

V.
v.
AMRO

141st Session

Judgment No. 5100

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms M. V. against the ASEAN+3 Macroeconomic Research Office (AMRO) on 25 April 2022 and corrected on 6 June 2022, AMRO's reply of 16 October 2022, the complainant's rejoinder of 13 January 2023 and AMRO's surrejoinder of 16 February 2023;

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 contests the decision to extend her contract for one year only.

The complainant is a former staff member of AMRO. She joined the organisation on 1 October 2018 as Research Data Analyst under a three-year fixed-term appointment.

On 29 January 2021, the Human Resources (HR) Team notified the complainant's supervisor, Mr P., that the complainant's fixed-term appointment was due to expire on 30 September 2021 and required him, pursuant to the relevant sections in Administrative Order No. 2.01, to prepare a recommendation to the Director on "the extension or non-renewal" of the complainant's appointment.

By a memorandum dated 9 April 2021, Mr P. recommended the Director to extend the complainant's contract for three years, highlighting that "[her] work performance ha[d] been in the fully satisfactory range for the past two years" and noting that "[s]he [was] encouraged to focus on fostering good working relationships with colleagues and strengthening time management".

By a letter of 6 May 2021, the Deputy Director notified the complainant that her fixed-term appointment would be extended for a period of three years. The complainant acknowledged receipt of this letter on 7 May 2021.

By an email of 16 July 2021, the complainant's supervisor invited her to discuss about the "Midyear Review of the Results Agreement and Staff Development Plan". The discussion took place on 22 July 2021. During this exchange, he identified shortcomings in the complainant's performance.

By an email of 26 July 2021, the complainant's supervisor informed the Group Head of HR that "[he] would rate [the complainant's] performance for the work and the behaviour in the first half of the year below fully satisfactory". He indicated that he wished to discuss with the Group Head of HR in this respect and that he also wanted to raise this issue during a meeting of the Group Heads.

On 29 July 2021, the complainant received, by email, a letter of appointment from the Director confirming that her contract would be extended for a period of three years. She was invited to sign the letter and return it to the organisation within a period of seven calendar days from the date of its receipt. Later that day, the complainant was informed that she should disregard the email she had received earlier "as the [letter of appointment] attached [was] not the most updated version" and that she would receive the updated version "when ready". The complainant acknowledged receipt of this email a few minutes later.

By an email of 30 July 2021, the complainant followed up on her discussion with her supervisor held on 22 July 2021, seeking clarification on what aspects of her performance had been positive and how she could improve in areas of concern. In his reply of 1 August 2021, Mr P. indicated that "[they] ha[d] extensively discussed [her] performance

especially several areas of improvements” and that he had no more to add. He suggested that “[the complainant] spend more time to reflect upon [his] feedback”.

In the absence of an updated version of the letter of appointment, the complainant signed the letter of 29 July 2021 and sent it to the organisation on 5 August 2021. The Group Head of HR replied to the complainant later that day, indicating that sending the signed letter of appointment was unnecessary as she had been notified to disregard it on 29 July 2021.

On 23 August 2021, Mr P. provided the complainant with her mid-year “Results Agreement and Staff Development Plan” for her comments. In the section entitled “Overall Comments” the complainant’s supervisor indicated that “[i]t [was] important for her to have much better time management to ensure that works progress according to the schedule and are submitted on time. She should also pay a lot of attention to the quality of written works in terms of the structure, flows and conciseness and try to reduce errors. The relationships with team members need to be further improved.”

On 20 September 2021, during a meeting with the Chief Economist and the Group Head of HR, the complainant was informed that her fixed-term appointment would be extended by one year.

Later that day, the complainant sent an email to the Group Head of HR expressing concern about the decisions communicated during the meeting with the Chief Economist to shorten her contract and to assign her to a new supervisor. She noted that the three-year extension of her contract had already been approved by the Director in July 2021 and questioned the rationale for the change, particularly in light of her consistently positive performance ratings. The complainant further expressed confusion over the “partially unsatisfactory” rating of her performance communicated during the meeting, arguing that it could refer only to the previous two months and that such an assessment should not affect the renewal of her contract and, if valid, should only be reflected at the end of the formal performance review scheduled for January 2022.

By a letter dated 24 September 2021, the complainant received a new letter of appointment extending her fixed-term appointment for a period of one year.

On 5 October 2021, the complainant submitted a request for administrative review of the decision to shorten the extension of her contract from three years to one year.

By a letter of 20 October 2021, the Deputy Director informed the complainant of his decision to reject her request for administrative review as unfounded. He notably highlighted that “any extension of a fixed-term appointment – and the decision on the duration of such extension – is predicated on ongoing satisfactory performance”. The Deputy Director indicated that, subsequent to the initial decision to extend the complainant’s appointment for a period of three years, her level of performance “started to drop”, as highlighted in her exchanges with her supervisor and in her mid-year “Results Agreement and Staff Development Plan”, where he raised concerns about “[her] time management, the quality of [her] written work and [her] relationships with team members”. Therefore, the decision to reduce the duration of the complainant’s contract extension was “an appropriate exercise of the organization’s discretion given the deterioration in aspects of [her] performance as had also been communicated to [her]”.

On 3 December 2021, the complainant submitted a request for compulsory conciliation under Section 3.6 of Administrative Order No. 2.06. The appointed Conciliator rendered her report on 27 January 2022, indicating that the conciliation attempt had been unsuccessful. This is the impugned decision.

On 18 February 2022, the complainant resigned from AMRO, effective 18 March 2022.

The complainant requests the Tribunal to set aside the impugned decision as well as the decision to extend her contract for one year only. She also asks the Tribunal to order full payment of all salaries, pension contributions, benefits and entitlements, and any other emolument that she would have received from 1 October 2022 until 30 September 2024. Additionally, the complainant seeks compensation for moral damage.

The organisation asks the Tribunal to dismiss the complaint in its entirety as unfounded.

CONSIDERATIONS

1. The complainant joined the staff of AMRO on 1 October 2018 and resigned from the organisation on 18 February 2022, effective 18 March 2022. Central to these proceedings are events in July, August and September 2021 concerning the extension of the fixed-term contract of three years, under which she was initially employed. In her pleas she raises a multitude of procedural and other arguments attending the initial proposal that there would be an extension of a further three years and the supersession of that proposal by a further one that the extension only be for one year.

2. It is unnecessary to deal with those procedural and other arguments because there is one fundamental legal flaw in the reduction of the period of extension from three years to one. Administrative Order No. 2.01 which concerns “Recruitment and Appointment”, relevantly provides:

Section 9, Acceptance of appointment:

“9.1 An appointment is accepted by the candidate upon receipt by AMRO of the appointment letter counter-signed by the candidate. Except as AMRO may otherwise agree, the candidate must countersign such appointment letter and send to AMRO within a period of seven (7) calendar days from the date the letter of appointment was dispatched to the candidate, together with the Affirmation referred to in Section 3 of AO 2.02.

[...]

9.3 AMRO Director may by written notice to the applicant withdraw a letter of appointment before it has been accepted or before conditions set forth in the offer of appointment have been met.”

Section 3, Types of appointment:

“3.1 [...] A fixed-term appointment is a full-time appointment to the staff of AMRO for a specified period of one year or more. [...] A fixed-term appointment may, at the option of AMRO, be extended which shall constitute a continuation of the previous fixed-term and be regarded as such for administrative purposes. Any extension of a fixed-term appointment is

entirely at the discretion of AMRO Director considering the needs of AMRO.”

Section 13, Extension of fixed-term appointment:

“13.1 The AMRO Director is under no obligation to extend a fixed-term appointment of a staff member. Such appointment will generally be extended when the following criteria are met:

(a) The AMRO Director decides that it will continue to require the staff member’s particular blend of skills and experience for the foreseeable future; and

(b) The AMRO Director is satisfied with his/her performance and suitability for further employment based on the results of the staff member’s performance review.

13.2 Group Heads are required to make a recommendation to the AMRO Director not later than seven (7) months prior to the expiry date of a staff member’s fixed-term appointment, as to its extension or non-renewal. Such recommendation shall be discussed with the staff member, who shall be given five (5) working days to submit comments. The Group Heads shall submit the recommendation, through the Head of HR (in the future, with the relevant Deputy Director), to which the staff member’s comments are to be attached, to the AMRO Director for approval. The Head of HR will assist the AMRO Director in the determination of the period of the fixed-term appointments.

13.3 The Head of HR shall notify the concerned staff member not later than six (6) months prior to the expiry of his/her fixed-term appointment, in the event AMRO does not intend to extend the staff member’s fixed-term appointment.”

3. One important matter emerges from these provisions. Decisions to appoint a person to, and extend, a fixed-term appointment, are decisions of, and action by, the Director. The exercise of the power of the Director to extend is subject to two conditions found in Section 13.1(a) and (b). Paraphrased, they are firstly that the organization needs the staff member and secondly that the Director is satisfied with the person’s performance and suitability. By letter dated 29 July 2021, the Director offered the complainant an extension of three years from the date on which her initial appointment concluded, namely 30 September 2024. It can be inferred that the Director was satisfied about the two matters referred to in Section 13.1 and, in any event, the complainant’s supervisor wrote to the Director in April 2021, via other

senior members of staff, a memorandum recommending her extension for three years and writing favorably about her performance.

4. In the present case, the Director wrote to the complainant by letter dated 29 July 2021 saying “[w]e are pleased to extend your current fixed term Contract of Employment [...] for another term of three (3) years until 30 September 2024”. The letter then detailed the basis on which she would work and where, concluding, in the penultimate paragraph: “[w]e hope that you will accept the offer outlined above. If you do, please countersign this Letter of Appointment and send them to AMRO within a period of seven (7) calendar days from the date this Letter of Appointment is received”.

5. The complainant did countersign the letter of appointment and returned it within seven days. This had the legal consequence of effecting a three-year renewal. This is consistent with the Tribunal’s case law that in the absence of specific provisions governing the conditions for their reversal or revocation, an individual administrative decision which affects a staff member of an organisation becomes binding upon the organisation that made it (see, for example, Judgment 3483, consideration 4).

6. It is true that the complainant was told by the Administration to ignore the letter of 29 July 2021 and later that it had been unnecessary for her to sign it. However, these were not, expressly, the manifestation of a decision made by the Director who, as is recalled, is the repository of the power to decide to extend fixed-term contracts. It is also true that the assessment of the complainant’s performance after April 2021 pointed to a decline in it. It is conceivable that in those circumstances no offer of a three-year extension should have been made. But it was made by the Director, and acted upon by the complainant, with the consequences discussed in the preceding consideration. This was not the manifestation of a mere clerical error (see, for example, Judgment 3693, consideration 18).

7. It is unnecessary to address other issues and the Tribunal can move straight to the question of relief. The decision of 20 October 2021 should be set aside.

8. The complainant seeks moral damages in the amount of 50,000 euros for the repeated violation of her rights in the process of deciding about the reduction of her contract extension and moral damages in the amount of 50,000 euros for the organisation's alleged breach of its duty of care. However, in a case such as the present it would be necessary for the complainant to demonstrate moral injury founding the award of moral damages. As the Tribunal has repeatedly held, moral damages flow from proof, provided by the complainant, of the moral injuries suffered, of the alleged unlawful act, and of the causal link between the unlawful act and the injury (see Judgment 4156, consideration 5, and the case law cited therein). Beyond the generalized assertion that her dignity and reputation had been tarnished, she gives one example of what she asserts was the diminution of her reputation in the eyes of one co-worker. But that example is an insufficiently firm foundation to award moral damages in the amount claimed or at all as is her assertion (but not proved by persuasive evidence) she was overlooked for positions for which she applied. However, the complainant is entitled to a compensation for the manifest moral injury she suffered having regard to the stress undoubtedly caused by the unlawful decision to renew her contract for one year only. She is therefore entitled to 12,000 euros as moral damages.

9. The complainant seeks material damages equivalent to two years net salary for the additional two years she would have worked had her appointment been extended by three years. The difficulty with this contention is that the complainant did not even serve the one year for which her appointment was extended. She decided to seek out and accept employment with another organisation after only 6 months of her one-year extension. The Tribunal finds, therefore, that the complainant has suffered no material injury. Her claim for compensation under this head is accordingly rejected.

10. Notwithstanding the fact that the complainant was legally represented, she did not seek an order for costs. Accordingly, no order for costs will be made.

DECISION

For the above reasons,

1. The decision of 20 October 2021 is set aside.
2. AMRO shall pay the complainant 12,000 euros in moral damages.
3. All other claims are dismissed.

In witness of this judgment, adopted on 31 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.