F. (No. 2)

v.

Global Fund to Fight AIDS, Tuberculosis and Malaria

140th Session **Judgment No. 5013**

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr A. F. against the Global Fund to Fight AIDS, Tuberculosis and Malaria ("the Global Fund") on 11 April 2023 and corrected on 12 May 2023, the Global Fund's reply of 22 September 2023, the complainant's rejoinder of 11 January 2024 and the Global Fund's surrejoinder of 15 April 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 contests the Global Fund's decision to terminate his employment contract while he was on certified sick leave and its failure to grant in a timely manner his requests to be placed on Continuous Disability Benefits (CDB).

The complainant joined the Global Fund on 13 September 2010 and he separated from it on 3 October 2021 following a redundancy process. At the material time, he was a Senior Disease Coordinator, HIV Technical Advice and Partnerships (TAP) Department, Strategy, Investment and Impact Division. In December 2019, the Global Fund initiated a restructuring of the TAP Department, as a result of which the complainant's position was abolished. Also in December 2019, the Administration received allegations of inappropriate behaviour on the

part of the complainant and, on 22 January 2020, it informed him that it had decided to initiate an investigation into these allegations. The complainant submitted a medical certificate, dated 22 January 2020, certifying that he was not fit for work due to "work related stress". He was immediately placed on sick leave, which was subsequently extended several times. On 6 August 2020, he exhausted his 130 days of medical leave entitlement and was placed, with effect from that same date on Sick Leave under Insurance Cover (SLIC). He was relevantly informed on 30 September 2020.

On 5 March 2020, 24 July 2020 and 13 October 2020, the Human Resources Department (HRD) invited him to apply for positions in the new structure matching his experience and qualifications, but the complainant refrained from doing so.

On 8 October 2020, the complainant was notified of the Administration's decision to close the above-mentioned investigation against him and to postpone any disciplinary proceedings until such time as his health condition might allow him to participate in such proceedings. In Judgment 4914, delivered on 6 February 2025, the Tribunal dismissed his complaint in this regard as irreceivable and unfounded.

By a letter of 9 December 2020, which served as a notice of redundancy pursuant to Section 19 of the Global Fund Employee Handbook, the Executive Director informed the complainant that he would exceptionally be allowed a six-month reassignment period starting on 4 January 2021, during which HRD would bring to his attention any available reassignment options, and he should also actively explore such options. In the event he was not reassigned to another position by the end of that period, i.e. by 3 July 2021, his employment with the Global Fund would be terminated on 3 October 2021.

On 26 March 2021, based on a medical report stating that he could never return to the Global Fund and recommending that he take "ill health retirement", the complainant, through his counsel, requested to be placed on CDB. On 12 April 2021, the Head, HRD, rejected this request as premature, noting that eligibility to CDB could only be

determined at the end of the SLIC entitlement, namely on 5 February 2022 for the complainant.

On 6 September 2021, the complainant was requested by HRD to complete and sign various administrative forms related to his separation from the Global Fund. The next day, on 7 September 2021, the complainant's counsel, acting on behalf of his client, returned to HRD the administrative forms completed and signed by the complainant, and he also forwarded to HRD a medical certificate confirming the latter's incapacity for service until 11 October 2021, requesting: (i) that the complainant's separation be suspended and he be paid full salary, benefits and other emoluments until his complete recovery; (ii) alternatively, that he be placed on CDB with effect from 3 October 2021; and (iii) that he be paid material and moral damages for his "service-incurred" illness, which had allegedly resulted from the Global Fund's negligent and bad faith actions towards him.

By a letter of 28 September 2021, the ad interim Head, HRD, rejected the complainant's first two requests as time-barred, and irreceivable, on the basis that they both challenged the 9 December 2020 redundancy and termination decision. The ad interim Head, HRD, also considered these requests to be unfounded, given that there was no legal basis for the suspension of the complainant's termination or for him to be granted CDB status beyond termination. Lastly, she rejected the complainant's third request as entirely unfounded on the basis that the complainant had not provided medical evidence establishing the nature of his illness.

The complainant separated from the Global Fund on 3 October 2021. He received 190,500.28 Swiss francs in termination indemnities, which corresponded to 12 months' base salary, i.e. the maximum amount allowed under Section 15 of Annex VIII of the Employee Handbook.

On 15 November 2021, the complainant's counsel wrote to the Executive Director expressing the complainant's disagreement with the 28 September 2021 decision and requesting an informal resolution of the matter. By a letter of 30 November 2021, the Executive Director refrained from taking a position on the complainant's case.

On 23 December 2021, the complainant filed a Request for Resolution against the 28 September 2021 decision, requesting (i) the setting aside of the decision to separate him from service with all legal effects flowing therefrom; (ii) reinstatement with full retroactive effect and payment of all salary, benefits, pension contributions, entitlements and any other emoluments he would have received had he not been separated; (iii) suspension of the termination decision and award of CDB, either immediately or upon exhaustion of his statutory sick leave benefits; (iv) 50,000 Swiss francs in material and moral damages; (v) 3,000 Swiss francs in costs; (vi) interest at the rate of 5 per cent per annum on all awarded amounts; and (vii) such other relief as deemed necessary, just and fair. In her response dated 21 February 2022, the ad interim Head, HRD, denied the complainant's Request for Resolution as irreceivable and unfounded in its entirety.

On 5 April 2022, the complainant submitted an appeal to the Appeal Board against the 21 February 2022 decision, making the same requests as in his Request for Resolution, except he no longer requested reinstatement and he raised to 7,500 Swiss francs his request for costs. In its report of 8 December 2022 to the Executive Director, the Appeal Board recommended (i) that the 28 September 2021 decision denying the complainant's request to place him on CDB as from 3 October 2021 be set aside; (ii) that this request be submitted for examination to the Insurer, pursuant to the applicable criteria and processes set out in the Provident Fund Rules and Regulations, and that the complainant's allegation regarding the service-incurred nature of his illness be examined; and (iii) that all other requests be rejected.

By a letter of 12 January 2023, the Executive Director informed the complainant, through his counsel, that he had decided to follow the Appeal Board's recommendations, but only as a gesture of appeasement and to avoid further litigation, and without acknowledging any legal obligation to do so. Indicating that the assessment of his eligibility for CDB and the final decision thereon would be made by the Insurer based on its findings of disability, the Executive Director advised the complainant that HRD would direct him on the next steps and would

revert to him on the engagement with the Insurer. This is the impugned decision.

On 11 April 2023, the complainant filed the present complaint with the Tribunal. On 19 July 2023, the Insurer invited the complainant to provide further information, upon receipt of which it approved the complainant's requests. Accordingly, in September 2023, it was decided to pay the complainant SLIC retroactively from 12 October 2021 to 5 February 2022, i.e. from the date his previous entitlement ended to the date he reached the maximum duration of SLIC, and to place him on CDB retroactively from 6 February 2022.

The complainant asks the Tribunal to set aside the decision to separate him from service effective 3 October 2021, with all legal effects flowing therefrom, and to award him retroactively all salary, benefits, pension contributions, entitlements, and other emoluments he would have received had he not been irregularly separated from service on 3 October 2021 and while on service-incurred sick leave, through the date he has fully recovered from his service-incurred illness. He claims 150,000 Swiss francs in material and moral damages for the harm caused to him as a result of the contested decision and for the injury and pain he suffered because of his service-incurred illness. He also claims full reimbursement of the costs he incurred in submitting this complaint, interest, at the rate of 5 per cent per annum, on all amounts awarded as from 3 October 2021 through the date all such amounts are fully paid, and such other relief as the Tribunal may deem necessary, just and fair.

The Global Fund asks the Tribunal to dismiss the complaint as moot and irreceivable and, on a subsidiary basis, as unfounded in its entirety.

CONSIDERATIONS

1. In his second complaint of 11 April 2023, the complainant impugns before the Tribunal the final decision of the Executive Director of the Global Fund rendered on 12 January 2023, whereby the executive

head of the organisation endorsed the conclusions and recommendations of the Appeal Board dated 8 December 2022.

In its report, the Appeal Board recommended, on the one hand, to dismiss as time-barred the complainant's appeal as far as it was directed against the termination of his employment contract, and, on the other hand, to set aside the decision of 28 September 2021 of the ad interim Head of HRD and the latter's response of 21 February 2022 denying the complainant's Request for Resolution against the 28 September 2021 decision.

2. The complainant has requested oral proceedings. However, as the submissions and documents produced by the parties are sufficient to enable the Tribunal to resolve the issues raised in the complaint, this request is rejected.

The complainant has also asked that the present complaint be joined and adjudicated with his first complaint. But given that this first complaint was previously considered in Judgment 4914, this request is moot.

3. It should be observed at the outset that in his complaint of 11 April 2023, the complainant specifically acknowledged that, initially, he "was ready to accept the final decision of the Executive Director if his medical file and request for CDB had been examined by the [I]nsurer as recommended by the Appeal Board, and as he was reassured [it] would happen in the [...] final decision".

The record indicates that, following the filing of the instant complaint before the Tribunal, the Insurer invited the complainant, by email of 19 July 2023, to provide information, such as sick leave certificates and reports from his treating doctor, so as to reactivate his SLIC claim and to examine his CDB claim. Upon receipt of the required information, the Insurer eventually approved the complainant's claims for both SLIC and CDB. The complainant was accordingly found to be entitled to SLIC from 12 October 2021 (the date on which his previous entitlements ended) to 5 February 2022 (the date on which he reached the maximum duration of SLIC). The Insurer also considered that the

complainant should be placed on CDB from 6 February 2022 to 8 September 2023.

As a result, the complainant conceded in his rejoinder that, as noted by the Global Fund in its submissions, his claims for relief in this regard, namely his request for retroactive placement on CDB as well as his request for retroactive payment of SLIC from the date his previous entitlements ended until his placement on CDB, were therefore moot.

4. This notwithstanding, the complainant still insists that, in his view, the current procedure was triggered by the Global Fund's continuous refusal, since September 2021, to submit his case to the Insurer with a request for the grant of CDB in his favour. He thus asks, despite this mootness that he acknowledges, to be compensated for the legal fees he incurred in this procedure, as well as for the moral damages he suffered because of the intentional behaviour, gross lack of care and bad faith allegedly exhibited in this regard by the Global Fund.

However, as the Tribunal has repeatedly held, malicious intent and bad faith cannot be presumed, they must be proven and the complainant bears the burden of proof in this respect (see, for example, Judgments 4851, consideration 11, and 4688, consideration 10, and the case law cited therein). The Tribunal considers that the complainant has clearly not met this burden. In the instant case, the record rather shows that at the time the complaint was filed, the complainant was having regular exchanges with the Global Fund for the implementation of the impugned decision. In addition, the complainant himself recognized that if the Global Fund had implemented the final decision of 12 January 2023 in a timely manner, a procedure would likely not have been submitted to the Tribunal. Moreover, as it will appear from the considerations that follow, it is obvious that the current procedure was triggered, at least in part, by the other claims for relief submitted by the complainant regarding the termination of his employment contract, with respect to which he cannot establish any entitlement to the payment of either legal fees or moral damages.

Under the circumstances, the complainant's claim that he is nevertheless entitled to legal fees or moral damages with respect to his moot claims must be dismissed.

5. Turning to the claim of the complainant that the decision to separate him from service, effective 3 October 2021, be found unlawful and set aside, he submits that both the Executive Director, in the impugned decision, and the Appeal Board, in its report, were mistaken to conclude that his appeal was not receivable as time-barred.

To that end, the complainant submits that in this procedure, he is appealing the decision to separate him from service while he was on service-incurred illness, but that he does not contest the decision of 9 December 2020, by which he was informed of the abolition of his post and the subsequent termination of his contract on 3 October 2021. According to the complainant, it is only after 6 September 2021, when it was confirmed to him that his termination would indeed become effective on 3 October 2021 despite his service-incurred sick leave, that he could have appealed this unlawful termination, as he initially did through his counsel's letter of 7 September 2021. In this context, he maintains that the Executive Director and the Appeal Board were wrong to conclude that his appeal was time-barred because he did not lodge his Request for Resolution before the expiry of the applicable 90-day time limit from the notification of the 9 December 2020 decision.

6. There are fundamental difficulties in much of the substance of this approach proposed by the complainant.

First, the claim for relief that he submits in this regard, in both his complaint form and his complaint, is that "the decision to separate [him] from service effective 3rd October 2021 be found unlawful and be set aside". Yet, the only decision by which he was informed of the abolition of his post and the termination of his contract on 3 October 2021 is that of 9 December 2020. There is simply no other decision in this respect that can be found in the record. At best, the email of 6 September 2021 merely confirmed the prior decision notified on 9 December 2020. This email regarding the administrative formalities related to his separation

did not amount to a new decision regarding the termination of his employment contract.

Second, if the complainant contends that he is not actually challenging the termination decision of 9 December 2020 but rather its implementation at the announced date of 3 October 2021, then, as rightly observed by the Global Fund, it must be concluded that he is not indeed challenging any administrative decision other than the one rendered on 9 December 2020 pursuant to which he was informed of the reason for the termination and of the separation date.

Third, the record indicates that when he was informed of the termination decision on 9 December 2020, the complainant had then been on sick leave for many months, namely since January 2020. It is also uncontested that his status in this regard indeed remained unchanged up until the effective date of the termination of his employment contract. Given these circumstances, his contention that he could not have been aware before 6 September 2021 that the termination of his employment contract would occur while on allegedly service-incurred illness is simply not sufficiently supported. On the facts of this case, it was rather highly predictable, on 9 December 2020, that the contemplated termination would indeed become effective while he was on sick leave.

7. As both the Executive Director and the Appeal Board correctly emphasized, the time requirements to challenge an administrative decision pursuant to the provisions of Section 18 of the Employee Handbook and Annex X thereto, entitled "Grievance and Dispute Resolution", are clear and unambiguous. A 90-day time limit applies. This time limit was manifestly ignored in the instant case such that the Request for Resolution and subsequent appeal filed by the complainant challenging the decision to terminate his employment contract effective 3 October 2021 were irreceivable as time-barred.

In this respect, the Tribunal recalls, on the one hand, that it is firmly established in its case law that strict adherence to time limits is essential to have finality and certainty in relation to the legal effect of decisions (see, for example, Judgment 4103, consideration 1). As aptly noted by the Tribunal in Judgment 4184, consideration 4, "the time limits for

internal appeal procedures [...] serve the important purposes of ensuring that disputes are dealt with in a timely way and that the rights of parties are known to be settled at a particular point of time". Pursuant to this consistent requirement of strict adherence to time limits, where a complainant does not comply with prescribed time limits for lodging a request for review, a grievance and/or an appeal, the complaint will be irreceivable for failure to exhaust all internal means of redress in accordance with Article VII, paragraph 1, of the Tribunal's Statute (see, for example, Judgments 4426, consideration 9, 4374, consideration 8, and 4221, consideration 8).

On the other hand, the Tribunal also observes that the complainant's contention to the effect that a staff member cannot be separated while on sick leave is devoid of legal basis. The complainant cannot identify any case law, principle, rule in the Global Fund Employee Handbook, or practice within the organisation that could have possibly compelled the Global Fund not to implement the termination decision of 9 December 2020 for the mere reason that he was on sick leave on the date of his separation. In Judgment 4704, considerations 9 and 10, the Tribunal recalled the following on this issue:

> "9. The [organisation]'s legal position is correct. Judgments 938 and 607, on which the complainant relies, did not establish a general principle that a staff member may not be separated while on sick leave. The question of whether an organisation is under an obligation to extend a fixed-term contract to cover a period of sick leave must be determined by having regard to the organisation's rules, including any established practice which is binding on the organisation. This position is consistently stated in the Tribunal's case law, most recently in Judgment 3754, consideration 14:
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> > 'Early judgments of the Tribunal, such as Judgment 938 relied on by the complainant, may have been thought to establish a principle of general application that an official's employment could not be terminated while the official was on sick leave. However it is clear that no such principle of general application has been established by the Tribunal's case law. This issue was discussed by the Tribunal in Judgment 3175, consideration 14.'
>
> 10. As there was neither a provision in the [organisation]'s Staff Regulations and Staff Rules, nor an established practice, or a principle of general application, requiring the [organisation] to extend a staff member's

> contract because she or he is on sick leave at the expiry of the contract, the [organisation] was not obliged to extend the complainant's contract to cover his sick leave." (Emphasis added.)

Similarly, in Judgment 3175, consideration 14, the Tribunal emphasized that it "did not establish a rule whereby, whatever the circumstances, an official who falls ill towards the end of his or her appointment is entitled to have it extended beyond the date of expiry and to receive a salary for the same term. It is equally plain that the principle set forth in Judgment 938, under 12, that 'a staff member cannot be separated while on sick leave' must be seen in context; it cannot be extended to every case in which an appointment ends." The reliance that the complainant put in this regard on Judgment 1494, consideration 7, is misguided and unsupportive of his assertion.

The Tribunal considers that the complainant failed to adhere to the allotted time limit to challenge the termination of his employment contract and his claims for relief in this regard must therefore be rejected as irreceivable.

8. It follows from the above that the complainant's main claims for relief are either moot or must be dismissed as irreceivable. Given this, his related claims for material and moral damages must be dismissed as well.

9. In the result, the complaint will be dismissed in its entirety.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 19 May 2025, Mr Michael F. Moore, Vice-President of the Tribunal, Mr Clément Gascon, Judge, and Ms Rosanna De Nictolis, Judge, sign below, as do I, René M. Vargas M., Registrar.

Delivered on 3 July 2025 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

CLÉMENT GASCON

ROSANNA DE NICTOLIS

RENÉ M. VARGAS M.