

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

S.
v.
ILO

139th Session

Judgment No. 4975

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr P. S. against the International Labour Organization (ILO) on 9 January 2024 and corrected on 16 February 2024;

Considering Articles II, paragraph 1, and VII of the Statute of the Tribunal and Article 7 of its Rules;

Having examined the written submissions of the complainant;

CONSIDERATIONS

1. The complainant, a former staff member of the ILO, completed his assignment with the Organization in December 2022 and was repatriated to Australia from Timor-Leste. On 12 December 2022, his personal effects were packed and removed from Timor-Leste. On 13 December 2022, the complainant informed the Organization that an item of the shipment had been damaged during packaging and affirmed that he would claim its “replacement cost” from the ILO’s insurer. On 8 February 2023, he received his personal effects in Brisbane, Australia. Upon receipt, the complainant realized that two additional items had been damaged. He submitted a claim, dated 31 March 2023, for the reimbursement of the value of these items to the ILO’s insurer. Between April and June 2023, the ILO and its insurer requested clarification and

documentation from the complainant necessary to process his claim, which he submitted on 26 April, 23 May, 23 June, and 3 July 2023. By email dated 4 July 2023, the Organization requested further information from the complainant pertaining to his claim, which he provided on the following day. Having received no reply, the complainant sent an email to the Organization on 23 August 2023 inquiring whether an assessment of his claim had been made and whether the payment for the damage to his items had been processed.

2. In section 3(b) of the complaint form, the complainant indicates that the impugned decision is an implied rejection, by virtue of Article VII, paragraph 3, of the Statute of the Tribunal, of a claim he allegedly submitted on 12 December 2022. However, in light of the evidence on file, it appears that no claim was submitted by the complainant on that date, which coincides only with the packing and removal of his personal effects from Timor-Leste. In the event that the complainant intended to refer, in his complaint form, to his email sent to the Organization on 13 December 2022, the Tribunal notes that such correspondence did not constitute a claim since it merely conveyed the complainant's intention to submit a claim at a later date. It is apparent from the file that the complainant's actual claim was dated 31 March 2023 and was sent on 11 April 2023 at the latest. This latter date will be the one considered for the purposes of the present judgment.

3. Article VII, paragraph 3, of the Statute of the Tribunal provides that:

“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.”

4. The complainant's reliance on Article VII, paragraph 3, is misplaced. As the Tribunal recalled, for example, in Judgments 4271, consideration 3, 4174, consideration 4, and 3975, consideration 5, it is

clearly established in the case law that where the Administration takes any action to deal with a claim, this step in itself constitutes a decision upon the claim within the meaning of Article VII, paragraph 3, of the Statute, which forestalls an implied rejection that could be referred to the Tribunal. It is clear from the complainant's submissions that two responses were received from the Organization, specifically on 20 April 2023 and on 19 May 2023, within the sixty-day period following the notification of his claim dated 31 March 2023. Whilst neither of those responses conveyed a final decision, they demonstrate that the Organization had taken action to deal with the complainant's claim. Thus, they were sufficient to forestall an implied rejection that could be impugned under Article VII, paragraph 3, of the Statute of the Tribunal (see, for example, Judgments 4911, consideration 4, 4621, consideration 2, 4620, consideration 2, 4494, consideration 4, and 3975, consideration 5).

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

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 15 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.

PATRICK FRYDMAN

JACQUES JAUMOTTE

CLÉMENT GASCON

MIRKA DREGER