

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**E.**  
**v.**  
**OACPS**

**139th Session**

**Judgment No. 4938**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr M. E. against the Organisation of African, Caribbean and Pacific States (OACPS) on 12 June 2021 and corrected on 20 July 2021, the OACPS's reply of 20 October 2021, the complainant's rejoinder of 25 November 2021, the OACPS's surrejoinder of 4 January 2022, the complainant's additional submissions of 20 February 2024 and the OACPS's final comments of 18 March 2024;

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 non-renewal of his employment contract and alleges breach of a promise of employment made to him.

On 1 September 2014 the complainant, who is a national of Cameroon, joined the Organisation as an expert in charge of private sector and investment issues at the Secretariat of the OACPS, at grade P4. He was recruited on a fixed-term contract that expired on 31 December 2020. By reason of his nationality, he was fully subject to the Staff Regulations of the OACPS and to the rules of the Organisation. During the course of his employment, the complainant also acquired Belgian nationality. By a letter of the Secretary-General dated 25 June

2020, he was informed, in the same way as other staff members – six months in advance as provided by Article 9(6) of the Staff Regulations – that his contract would not be renewed beyond its expiry date, on 31 December 2020.

On 3 July 2020 the complainant filed a “[r]equest for a review of [the] decision of 25 June concerning [the Secretary-General’s] intention not to renew [his] contract”\*. Similarly, by a letter of the same date addressed to the Secretary-General, the complainant, in his capacity as President of the Staff Association, expressed concern about the letters terminating employment received by 52 staff members employed under the OACPS regime and by 13 other staff members whose employment contracts were governed by Belgian law. Furthermore, he expressed surprise that these decisions were taken before the adoption, by the Council of Ministers, of the new organisational structure of the OACPS Secretariat, and requested the Secretary-General to allow more time for an “orderly” and “consultative” restructuring. The complainant’s appointment was therefore terminated on 31 December 2020, on which occasion he received the sum of 51,863.67 euros due to the termination of the contractual relationship, in addition to other amounts relating to shipping and travel costs, compensation for the balance of annual leave and the balance of the Provident Fund, in the total amount of 90,766.04 euros.

In early January 2021 the complainant had some exchanges with the Assistant Secretary-General – who was his former supervisor – concerning his administrative position, since he was receiving correspondence from individuals in connection with matters for which he was responsible when in the service of the Organisation, and also the possibility of renewing his contract. The Assistant Secretary-General informed him that no Belgian citizen could be offered a contract before the beginning of February.

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\* Registry’s translation.

On 13 January 2021 a memorandum was sent to the former officials of the Secretariat of the OACPS, on follow-up to a meeting convened on 21 December 2020 between management and staff concerning the termination of certain employment contracts and the possibility of awarding short-term contracts, of from three to six months, for key posts in order to ensure continuity in the operations of the Secretariat. The memorandum further indicated that all those to whom new contracts were offered had been contacted and that the service of those who had not been informed was no longer required. The complainant, to whom this memorandum was not addressed, received a copy from a former colleague. On 22 January 2021 the Assistant Secretary-General informed the complainant orally of the decision “not to renew”<sup>\*</sup> his contract on the grounds that his former post had been abolished.

In a letter of 9 February 2021 addressed to the Secretary-General, concerning the “[r]enewal”<sup>\*</sup> of his contract – which the complainant describes as a complaint in accordance with the provisions of Annex IX to the Staff Regulations on the dispute resolution mechanism – he requested further information on the abolition of the post that he had occupied, the restructuring carried out by the Organisation and the reasons why he had not been considered for a post in the new structure of the Secretariat. It does not appear from the documents submitted by the parties that this request was followed up.

By a letter of 15 March 2021 addressed to the Chairperson of the Committee of Ambassadors, the complainant submitted an appeal against the decision to abolish his post, as well as against the decision not to renew his contract. In the absence of a reply both to his letter of 9 February 2021 and to this appeal, he filed a complaint with the Tribunal, on 12 June 2021, against the implied decision to reject his appeal of 15 March 2021.

The complainant asks the Tribunal to declare his appeal receivable and well founded. He seeks an award of 601,260 euros in damages for the material injury he has allegedly suffered. He also claims an award of 200,000 euros for the damage caused by the discrimination on the

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<sup>\*</sup> Registry’s translation.

ground of nationality to which he was allegedly subjected, as well as an award of 100,000 euros for failure to protect him in his capacity as a staff representative. He further claims an award of 50,000 euros for the reputational injury he alleges he has suffered, as well as 100,000 euros in moral damages. Lastly, he seeks an award of 10,000 euros in costs, “including procedural compensation”\*, and asks the Tribunal to “[d]eclare the judgment provisionally enforceable notwithstanding any appeal and without guarantee or delimitation of the claim”\*. In his rejoinder, the complainant also seeks reimbursement of the amount of 27,362 euros, corresponding to the amount unduly paid by the Organisation to third parties in connection with the settlement of his contractual rights.

The OACPS asks the Tribunal to declare that the Belgian law invoked by the complainant in his submissions is not applicable in the present case. It requests, primarily, that the complaint be dismissed as falling outside the jurisdiction of the Tribunal or as irreceivable and, subsidiarily, that it be dismissed as unfounded. Even more subsidiarily, it asks the Tribunal to offset any amounts that it might be ordered to pay the complainant against the amount already paid to him in the context of the settlement of his rights in connection with the termination of his employment contract, namely 90,766.04 euros. Lastly, it requests that the complainant be ordered to pay the costs of the proceedings, including procedural compensation in the amount of 10,000 euros.

#### CONSIDERATIONS

1. Apart from the setting aside of the implied decision to reject his appeal of 15 March 2021, the complainant seeks payment of various sums in compensation for the material and moral injury which he alleges he has suffered as a result of the explicit decision not to renew his fixed-term employment contract, as well as, more generally, the Organisation’s conduct towards him.

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\* Registry’s translation.

2. The OACPS requested an oral hearing. However, in view of the abundant submissions and evidence provided by the parties, the Tribunal considers that it has sufficient written information to be able to rule on the matter. It is therefore not appropriate to grant this request.

3. The Organisation considers that the complaint should be dismissed as falling outside the jurisdiction of the Tribunal or as irreceivable. Firstly, at the time when the complainant filed his internal appeal of 15 March 2021 with the Chairperson of the Committee of Ambassadors, he was no longer a staff member of the OACPS since 31 December 2020, which means that this internal appeal was no longer available to him. Secondly, Annex VIII (*recte* IX) to the Staff Regulations provides for the possibility of filing a complaint with the Tribunal only for staff members of the Organisation, which was no longer the complainant's case when, on 9 February 2021, he challenged the decision not to offer him a new employment contract. Thirdly, insofar as the complaint should be regarded as impugning the decision, taken on 25 June 2020, not to renew the complainant's appointment, it should likewise be deemed irreceivable in that it relates to a decision against which no internal appeal was made within the prescribed time limit. On the one hand, Article 2 of former Annex VIII to the Staff Regulations (which became Annex IX with effect from 14 December 2020) provided that "any complaint by a member of staff shall be made in writing within seven (7) calendar days of the event giving rise to the filing of the complaint", whereas, on the other hand, Article 3 thereof provided that in the absence of a satisfactory response from the Secretary-General within 30 calendar days, "the member of staff may file his/her complaint with the Chairman of the Committee of Ambassadors". However, the complainant does not establish that he complied with these two provisions.

The complainant, on the contrary, refutes that his complaint should be dismissed as falling outside the jurisdiction of the Tribunal or as irreceivable. He contends that he is a former staff member of the OACPS who has brought a complaint before the Tribunal for breach of his terms of appointment and has done so after having exhausted the internal means of redress against the Organisation's decision not to

renew his contract of employment. Furthermore, his complaint was indeed filed less than 90 days after having exhausted all internal means of redress provided for in the Staff Regulations, under Article 22 of the Regulations and Annex VIII (*recte* IX) thereto. The reason why he only filed an internal complaint with the Secretary-General on 9 February 2021 was because of the promise made to him, when he was still a staff member of the Organisation, that he would be offered a new contract of employment in the first months of 2021. He further observes that the Organisation had not at that time concluded that his internal appeals were irreceivable.

4. The OACPS contends that the Tribunal is not competent to hear the complaint, on the grounds that the complainant is no longer a staff member of the Organisation. However, the Tribunal recalls that, under Article II, paragraph 6(a), of its Statute, the Tribunal is open to any official “even if her or his employment has ceased”. This challenge to the Tribunal’s competence will therefore be dismissed.

5. With regard to the receivability of the complaint, the Tribunal observes that the arguments of the parties should be considered on the basis of the provisions of the Staff Regulations in force at the time the complainant was informed, on 25 June 2020, that his contract of employment would not be renewed, namely those adopted on 2 December 2011.

Pursuant to Article 22 of the Staff Regulations, “[a]ny member of staff may make a request to, or lodge a complaint with, the Secretary General concerning his/her personal situation within the Secretariat in accordance with the Internal Grievance Mechanism provided for in Annex VIII of these Staff Regulations” and “[t]he Secretary General may seek the advice of the Grievance Committee as he/she may deem necessary and shall give his/her reasoned decision in accordance with Annex VIII of these Staff Regulations”.

Annex VIII to the Staff Regulations, entitled “Internal Grievance Mechanism” in the version prior to 14 December 2020, relevantly states as follows:

- “2. Unless there are other special circumstances, any complaint by a member of staff shall be made in writing within seven (7) calendar days of the event giving rise to the filing of the complaint.
3. In the case where the complaint is about the Secretary General, the member of staff shall first submit his/her complaint to the Secretary General, in writing stating his/her complaint. If a satisfactory response is not received from the Secretary General within thirty calendar days the member of staff may file his/her complaint with the Chairman of the Committee of Ambassadors.”

In the light of these provisions, the Tribunal is bound to note the following.

6. Inasmuch as, in his letter of 9 February 2021, the complainant sought to challenge the decision not to renew his contract of employment, taken on 25 June 2020, Article VII, paragraph 1, of the Statute of the Tribunal must be applied and the complaint be declared irreceivable in this regard, since the complainant did not exhaust, within the time limits laid down and in the required form, “such other means of redress” as were open to him under the Staff Regulations of the OACPS (see, in this respect, Judgments 4759, consideration 5, 4634, consideration 2, 3749, consideration 2, and 3296, consideration 10). Indeed, although the complainant asserts that he filed an internal complaint in due time by sending his memorandum of 3 July 2020, the fact remains that in the absence of a “satisfactory response” from the Secretary-General within 30 calendar days, it was the complainant’s responsibility to refer the matter to the Chairperson of the Committee of Ambassadors, pursuant to paragraph 3 of aforementioned Annex VIII to the Staff Regulations. Having refrained from doing so, the complainant has therefore failed to exhaust the internal means of redress that were open to him. Additionally, the letter addressed by the complainant to the Secretary-General on 3 July 2020 as President of the Staff Association cannot be deemed to constitute an internal complaint filed individually within the meaning of the Staff Regulations.

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

promise was made to the complainant by the Organisation to reappoint him at a later date. It follows that the complainant cannot rely on the existence of such a promise to justify his inaction in this regard.

7. Inasmuch as the complainant seeks, in his complaint, to challenge an implied decision not to offer him a new contract at the beginning of 2021, the Tribunal observes that the complainant himself acknowledges, on several occasions, that he was informed by the Assistant Secretary-General on 22 January 2021 of the decision not to offer him a new fixed-term contract of employment owing to the abolition of the post that he held.

This was a final decision within the meaning of Article VII, paragraph 1, of the Statute of the Tribunal given that the complainant, as a former official of the OACPS, did not have access, under the applicable rules of the Organisation, to the means of internal redress available to its staff.

According to 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, in the present case, the complaint was filed with the Tribunal on 12 June 2021, after the expiry of the prescribed 90-day time limit, which began to run from 22 January 2021 when the complainant was informed of the decision not to offer him a new fixed-term contract. Consequently, the request to set aside the decision, taken in early 2021, not to renew his contract or, more precisely, not to offer him a new fixed-term contract, must be rejected as time-barred (see, in this respect, Judgments 4759, consideration 7, and 4582, consideration 4).

8. The complainant nevertheless contends that he intends to impugn what he asserts to be an implied rejection decision which arose, pursuant to Article VII, paragraph 3, of the Statute of the Tribunal, 60 days after he submitted his appeal, on 15 March 2021, to the Chairperson of the Committee of Ambassadors.

Under the terms of Article VII, paragraph 3, of the Statute of the Tribunal:

“Where 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. The period of ninety days provided for by the last preceding paragraph shall run from the expiration of the sixty days allowed for the taking of the decision by the Administration.”

However, since the complainant had ceased to be a member of staff of the OACPS as of 31 December 2020, the internal means of redress provided for in the Staff Regulations were no longer open to him and he could, therefore, challenge the decision not to offer him a new employment contract directly before the Tribunal.

9. Lastly, insofar as the complainant intends to challenge the procedures for the restructuring of the OACPS Secretariat and the revision of the Staff Regulations, it should be noted that the complaint is also irreceivable in this respect. As the Tribunal has consistently held, a general decision intended to serve as a basis for individual decisions cannot be impugned, save in highly specific situations, and its lawfulness may only be challenged in the context of a challenge to the individual decisions that are taken on its basis (see, for example, Judgments 4734, consideration 4, 4572, consideration 3, 4278, consideration 2, 3736, consideration 3, or 3628, consideration 4). The Tribunal observes that the complainant does not plead unlawfulness in the present case (see, to the same effect, Judgment 4759, consideration 8).

10. In view of all the foregoing, the Tribunal finds that the complaint is irreceivable in its entirety. Accordingly, there is, in any event, no need to grant the Organisation’s request to disregard some items of evidence that are related to the merits of the case.

11. Based on Article 7B of the Tribunal’s Rules and on European Parliament and Council Regulation (EU) 2016/679 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 (hereinafter the

GDPR), the Organisation requests that “all names of individuals (as well as all personal data) be redacted in the published decisions (judgments and orders) rendered in this case”.\*

However, pursuant to paragraph 1 of Article 7B of the Tribunal’s Rules, the option to request anonymity is available only to a complainant or intervener, which may be explained by the fact that their names are the only ones cited in the Tribunal’s judgments.

In addition, in view of its particular nature and its specific Statute, the Tribunal is not, in any event, bound by the provisions of EU law, such as those of 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 (see, to the same effect, Judgment 4759, consideration 10).

12. Accordingly, the complaint will be dismissed in its entirety.

13. Lastly, the Tribunal considers that, as there is no reason to regard the complaint as vexatious, it is also not appropriate to grant the Organisation’s counterclaim for costs.

#### DECISION

For the above reasons,

The complaint is dismissed, as is the OACPS’s counterclaim.

In witness of this judgment, adopted on 7 November 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.

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\* Registry’s translation.

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

*(Signed)*

PATRICK FRYDMAN    JACQUES JAUMOTTE    CLÉMENT GASCON

MIRKA DREGER