaks, may constitute a continuous employment relationship warranting conversion of the contracts. In such cases, the Tribunal has found – and expressly noted – that a series of short-term contracts renewed continuously, without significant interruption, should be reclassified accordingly (see Judgments 3225, consideration 8, and 3090, consideration 7). For instance, in Judgment 3225, consideration 8, the Tribunal held that the complainant's employment relationship must be reclassified as if she had received a fixed-term contract, given that she was issued short-term contracts over a 13-year period without significant breaks. However, the present case

is different since it does not involve a long period of continuous employment, and a brief interruption was specifically introduced by the Centre to signal two distinct temporary appointments. The evidence on file shows that the complainant was recruited as a short-term staff member; the nature of her short-term contract met the specific needs of the project she participated in; a three-day interruption was intentionally inserted by the Centre to underscore the temporary nature of her position; the complainant signed the second short-term contract without reservation; and she was fully aware that her service was for less than one year. Thus, the Centre's use of a short break between the two short-term contracts cannot be regarded as misuse of the rules governing such contracts.

11. The complainant also asserts that she was obliged to sign the extended contract on 13 March 2020, or else she and her daughter would have been excluded from the health insurance plan. Even if her assertion regarding the health insurance plan were true, as the complainant fails to provide credible evidence to establish that she signed the contract under duress, her allegation on this point must be dismissed.

12. The complainant's second plea is therefore unfounded. Consequently, the related third plea – that the Centre violated its duty of care by misleading her about the absence of a right to convert and by unfairly terminating her contract after her return from sick leave without valid reasons – is also without basis.

13. The complainant's fourth plea concerns the lawfulness of the decision to reduce her salary. She argues that this decision resulted in "unjust enrichment" on the part of the Centre, as she should have been paid for the time effectively dedicated to service, rather than according to the official dates set by the Centre. She further contends that, based on her monthly salary of 7,654.37 Swiss francs, the pro rata payment for three days out of the 31 days in January should amount to 740 Swiss francs rather than the 850 Swiss francs that were deducted.

14. The Centre submits that no "reduction" in her salary was made and that paying for the days of the contract break would have been improper and objectionable to its auditors. Salary adjustments, according to the Centre's accounting practice approved by its auditors, are made only at the end of the fiscal year or at the conclusion of the contract, whichever occurs first. The Centre denies any unjust enrichment, explaining that the discrepancy in calculation is due to the fact that medical insurance is charged for the entire month rather than on a prorated basis, whereas all other components of the salary can be prorated. The Centre emphasizes that this calculation was reviewed during audits, and no questions were raised.

15. The Tribunal finds that the "reduction" of 850 Swiss francs was based on the three-day break between the complainant's short-term contracts to ensure that her remuneration was aligned with the contractual terms. Whether the adjustment was made in January or December does not alter its intent or purpose. The Tribunal is satisfied that the Centre did not achieve any unjust enrichment through its calculation, which excluded medical insurance from the prorated basis. The complainant's fourth plea is therefore unsubstantiated.

16. In her fifth plea, the complainant contends that the impugned decision made by the ad hoc Appellate Body violated fundamental principles of law. She argues that the appeal process was artificial and lacked impartiality; that her due process rights were violated in particular as the Centre's surrejoinder was not provided to her. Additionally, she argues that the final decision lacked sufficient motivation, as the ad hoc Appellate Body's conclusions were limited to a few sentences and failed to provide valid reasons for its findings, leaving her unclear on how the parties' submissions were assessed or whether the Centre introduced new claims or evidence. She claims that undue delay in issuing the final decision warrants an award of moral damages.

17. Regarding the complainant's fifth plea that the impugned decision violated fundamental principles of law, the Tribunal has the following observations.

First, according to the applicable rules set forth in Part B, entitled "Appellate Body", of Annex VII of the Staff Regulations regarding "Disciplinary Measures and Procedures and Appeals Processes", the ad hoc Appellate Body consisted of three members, independent from the South Centre Secretariat, with no evidence whatsoever indicating partiality.

Second, Article 3 of Part B provides that the ad hoc Appellate Body "shall receive the staff member's written appeal, and a written reply thereto by the Chairperson of the Board [...] It may also hear further observations on, or rebuttals to, the initial written submissions, orally or in writing. It may also call for oral testimony from the parties or witnesses [...]". The decision not to hold an oral hearing fell within the ad hoc Appellate Body's statutory discretion.

Third, the ad hoc Appellate Body reviewed all appeals and rejoinders submitted by the complainant from December 2020 to June 2021, as well as the Centre's responses in March and July 2021 and carefully assessed her claims and arguments, making its final decision based on a balanced and thoughtful consideration. Although the reasoning provided was succinct, the decision was nonetheless motivated.

18. However, the Tribunal observes that the complainant is right in asserting that the ad hoc Appellate Body examined the Centre's surrejoinder but failed to provide it to her. This was a breach of the complainant's due process rights. It was not in conformity with the basic principles of a proper adversarial process. This lack of due process alone justifies setting aside the impugned decision of the ad hoc Appellate Body and entitles the complainant to an award of moral damages, which the Tribunal will assess in the amount of 3,000 Swiss francs (see, for a similar situation, Judgment 4588, consideration 13). However, based on the evidence on file, the non-renewal decision is legally justified as, in any event, there was no objective basis to renew her contract beyond the expiry date.

19. Lastly, regarding the complainant's allegation of undue delay, the Tribunal observes that, pursuant to Article 5 of Part B of Annex VII of the Staff Regulations, "[t]he ad hoc Appellate Body shall forward its decision through its Chairperson to the full Board of the South Centre, and to the appellant not later than one month from the date it hears the appeal". Although the requirements of the provision were not met, the delay was not unreasonable as the ad hoc Appellate Body reviewed three appeals within five months of the final response in July 2021. In any event, the complainant does not convincingly demonstrate any adverse effects suffered due to the alleged delay. Therefore, her claim for moral damages is rejected.

20. As the complainant succeeds in part, she is entitled to legal costs in the amount of 8,000 Swiss francs.

21. Finally, the complainant's request for document disclosure is denied as the Tribunal considers that this request concerns an issue which is irrelevant to the outcome of the case.

DECISION

For the above reasons,

1. The impugned decision of 30 December 2021 is set aside.
2. The South Centre shall pay the complainant 3,000 Swiss francs in moral damages.
3. It shall pay the complainant 8,000 Swiss francs in legal costs.
4. All other claims are dismissed.

In witness of this judgment, adopted on 7 November 2024, Mr Patrick Frydman, President of the Tribunal, Ms Rosanna De Nictolis, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, Mirka Dreger, Registrar.

Delivered on 6 February 2025 by video recording posted on the Tribunal's Internet page.

PATRICK FRYDMAN

ROSANNA DE NICTOLIS

HONGYU SHEN

MIRKA DREGER