

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

L.
v.
IOM

139th Session

Judgment No. 4937

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms E. L. against the International Organization for Migration (IOM) on 13 July 2022 and corrected on 8 August 2022, IOM's reply of 14 November 2022, the complainant's rejoinder of 22 March 2023 and IOM's surrejoinder of 3 July 2023;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions;

Considering that the facts of the case may be summed up as follows:

The complainant challenges the decisions to abolish the post she encumbered and to terminate her contract.

The complainant joined IOM in January 2009 as Head of the Support Unit of the Global Forum on Migration and Development (GFMD), at grade P-4. She held a one-year fixed-term appointment which was renewed each year until 2020.

The GFMD was established in 2007 as a voluntary, informal consultative process open to Member States and Observers of the United Nations and selected observer organizations, with the aim of encouraging dialogue and cooperation amongst its participants concerning, in particular, the links between migration and development. It is chaired on a rotational basis by the government of a Member State,

referred to as the “Chair-in-Office”. The administrative arrangements for the GFMD’s Support Unit were the subject of a Memorandum of Understanding (MOU) of 15 December 2008 between the GFMD and IOM, which was amended on 25 March 2015. According to the MOU, the Support Unit would receive administrative support from the Organization but would remain strictly independent of the latter. The management and oversight of the Support Unit were the responsibility of the GFMD Chair-in-Office. The Head of the Support Unit, who was offered a contract of services by IOM under terms and conditions approved by the Chair-in-Office, was selected by the latter and was accountable to her or him. Regarding the funding of the Support Unit, the MOU provided that its annual budget was to be prepared by the former in close coordination with the Organization, which would however not be responsible for securing the necessary contributions to the Unit.

In September 2020, the Organization informed the Chair-in-Office of the GFMD – the United Arab Emirates – that the existing resources of the GFMD were sufficient to cover the costs of the Support Unit until 31 January 2021, but that there would be no funds available to the GFMD to implement any additional activities or events. The Chair-in-Office was subsequently requested to consult with the GFMD Member States in order to provide clarification as to whether, in light of the financial situation, the contracts of the staff members serving in the Support Unit should be continued. By email dated 25 September 2020, the Chair-in-Office confirmed to the Organization that, based on an updated projection of its finances, the GFMD would not be able to meet its obligations towards IOM. Following email correspondence in October 2020, the Chair-in-Office indicated that there was no prospect of additional contributions to cover the costs of the Support Unit and that, consequently, it was necessary to terminate the contracts of its staff members.

On 28 October 2020, the Director, Human Resources Management (HRM), verbally informed the complainant that the Support Unit, including her post, would be abolished. This information was confirmed by letter dated 30 October 2020, formally advising the complainant that

the decision to abolish her post was taken “due to current lack of resources and reasonable prospect of additional future sustained staff earmarked funding”. As a result, her one-year fixed-term contract would be terminated with effect on 31 January 2021. The complainant was encouraged to apply for suitable vacancies that might be advertised.

On 29 December 2020, the complainant requested a review of the decisions to abolish her post and to terminate her contract. The Director, HRM, informed the complainant, by letter dated 1 March 2021, that her request for review was rejected.

On 31 March 2021, the complainant lodged an appeal with the Joint Administrative Review Board (JARB) and, on 15 March 2022, the JARB rendered its report to the Director General, concluding that the appeal was without merit. The Director General informed the complainant, on 14 April 2022, of his decision to dismiss her appeal, following the JARB’s recommendation. That is the impugned decision.

The complainant asks the Tribunal to order her reinstatement, to grant her material damages in the amount of 87,180 United States dollars as well as moral and “psychological” damages in the amount of 100,000 United States dollars and exemplary damages in the amount of 100,000 United States dollars. Lastly, the complainant requests the award of costs in an amount set by the Tribunal.

The Organization asks the Tribunal to dismiss the complaint as irreceivable in part and unfounded for the remainder.

CONSIDERATIONS

1. The complainant challenges the impugned decision in which the Director General accepted the Joint Administrative Review Board’s (JARB) recommendation to dismiss her internal appeal in which she centrally requested that the decisions to abolish her post and consequently terminate her one-year fixed-term appointment be quashed and she be reinstated. Her post had been abolished and her appointment terminated in the context of the abolition of the Support Unit which she headed at the material time.

2. Firm precedent has it that in order to achieve greater efficiency, to make budgetary savings or if funding is no longer available, international organisations may undertake restructuring entailing the redefinition of posts and staff reductions. However, each and every individual decision adopted in such restructuring must respect all the pertinent legal rules, and, in particular, the fundamental rights of the staff concerned (see, for example, Judgments 4599, consideration 11, and 3238, consideration 7). The case law also states that decisions concerning restructuring within an international organization, including the abolition of posts, may be taken at the discretion of the executive head of an organization and are consequently subject to only limited review. The Tribunal will ascertain whether such decisions are taken in accordance with the relevant rules on competence, form or procedure, whether they rest upon a mistake of fact or law, or whether they constituted abuse of authority. The Tribunal will not rule on the appropriateness of the restructuring, as it will not substitute the organization's view with its own (see, for example, Judgments 4844, consideration 3, 4004, consideration 2, and 3582, consideration 6). Nevertheless, any decision to abolish a post must be based on objective grounds and its purpose may never be to remove a member of staff regarded as unwanted. Disguising such purposes as a restructuring measure would constitute abuse of authority (see, for example, Judgments 4353, consideration 6, and 3582, consideration 6). Moreover, a decision to abolish a post must be communicated to the staff member occupying the post in a manner that safeguards that individual's rights. These rights are safeguarded by giving proper notice of the decision, reasons for the decision and an opportunity to contest the decision. The Tribunal has further stated that the need to give reasons in support of adverse administrative decisions arises precisely because the affected staff member must be given an opportunity of knowing and evaluating whether or not the decision should be timely contested (see, for example, Judgments 4353, consideration 7, 3928, consideration 15, and 3041, considerations 8 and 9). It is worth recalling that, as per the Memorandum of Understanding (MOU) establishing the administrative arrangements for the Support Unit, the Unit's management and oversight was the responsibility of the Global

Forum on Migration and Development (GFMD) Chair-in-Office, who decided how the Support Unit was run and advised the Organization accordingly of its role in accommodating and supporting the Unit. Moreover, the Head of the Support Unit, who was offered a contract of services by IOM under terms and conditions approved by the Chair-in-Office, was selected by the latter and was accountable to her or him. The Tribunal considers, in light of the terms of the MOU, that the decision to abolish the Support Unit was the prerogative of the GFMD.

3. In her internal appeal, the complainant stated that the decisions to abolish her post and terminate her employment were not made on objective grounds, but on errors of fact triggered by incomplete or erroneous consideration of material facts and tainted with bad faith. She stated, critically, that she was hired in 2009 as a “full-fledged” official of IOM but that in 2014 the terms of her employment were amended by the addition of a disclaimer which relevantly stated that “your employment with IOM is limited to the duration of your employment with the GFMD Support Unit and you have no expectancy or right of employment with IOM outside the GFMD Support Unit. You will not be considered as an IOM internal candidate for vacancies outside the GFMD Support Unit and you are not entitled to any type of IOM contract other than the type of this current contract.” The complainant stated that she signed the contract containing that disclaimer under protest because it made her employment situation precarious. The JARB agreed with this statement, but stated, correctly, that while it may have concerns about that type of arrangement, the complainant had signed it of her own free will thereby accepting those conditions.

The complainant also stated in her internal appeal that she was dissatisfied with aspects of the institutional and administrative arrangements in which she worked. She submitted that the Administration did not give her sufficient explanation or information for the abolition of the Support Unit, which caused the termination of her contract. She further submitted that the decisions were based on incorrect and unsubstantiated facts and a wrong interpretation of the financial history of the GFMD process and that there was no

justification for hastily closing the Support Unit with effect from 1 February 2021, and further, IOM had acted in bad faith in breach of its duty of care. She submitted that the peculiar hosting arrangements of the Support Unit left her at the mercy of the rotating Chair-in-Office in breach of IOM's duty of care towards her thereby "causing her material, moral and professional damages". She also submitted that IOM had refused to provide the relevant information that led to the abolition of the Support Unit and the termination of her contract; failed to implement the mandatory annual staff evaluation system; denied her request for special leave without pay; failed to defend her from the arbitrary and highly prejudicial treatment of the United Arab Emirates (UAE) Chair-in-Office who displayed personal and cultural biases; and failed to find her a suitable position given her acquired skills over a long period of employment.

4. In its report, the JARB concluded that the financial reason was the objective basis for the decisions the complainant contested and was not a pretext to abolish her post. It also concluded that there were no procedural flaws in the abolition of the complainant's post because IOM's Guidelines for Managing a Downsizing Exercise were not applied to her situation. It also concluded that the complainant's contract was not terminated abruptly without proper notice and rejected the complainant's allegation that the process was flawed because it lacked transparency and was attended by discrimination and the lack of duty of care. In the impugned decision, the Director General relevantly stated that he had relied on the findings set out in the JARB report, specifically that the abolition of the complainant's post was lawfully based on genuine financial justifications that had been duly verified by the Administration and that the decision had not been tainted by bad faith or improper motives. He further noted the JARB's conclusion that the applicable procedure under the IOM Unified Staff Regulations and Rules were followed with respect to the termination of the complainant's contract and that she received all financial benefits she was entitled to as a result of the decisions.

5. The complainant sets out her challenge to the impugned decision under headings, which, in some respects, invite the Tribunal itself to consider without focussing upon the bases the JARB considered in her internal appeal and the impugned decision. She states that (1) the decision to abolish the Support Unit was not based on objective grounds, (2) IOM erred in interpreting the spirit of the MOU on Support Unit hosting to the detriment of her rights to the broader GFMD process, and (3) IOM violated its duty of care towards her by facilitating the abolition of the Support Unit and terminating her contract. However, on a careful reading of her submissions in concert with the issues the JARB considered on her pleas in the internal appeal, the Tribunal discerns the following grounds contesting the impugned decision:

- (1) The impugned decision is tainted in that it concluded that the decisions she initially contested were not taken in breach of due process because she was not given proper notice.
- (2) The impugned decision is tainted in that it concluded that the decisions she initially contested were not taken in breach of due process because she was not properly informed of the reason for it.
- (3) The impugned decision is tainted in that it concluded that the decision to abolish the Support Unit (and thereby her post) was based on objective grounds; was not arbitrarily made in unnecessary haste and was not tainted by malice and abuse of authority.
- (4) The impugned decision is tainted in that it concluded that IOM did not violate its duty of care and the duty of good faith.

6. As a precursor to considering these grounds, the Tribunal will consider a procedural issue the complainant raises. In the complaint form, she highlights the box which signifies that she did not want oral proceedings (hearing) under Article 12(1) of the Tribunal's Rules. However, in her rejoinder, the complainant asks the Tribunal to conduct an oral hearing and hear two witnesses. The Tribunal considers that the parties have presented sufficiently extensive and detailed submissions

and documents to permit it to make an informed decision on this case. The application for oral proceedings is therefore rejected.

7. Regarding the first ground, the JARB rejected as incorrect the complainant's submission that her contract was terminated abruptly. This, it stated, was because she was notified of the possible abolition of her post and termination of her appointment on 28 October 2020 and she separated from the Organization on 1 February 2021, which was more than the three months' notice she was entitled to receive. The JARB further observed that the complainant had admitted that she was given an additional two-month extension of the *carte de légitimation*. The Tribunal notes that in the letter of 30 October 2020, the Chief, Human Resources Operations and Administrative Services, informed the complainant that that letter was to formally advise her of the information she was given, in a meeting on 28 October 2020, that "due to current lack of resources and reasonable prospect of additional future sustained staff earmarked funding, the Support Unit – including the position [she held] – will be abolished with effect on 31 January 2021" and as a result, her one-year fixed-term contract that was last extended by letter of 26 March 2020 would have been terminated with effect from 31 January 2021.

8. Citing Judgment 2768, consideration 4, the complainant submits, in effect, that the JARB should have concluded that IOM violated the principles of good faith and duty of care. She insists that she did not receive proper notice because supervening events directly concerning her work effectively "blurred", if not "interrupted", the notice period. She referred to an "11th hour development" that was communicated by the Director, Human Resources Management (HRM) as well as to "appeals from [the] GFMD Steering Group and other Friends of the Forum during the GFMD 2020 Summit Meeting (January 23, 2020)", and to "informal exchanges between [the] complainant and the ICP focal point that an extension was forthcoming to allow for an objective discussion on the issues". This statement however suggests that there were ongoing discussions from January 2020 about the possible abolition of the Support Unit, in which the complainant was

involved. These matters were apparently exploratory and did not in any way interrupt the notice period, as the complainant submits. The complainant's further statement that the separation formalities were served barely a week after several Member States asked to maintain the status quo of the Support Unit and several pledges of financial commitment were made, does not advance her case any further. Accordingly, the first ground is unfounded. So also, is the second ground given the terms of the letter of 30 October 2020, referred to in consideration 7 of this judgment, which was the basis of the JARB's conclusion, accepted in the impugned decision, that the reasons for the termination of the complainant's post were clearly stated and genuine.

9. Regarding the complainant's submission, in the third ground, that the decisions to abolish the Support Unit and thereby her post and to terminate her contract were not based on objective grounds, it is notable that in her internal appeal, the complainant requested the JARB to furnish her with copies of the reports and other material on which those decisions were taken and to provide her with an objective basis for the proposed interim arrangements which did not consider her and the other staff members of the Unit. The JARB report shows that at its request, the Administration provided it with additional information and a response to the complainant's requests. The complainant confirms this and that she also provided financial information to the JARB. Against this background, the complainant's assertion that IOM should have disclosed any relevant information on the funds available to continue to support the GFMD and its failure to do so evinced bad faith is without merit.

10. The JARB stated, in its report, that having studied the financial calculations the complainant and the Administration presented, it established that there was a projected deficit in the funding for the Support Unit by the end of the United Arab Emirates' chairmanship of the GFMD; that by the end of January 2021, no financial commitment was in place which could have formed the basis of a new decision about the future of the Support Unit and its staff members and there was no legitimate reason for IOM itself to allocate

funds to the Unit. The JARB also noted, among other things, that the MOU between IOM and the GFMD stated that “IOM will not be responsible for securing the necessary contributions to the [Support Unit]”. The JARB found, among other things, that IOM discontinued support services to the GFMD as of 1 February 2021, which supports IOM’s position that the financial factors it had advanced were the reasons for abolishing the Support Unit. It referred to the Administration’s response to its question that no services were provided by IOM to the GFMD between 1 February 2021 and 25 May 2021 and that, after protracted negotiations, a temporary arrangement was put in place from 1 July 2021 for IOM to provide minimal secretarial services to the GFMD, on a greatly reduced scale when compared to the functions previously provided by the Support Unit. It stated that it was satisfied with IOM’s explanation that the interim arrangements did not replace the Support Unit. The JARB concluded that it was satisfied that IOM had done the necessary due diligence to verify the status of the funding of the Support Unit and that, contrary to the complainant’s submission, financial reasons for the abolition of her position were genuine and legitimate and did not constitute an error of fact.

11. The Tribunal determines that, on the record in these proceedings, this conclusion, accepted in the impugned decision, was open to the JARB. The complainant’s submissions to the contrary are therefore unfounded. In the main, her supporting arguments reflect her subjective view as to the availability of funds to continue to fund the Support Unit and her post. By extension, the complainant’s contention that IOM could have avoided the abolition of the Support Unit and her position, including by itself providing their funding from its own resources or otherwise is unfounded, particularly having regard to the administrative arrangements governing the complainant’s employment as mentioned in consideration 2. By extension as well, the complainant’s submissions that the subject decisions were taken in abuse of authority motivated by the Administration’s desire to remove her in the absence of a lawful reason to do so and the decisions were based on inaccurate facts, influenced by misleading information evidenced in the subsequent reestablishment of the same post are also unfounded. It is of no moment

whether, even as the complainant states to support her plea of abuse of authority, IOM provided interim services, comparable to the services the Support Unit provided, from 2021 to 2022 and established a permanent GFMD Secretariat in 2023 in which it maintained a position “comparable [to] if not alike” her position after the termination of her appointment. The clear evidence is that the Support Unit, and, relatedly, her position, were abolished on objective grounds. As IOM points out, the interim services were not a new structure to which Support Unit staff members could have been transferred and the submission ignores the lapse in time between the abolition of Support Unit and her post in January 2021; the formal establishment of the GFMD Secretariat in February 2023 and the assumption of functions by the Head of that Secretariat in March 2023. Against this background, the complainant’s submission that the decisions were unnecessary is unmeritorious.

12. Additionally, the complainant’s submission, which seems to suggest that, in abuse of authority, the subject decisions were influenced by the Chair-in-Office misapprehends the relationship between IOM and the Member States that funded the GFMD. Furthermore, the complainant’s submission that the subject decisions were arbitrarily made in unnecessary haste is not supported by the facts or the record. As the Tribunal has repeatedly stated, abuse of authority may not be presumed and the burden of proof is on the party that pleads it (see, for example, Judgments 4283, consideration 9, 4081, consideration 19, 3543, consideration 20, and 2116, consideration 4(a)). Moreover, bias, prejudice, and bad faith cannot be presumed, they must be proven and the complainant bears the burden of proof (see Judgment 4688, consideration 10, and the case law cited therein). Although evidence of personal prejudice is often concealed and such prejudice must be inferred from surrounding circumstances, that does not relieve complainants, who bear the burden of proving their allegations, from introducing evidence of sufficient quality and weight to persuade the Tribunal (see Judgments 4841, consideration 4, and 4745, consideration 12). The complainant does not provide evidence, as against surmise and speculation, to discharge the burden she bears to prove that the decisions were taken out of malice; in bad faith or were motivated by

bias against her on the part of the UAE's Chair-in-Office. For the foregoing reasons, the third ground is unfounded.

13. The Tribunal determines that, contrary to the complainant's submissions supporting the fourth ground, the JARB's conclusion to the effect that there was no evidence that the decisions to abolish the Support Unit and complainant's post were tainted by lack of transparency, discrimination or lack of duty of care, was open to it on the record. The statements the complainant makes to support these submissions are merely speculative. Her submission which suggests that IOM breached its duty of care by not taking reasonable steps to find her an alternative employment with the Organization is unfounded. The Tribunal considers that, in the circumstances of this case, the efforts made by IOM to identify a suitable alternative position for her were sufficient; the fourth ground is therefore unfounded.

14. As the complainant provides no basis on which the Tribunal finds that the impugned decision and the original decisions to abolish the Support Unit and her post, as well as to terminate her employment were unlawful, this complaint will be dismissed.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 15 October 2024, Mr Michael F. Moore, Vice-President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Rosanna De Nictolis, Judge, sign below, as do I, Mirka Dreger, Registrar.

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

MICHAEL F. MOORE

HUGH A. RAWLINS

ROSANNA DE NICTOLIS

MIRKA DREGER