

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

T.
v.
OACPS

139th Session

Judgment No. 4940

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr M. T. against the Organisation of African, Caribbean and Pacific States (OACPS) on 17 August 2021 and corrected on 1 October 2021, the OACPS's reply of 17 November 2021, the complainant's rejoinder of 17 December 2021, the OACPS's surrejoinder of 19 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 16 October 2001 the complainant, who is a national of Mali, joined the Organisation as an internal auditor at grade P5 on a fixed-term contract expiring on 31 December 2004. By reason of his nationality, he was fully subject to the Staff Regulations of the OACPS and to the rules of the Organisation. His appointment was extended on several occasions. The last extension of his contract was for the period from 1 January 2014 to 31 December 2020. During this period, 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 in Article 9(6) of the Staff Regulations – that his contract would not be renewed beyond its expiry date, on 31 December 2020.

By letter of 3 July 2020, the 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 therefore terminated on 31 December 2020, on which occasion he received the sum of 264,396.14 euros due to the termination of the contractual relationship.

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 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. According to the complainant, at the meeting referred to above, staff members were informed of the following: all employees who had been given notice of dismissal were entitled to their end-of-service payments before the end of the year; all employees who held a Belgian residence card or were Belgian nationals should not report for duty from 4 January 2021; all other non-Belgian employees who did not have a Belgian residence card were invited to report for duty on 4 January 2021. Being among the latter group, the complainant reported for duty on that date. He states that he worked between 4 January and 19 February 2021, on which date he was asked to hand in his office key and badge. The Organisation submits in this regard that

the complainant took part in the transition phase of the restructuring of the OACPS Secretariat without a new contract of employment, even though, according to the complainant, the Chief of Staff of the Office of the Secretary-General had made him an oral promise on 8 January 2021 that he would receive one.

In a letter of 21 March 2021 addressed to the Secretary-General in accordance with the provisions of Annex IX to the Staff Regulations concerning the dispute resolution mechanism, the complainant, aware that he would not, in the end, have a new employment contract, challenged the decision not to renew his contract, as well as the manner in which the procedures for the restructuring of the OACPS Secretariat and the revision of the Staff Regulations were being carried out. By letter of 21 April 2021, the Organisation replied that it had terminated the employment relationship due to budgetary constraints and in a manner consistent with the applicable law, and offered to help the complainant find a new post if he was able to find a financing solution, as an investor or subsidy provider.

By a letter of 17 May 2021 addressed to the Chairperson of the Committee of Ambassadors, the complainant submitted an appeal against the decision not to renew his contract. In the absence of a reply, he filed a complaint with the Tribunal, on 17 August 2021, against the implied decision to reject his appeal of 17 May 2021.

The complainant asks the Tribunal to declare his appeal receivable and well founded. He seeks an award of 996,686 euros in damages for the material injury he has allegedly suffered. He also claims an award of 50,000 euros for the reputational injury he alleges to have suffered, as well as 200,000 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”*.

* Registry’s translation.

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 264,396.14 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 17 May 2021, the complainant seeks payment of various sums in compensation for the material and moral injury which he alleges to have suffered as a result of the explicit decision of 21 April 2021 not to renew his fixed-term employment contract, as well as, more generally, the Organisation's conduct towards him.

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 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 he challenged the decision of 21 April 2021 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 of 21 April 2021 not to recognise the discriminatory treatment that he suffered as a result of the non-renewal of his contract or to afford him the protection that he should have enjoyed as an internal auditor in the Secretariat of the Organisation. 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 21 March 2021 was because of the oral promise made to him on 8 January 2021 by the Chief of Staff of the Office of the Secretary-General, when he was still a staff member of the Organisation, that he would shortly be offered a new contract of employment. 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 21 March 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, he does not provide any evidence of this, while the letter addressed to the Secretary-General by the President of the Staff Association on 3 July 2020 cannot be deemed to constitute a complaint 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. In this regard, the statements allegedly made by the Chief of Staff of the Office of the Secretary-General on 8 January 2021 do not meet the relevant criteria stipulated in the case law cited above to be considered as constituting a real “promise” within the meaning of this case law, if only because they came from a person who did not have the authority to make such a promise. Similarly, the mere fact that the post of internal auditor held by the complainant was not on the first list of retained posts drawn up on 2 December 2020, while it was on the list drawn up subsequently, also cannot be considered to constitute such a promise. Further, although it is true that the complainant continued to provide services to the Organisation after 31 December 2020, this may be explained, as the OACPS submits, by the simple need to ensure a degree of continuity in the functioning of the Secretariat, without an intention on the part of the Organisation to offer the complainant a new short-term employment contract being inferred, as the complainant understood it. 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, a decision of which he allegedly became aware only on 21 March 2021, despite the clear announcement made on 13 January 2021 that new employment contracts, other than those already sent to certain former members of staff among whom the complainant was not included, would not be offered to other former staff members, his complaint must be declared irreceivable as time-barred. The complainant submits that when he became aware of the existence of this implied decision not to offer him a new contract, he filed an internal complaint on 21 March 2021, which was rejected by letter of 21 April 2021.

The complainant impugns 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 17 May 2021, against the decision of 21 April 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.”

The Tribunal finds that the complainant’s request, submitted to the Secretary-General on 21 March 2021, constituted a claim in the meaning of the aforementioned provisions of Article VII of the Statute of the Tribunal, to which a response was received, as indicated, on 21 April 2021. It follows from the above that a decision on this claim was indeed taken within the time limit of 60 days from the date of filing prescribed by these provisions. Therefore, no implied decision arose at the end of that period, and the fact that the complainant had lodged an appeal – itself inadmissible – with the Chairperson of the Committee of Ambassadors against the rejection, to which he refers, of that complaint

has no bearing on this conclusion (see, in this respect, Judgment 4582, consideration 3).

8. The decision of 21 April 2021 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 17 August 2021, after the expiry of the prescribed 90-day time limit, which began to run from the notification of the decision of 21 April 2021. Consequently, the request to set aside the decision of 21 April 2021 must be rejected as time-barred (see, in this respect, Judgments 4759, consideration 7, and 4582, consideration 4).

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 an award of costs against the complainant.

* Registry's translation.

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.

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

(Signed)

PATRICK FRYDMAN JACQUES JAUMOTTE CLEMENT GASCON

MIRKA DREGER