

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

S. (No. 3)

v.

**Global Fund to Fight AIDS, Tuberculosis
and Malaria**

141st Session

Judgment No. 5099

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Ms A. S. against the Global Fund to Fight AIDS, Tuberculosis and Malaria (“the Global Fund”) on 26 April 2024, the Global Fund’s reply of 19 August 2024, the complainant’s rejoinder of 18 November 2024, corrected on 19 November 2024, and the Global Fund’s surrejoinder of 21 March 2025;

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

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

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

The complainant challenges the decision to terminate her contract for abandonment of post.

The complainant joined the Global Fund on 9 November 2009 as a Finance Analyst in the Program Finance Team. On 1 January 2012, she was promoted to the Senior Finance Officer and Resource Mobilisation position (grade 05) in the Financial Planning and Analysis Team. She was then appointed to several teams before being assigned to the Sourcing Department in September 2014. She held grade 05, which was replaced by grade D following the entry into force of the new grading system in October 2014.

In February 2018, the Sourcing Department and Supply Chain Department were merged to create the Supply Operations Department. On 7 June 2019, the Head of this new department informed the complainant that her position was transferred to the newly created Data, Analytics, Processes, and Tools Team (“DAPT Team”). The complainant lodged an appeal (appeal No. 40) challenging this decision. The appeal was dismissed by the Executive Director, following the recommendation of the Appeal Board. The complainant then filed a complaint with the Tribunal, which was dismissed by Judgment 5014.

The complainant kept expressing, by email, her frustration with the decision to transfer her to the DAPT Team, and on 17 June 2019, after multiple exchanges between the complainant and the Human Resources Department (HR), she was placed on medical leave and did not return to work until the termination of her contract. She kept providing HR with medical certificates attesting that she was unfit to return to work unless her work setting was changed. On 17 December 2019, the complainant reached the maximum entitlement of 130 days of medical leave and the Global Fund asked her to apply for Sick Leave under Insurance Cover (SLIC) to continue to receive insurance coverage subject to the insurer’s approval. By an email of 20 January 2020, the complainant refused to apply for SLIC and stated that the Administration could use her annual leave entitlement or initiate a separation process.

On 17 March 2020, the complainant had exhausted her annual leave balance, but still refused to apply for SLIC, later claiming to be entitled to additional medical leave as of 17 June 2020. Her request for additional medical leave was rejected by the Global Fund, and the complainant lodged an appeal (appeal No. 44) challenging this decision. Furthermore, the complainant requested to be granted a position matching her qualifications and experience outside the Supply Operations Department which was rejected and led to another internal appeal (appeal No. 46). Lastly, following the rejection of her requests to change her job description as uploaded in the system, the complainant lodged another appeal (appeal No. 47). These appeals (Nos. 44, 46 and 47) were joined by the Appeal Board who recommended rejecting them.

The Executive Director dismissed the three appeals and the complainant filed a complaint with the Tribunal which led to Judgment 5015, which dismissed it.

By letter dated 25 September 2020, the complainant was informed that the Global Fund had conducted an investigation into her unauthorized absence from work from 21 April to 25 June 2020. The letter also stated that the complainant was required to undergo a further medical examination and that disciplinary action would be suspended until such time as a medical report was established.

On 7 February 2021, the complainant submitted a medical certificate that indicated that she would resume work at 50 per cent on the sole condition of having a change of team.

On 28 June 2021, the Chief of Staff stated that if the complainant failed to apply for SLIC before 9 July 2021, her employment status would be reviewed, as she was not on any approved leave under the Employee Handbook. As the complainant refused again, she was asked to report back to work on 9 August 2021, and the Chief of Staff warned her that failure to do so would be treated as a resignation. Subsequently, by a letter dated 26 August 2021, the Chief of Staff acknowledged the complainant's resignation stating that her separation would take effect as of 10 November 2021, that she was exempted from returning to work in the interim, and setting out the clearance procedure.

As the abovementioned letter was attached to an email allowing her to bypass the request for resolution process outlined in Annex X of the Employee Handbook and to file the claim directly with the Appeal Board, the complainant directly lodged an appeal on 29 September 2021 (appeal No. 54), in which she requested that the 26 August 2021 decision be set aside.

On 2 March 2022, the Appeal Board issued its report on appeal No. 54, recommending setting aside the 26 August 2021 decision, and for the complainant to be reinstated in the contractual situation and position in which she was placed before that date. It stated that there was no valid resignation according to Section 19 of the Employee Handbook, as such a resignation should be submitted with a written notice and entered in the internal information technology platform.

Additionally, the Appeal Board noted that the complainant's attitude and disrespect were not compatible with her obligations as a Global Fund employee nor with the conduct expected from an international civil servant and deemed it appropriate for the Global Fund to follow up with a disciplinary procedure.

On 18 March 2022, the Executive Director followed the recommendation of the Appeal Board, set aside the decision of 26 August 2021 and notified the complainant that she would be reinstated with retroactive effect as from 10 November 2021 in her previous position. However, the Executive Director noted the complainant's reluctance to return to work under these conditions and asked her to clarify, before 1 April 2022, whether she wished to be reinstated, apply for SLIC or resign from service with immediate effect.

On 1 April 2022, the complainant replied that these options were disingenuous, as returning to work under these conditions was deemed impossible by a medical practitioner, leading to a de facto termination of her contract by the Global Fund. By email dated 3 May 2022, the Chief Human Resources Officer requested the complainant to return to work on 1 June 2022 and informed her that the reporting manager for her position had changed. She noted the complainant's unwillingness to choose between the proposed options.

Following several email exchanges between the parties maintaining their position, the Chief Human Resources Officer warned the complainant, by letter dated 17 August 2022, that "failure to return to work by 30 August 2022 would be regarded as unauthorized absence from work in [the complainant's] position and a confirmation of [her] unwillingness to resume work in [her] current position. It could therefore trigger the application of Section 19 of the Employee Handbook relating to abandonment of post and, as such, eventually lead to the termination of [her] contract." On 1 September 2022, the complainant responded that this warning disregarded medical advice from the practitioner which stated that her return to work was only possible with appropriate medical precautions.

On 30 September 2022, the Chief Human Resources Officer issued another warning to the complainant to resume work by 7 October 2022, to which the latter responded reiterating her willingness to return to work under the conditions she had repeatedly stated.

On 11 November 2022, the Executive Director informed the complainant of the termination of her employment for abandonment of post, as it constituted unauthorized absence from work as per Section 19(E) of the Employee Handbook, the separation being effective on 10 December 2022. Further details regarding the clearance procedure were provided by the Chief Human Resources Officer on 15 November 2022.

The complainant filed a request for resolution on 6 February 2023, asking to set aside the 11 November 2022 decision, to be reinstated to a suitable position at the Global Fund under her continuing duration contract, and to be compensated for all employment-related losses (including salary, allowances, and Provident Fund contributions) from the date of termination until reinstatement, with 10 per cent annual interest. Alternatively, if reinstatement is not granted, she sought compensation for those losses through to her anticipated retirement. Additionally, the complainant requested 100,000 Swiss francs in moral damages due to the ongoing harm caused by the Global Fund's conduct and its negative impact on her career, dignity, and well-being, as well as 10,000 Swiss francs in exemplary damages for the organization's failure to address a clear conflict of interest. The request was rejected on 6 April 2023, the Chief Human Resources Officer emphasizing that the termination process respected the provisions of the Employee Handbook, and that the complainant was provided "clear" opportunities to return to work over a period of five months. Therefore, on 16 May 2023, the complainant lodged an appeal (appeal No. 65).

On 23 January 2024, the Appeal Board issued its report, unanimously recommending rejecting the appeal in its entirety. It found the appeal receivable, despite the complainant's employment having ended when the appeal was filed, since the core issue was the legality of that termination. It also noted that the Global Fund had implicitly waived the informal resolution step and the complainant met all procedural

deadlines. On the merits, the Appeal Board concluded that the termination for abandonment of post was legally valid. According to it, although the relevant rule (Section 19(E) of the Employee Handbook) was introduced after the complainant's absence began, her conduct after the rule's adoption justified its application, and the organization had clearly informed her of the consequences. The Appeal Board also noted the complainant did not follow the required procedure (SLIC) to obtain authorized medical leave, and thus her absence was deemed unauthorized. It rejected allegations of bad faith and conflict of interest, finding the process consistent with standard practice in international organizations.

On 31 January 2024, the Executive Director endorsed the recommendations of the Appeal Board and dismissed the complainant's appeal. This is the impugned decision.

The complainant asks the Tribunal that the impugned decision be set aside and that she be reinstated at the Global Fund under her continuing contract. She seeks material damages for lost employment benefits from the date of termination until either her reinstatement or anticipated retirement, with 10 per cent annual interest. Additionally, she requests 100,000 Swiss francs in moral damages due to the harmful impact of the Global Fund's conduct on her dignity and well-being, 10,000 Swiss francs in exemplary damages for the organization's failure to address a conflict of interest and the resulting procedural delay, and an award of legal costs.

The Global Fund asks the Tribunal to reject the complaint as partly irreceivable and entirely unfounded, and, therefore, to reject the ancillary claims.

CONSIDERATIONS

1. The relevant background facts have been set out earlier and need not be repeated here. The complainant impugns the decision dated 31 January 2024, whereby the Executive Director of the Global Fund endorsed the Appeal Board's recommendation to dismiss her appeal in its entirety, upholding the Executive Director's decision of 11 November

2022 to terminate her appointment for abandonment of post with effect from 10 December 2022.

2. The central issue in the present complaint is whether the Global Fund's termination of the complainant's appointment for abandonment of post is lawful.

3. The complainant first argues that no abandonment of post occurred. She maintains that she consistently expressed her willingness to return to duty, but that the Global Fund obstructed her return by offering only her former post in the same setting, contrary to her doctor's advice that her health status allowed her to resume a professional activity at 50 per cent "but on the sole condition of having a change in her working conditions, namely a change of team". The alternatives proposed, namely applying for SLIC or resigning, were, in her view, neither feasible nor in good faith. She also contends that the Global Fund applied a new provision governing termination for abandonment of post retroactively to the complainant's circumstances, constituting an *ex post facto* application. Notably, this retroactive imposition, following an initial unsuccessful dismissal attempt, demonstrates an abuse of authority targeting the complainant. Further, the specific conditions stipulated by this newly applied provision were not satisfied in her case.

4. The Global Fund submits that the termination was lawful. The provision on termination for abandonment of post, effective 1 July 2022, was applied only to the complainant's continued unauthorized absence after that date. Notably, she was formally notified by a letter of 17 August 2022 and again on 30 September 2022 that failure to return to duty could trigger termination under Section 19(E) of the Employee Handbook. The rule was therefore applied prospectively, not retroactively. It emphasizes that under the Employee Handbook provisions, only the insurer's assessment under the SLIC process can validate medical leave beyond the standard entitlement. Her independent medical certificates could not substitute for the formal SLIC procedure. The complainant's

refusal to apply for SLIC left her in a legal and administrative vacuum, rendering her absence unauthorized.

5. The Tribunal recalls that Judgment 5015 concerning the complainant's second complaint definitively settled the lawfulness of the Global Fund's actions concerning SLIC. It held that only the insurer's medical evaluation can determine entitlement to special leave for prolonged illness; that the 2021 external medical practitioner's report, which stated that the complainant could only work at 50 per cent capacity in a changed environment could not replace the mandatory SLIC evaluation; that the complainant's continued refusal to apply for SLIC rendered her absence unauthorized; and that the Global Fund's insistence that she regularize her medical status through the SLIC process was lawful and did not breach its duty of care.

6. In the present case, the complainant was repeatedly requested to resume duty or provide medical justification through the SLIC process after her reinstatement. She did neither. Since the exhaustion of her medical leave and annual leave on 17 March 2020, she persisted for almost two years and eight months in refusing to report for duty or to engage in the SLIC. Her unauthorized absence therefore triggered the application of Section 19(E) entitled "Termination for abandonment of post", introduced on 1 July 2022 into the Employee Handbook, which provides as follows:

"An employee may be absent from work only for authorized absences provided for as per the Employee Handbook and within the limits set out thereunder.

Once a staff member is advised that they are absent without authorization, the employee must report to work immediately or otherwise submit, without delay the relevant request for authorized absence. Failure to do so shall be considered unauthorized absence from work.

Irrespective of any action that may apply pursuant to Annex IX – Investigations and Annex XII – Disciplinary Procedure to the Employee Handbook, unauthorized absence from work will constitute a valid reason for termination of their employment by the Executive Director for abandonment of post with one-month prior notice in the interest of the Global Fund."

7. The Appeal Board found, and the Tribunal agrees, that Section 19(E) was not applied retroactively. After it entered into force on 1 July 2022, the complainant was formally warned by letters of 17 August 2022 and 30 September 2022 that failure to return to work would trigger the application of Section 19(E). She was therefore sufficiently informed of the existence of the new provision and its implications, although she no longer had intranet access. The decision of 11 November 2022 was motivated by her continued unauthorised absence from 1 June 2022, but also beyond 1 July 2022. No violation of the principle of non-retroactivity occurred. The complainant's continued unauthorised absence from work following explicit warnings in August 2022 and September 2022 met the conditions for termination for abandonment of post under Section 19(E). The Global Fund also respected the one-month notice period by setting the effective date of termination to 10 December 2022.

8. The Tribunal finds that the Global Fund was not required to take additional precautionary measures to facilitate the complainant's return to work and no abuse of authority has been established, as the complainant, being the party asserting this allegation, must prove it (see, for example, Judgments 4988, consideration 5, 4524, consideration 15, 4467, consideration 17, 4146, consideration 10, 3939, consideration 10, 2264, consideration 7(a), and 2163, consideration 11), which she has not done. The Tribunal's case law has held that it is not always feasible to accommodate the needs of each individual employee, as the product or result of the work is frequently and justifiably accorded higher priority than an individual's personal interests (see Judgments 4345, consideration 5, 4316, consideration 18, 3447, consideration 11, 3192, consideration 22, and 2587, consideration 10). Furthermore, the Tribunal is satisfied that the Global Fund has acted in good faith and fulfilled its duty of care by repeatedly inviting the complainant to regularise her employment situation and giving support to her in clarifying her legal situation after introducing Section 19(E) into the Employee Handbook.

The complainant's first plea is therefore unfounded.

9. The complainant next alleges that the Global Fund breached due process by failing to provide an effective remedy and denying her a fair and impartial appeal. She contends that the Appeal Board misrepresented facts, ignored relevant medical evidence, wrongly accepted the transfer of the Occupational Health Service's functions to the SLIC insurer, and minimized the failure to provide updated terms of reference and to notify her of the new rule on abandonment of post. She further claims a conflict of interest and lack of independence in the decision-making process, as both the Chief Human Resources Officer and the Executive Director reviewed and reaffirmed a termination decision originally taken by the Executive Director, creating a circular and biased process that caused her additional harm.

10. The Global Fund replies that its procedure fully complied with Sections 18 and 19(E) of the Employee Handbook, that the Appeal Board acted independently and gave the complainant ample opportunity to present evidence, that it also rightfully assessed the functions and responsibility of the SLIC insurer, that the alleged failures to provide updated terms of reference and to notify the complainant of the new rule have been rebutted by the Global Fund in other appeal procedures, and that the Executive Director's role as final decision-maker, following an independent recommendation, is standard practice across international organizations and involves no conflict of interest.

11. The Tribunal recalls its case law regarding the role and the significance of appeal board opinions, for example in consideration 7 of Judgment 4488, reaffirmed by Judgment 4848, consideration 10, as follows:

“The Tribunal's case law establishes in, for example, Judgment 4407, at consideration 3, that an internal appeal body's report warrants considerable deference in circumstances where its report involves a balanced and thoughtful analysis of the issues raised in the internal appeal, as it does in this case, and on its analysis its conclusions and recommendations were justified and rational, as again they are in this case (see also Judgments 3608, consideration 7, 3400, consideration 6, and 2295, consideration 10).”

12. The record shows that the internal appeals procedure was conducted in accordance with the applicable rules and with due regard for the complainant's rights. The Appeal Board gave the complainant ample opportunity to present evidence, considered the complainant's submissions in detail, and issued a reasoned recommendation. The complainant's disagreement with the Appeal Board's evaluation of evidence does not demonstrate a procedural flaw.

13. Regarding the complainant's allegation of conflict of interest and lack of impartiality in the decision-making, the Tribunal has established through its case law that an allegation of conflict of interest must be substantiated through concrete evidence demonstrating actual prejudice (see, for example, Judgment 4891, consideration 11). A conflict arises only where a reasonable person would not exclude partiality. The complainant's reliance on mere suspicion or conjecture fails to meet this evidentiary threshold. The Executive Director's endorsement of the Appeal Board's recommendation does not, in itself, create objective partiality. The fact that the Executive Director rendered both the initial decision and the final decision is unexceptionable given that it is contemplated in the Employee Handbook (see, for similar examples, Judgments 4815, consideration 7, 4540, consideration 4, and 3352, consideration 6). The complainant has not discharged her burden of proving conflict of interest, lack of independence, or violation of due process.

The complainant's second plea is therefore unfounded.

14. It follows from the foregoing that the complaint must be dismissed in its entirety.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 28 October 2025, Mr Michael F. Moore, President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, René M. Vargas M., Registrar.

Delivered on 10 February 2026 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

HONGYU SHEN

RENÉ M. VARGAS M.