

**AG. and B.**

**v.**

**WTO**

**141st Session**

**Judgment No. 5106**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr Y. F. AG. against the World Trade Organization (WTO) on 15 April 2022, the WTO's reply of 5 September 2022, the complainant's rejoinder of 17 October 2022 and the WTO's surrejoinder of 9 November 2022;

Considering the complaint filed by Mr K.-E. B. against the WTO on 13 April 2022, the WTO's reply of 5 September 2022, the complainant's rejoinder of 7 October 2022 and the WTO's surrejoinder of 9 November 2022;

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 none of the parties has applied;

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

The complainants challenge the decision not to pay them a termination indemnity.

In October 2013, the complainants were appointed Deputy Directors-General under the then Director-General, Mr A. They each held a two-year fixed-term contract that was extended three times during Mr A.'s term of office. The last contractual extension was until 30 September 2021. As indicated in their initial contract dated 11 September 2013 for Mr B. and 18 September 2013 for Mr AG., their

appointments were governed by the provisions of the WTO Staff Regulations and Staff Rules, and by the specific terms and conditions of their respective contracts. Hence, their contracts expressly indicated *inter alia* that their fixed-term appointments were renewable but conditional to, and not beyond, the term of office of the Director-General, Mr A., that their contracts may not be converted into regular contracts and that they “may be terminated by the WTO before [their end] date subject to not less than three months of written notice to that effect (Staff Rule 111.2)”.

In May 2020, Mr A. announced that he would resign with effect from 31 August 2020, one year prior to the scheduled end of his term of office. In August 2020, he informed all staff that, as of 1 September 2020, the four Deputy Directors-General, which included the complainants, were entrusted with the necessary authority and powers to fully discharge their responsibilities. All matters normally requiring the Director-General’s attention were to be addressed to the four Deputy Directors-General, who were representing him until the General Council or a new Director-General decided otherwise.

On 1 March 2021, the new Director-General took office. The following day, 2 March 2021, the Human Resources Division notified each complainant, by a separate memorandum, that the Director-General was thereby giving them notice that their contracts would expire on 31 March 2021. The memorandum underlined that their contracts were conditional on Mr A.’s term of office, and that the possibility of adjusting their tenure of appointment was based on a three-month notice under Staff Rule 111.2; this provision reflected the political nature of their appointments. It further explained that the date of expiry of their contracts was established pursuant to the “customary practice” that Deputy Directors-General, who were appointed by the Director-General, should remain in office for one month into the term of the newly elected Director-General. The memorandum indicated that they would be paid three months’ salary in lieu of notice, but they would not be paid a termination indemnity because the expiration of their fixed-term contracts should not be regarded as a termination based on Staff Regulation 10.4 and Staff Rule 111.2(c).

In late March 2021, the complainants requested the review of the 2 March 2021 decisions insofar as they were not paid the termination indemnity. The Director-General rejected their requests a few days later. Shortly after, in early April 2021, the complainants filed an appeal with the Joint Appeals Board (JAB) contesting that decision. Their appeals were joined.

In its report of 14 December 2021, the JAB found no grounds upon which to conclude that the complainants were entitled to the payment of a termination indemnity following their separation from service on 31 March 2021. The JAB was unable to reach a unanimous view as to whether their separations were the result of an expiration in accordance with the terms of their contracts, or a termination by the Director-General. It nevertheless concluded that, in the circumstances, neither an expiration nor a termination of contract in the circumstances could give rise to the payment of an indemnity under the Staff Regulations and Staff Rules and the specific terms and conditions of their contracts.

On 18 January 2022, the complainants were notified separately that the Director-General had decided to maintain his decision on the grounds that, as indicated by the JAB, there was no legal basis to authorise the payment of a termination indemnity. This is the decision impugned by each complainant.

Each complainant asks the Tribunal to find that the impugned decision was a termination of his contract ahead of its expiration date, to set aside the impugned decision to the extent that the Director-General had refused to pay a termination indemnity and to order the payment of this termination indemnity in an amount equivalent to three months' net salary.

The WTO asks the Tribunal to reject the complaints as irreceivable insofar as the complainants raise new arguments for which they have failed to exhaust the internal means of redress. The complaints are otherwise unfounded.

## CONSIDERATIONS

1. This judgment concerns the entitlement of two former members of the staff of the WTO to a termination indemnity at the conclusion of their contracts effective 31 March 2021 and related issues. The two staff members raise precisely the same legal issue, seek the same redress and the material facts are the same. Indeed, their pleas are almost in identical terms. The WTO asks that the complaints be joined so that one judgment can be rendered. This is not opposed by either complainant. In these particular circumstances, it is appropriate to join the two complaints.

2. Each complainant was initially engaged under a contract dated 11 September 2013 for Mr B. and 18 September 2013 for Mr AG. for a duration of two years. Under the contract, the date of appointment was 1 October 2013. The appointment was renewed on three occasions most recently in April 2019 and was thus scheduled to expire on 30 September 2021. The terms of the contract of 18 September 2013 continued to govern their appointment during these periods of renewal.

3. As to the tenure of the complainants' appointment the contract of 11 September and 18 September 2013 respectively provided (the tenure term):

“This appointment will be a fixed-term contract of two (2) years from 1 October 2013 to 30 September 2015; renewable but conditional to, and not beyond, the term of office of the Director-General, [Mr A.]. This contract may not be converted into a regular contract. The holder of this contract may not be transferred at any time to any other post. It may be terminated by the WTO before that date subject to not less than three months of written notice to that effect (Staff Rule 111.2).”

4. Staff Rule 111.2 provided:

*“Expiration of fixed-term contracts*

- (a) A fixed-term contract shall expire on the expiration date specified in the contract, except that where the staff member concerned is on sick leave, the contract may be extended subject to the limits specified in Staff Rule 110.3.

- (b) If a fixed-term contract is not to be extended, the expiration date shall be confirmed to the staff member in writing wherever possible three months beforehand, and in any event no less than two months beforehand.
- (c) Separation from service as a result of the expiration of a fixed-term contract shall not be regarded as a termination.”

5. The relevant provisions of the Staff Regulations concerning termination indemnity were:

“**Regulation 10.1:** Separation from service may occur as a result of:

- (a) resignation, with due notice;
- (b) expiration of a contract in accordance with its terms;
- (c) termination of a contract by the Director-General;
- (d) retirement;
- (e) summary dismissal for serious misconduct;
- (f) abandonment of post;
- (g) death.”

“**Regulation 10.3:** The following cases shall constitute grounds for termination of contract by the Director-General:

- (a) reduction of the staff, or if the necessities of the service require abolition of the post occupied by the staff member concerned and redeployment is not possible;
- (b) if the staff member is incapacitated for further service for reasons of health;
- (c) if such action is desirable in view of the needs of the WTO, on terms mutually agreed with the staff member;
- (d) if the performance of the staff member concerned falls short of the minimum standards required, as documented in the annual evaluation reports;
- (e) if the conduct of the staff member does not meet the highest standards of integrity required by the Staff Regulations, including the respect of obligations detailed in Annex A thereof;
- (f) if facts anterior to the appointment of the staff member come to light which, had they been known, would have precluded appointment.

**Regulation 10.4:** In cases provided for under Staff Regulation 10.1(b), a staff member shall be given notice. The expiration of a fixed-term contract in accordance with its terms shall not give rise to the payment of an indemnity.

**Regulation 10.5:** A staff member whose contract is terminated under Staff Regulation 10.1(c) shall be given notice or, exceptionally, payment in lieu of notice.

**Regulation 10.6:** Termination under Staff Regulation 10.3 (a), (b), or (c) shall give rise to an indemnity which may be increased in exceptional cases by up to 50 per cent in case of termination under Staff Regulation 10.3(c). Termination under Staff Regulation 10.3(d) may, in cases of exceptional hardship, give rise to an indemnity not exceeding one half of the indemnity payable under Staff Regulation 10.3(a) or (b).”

6. It was against this legal background that events unfolded in 2020 and 2021. The Director-General, Mr A., held office until 31 August 2020. Had he served his full four-year term, he would have held office until 31 August 2021. After a lacuna in the occupation of the office of Director-General, a new Director-General assumed the office on 1 March 2021. On 2 March 2021, each complainant was sent a notice at the direction of the new Director-General. It said:

“1. I have been instructed by the Director-General, on 2 March 2021, to provide you with this notice under Staff Regulation 10.4 and Staff Rule 111.2(b).

[...]

3. Pursuant to Staff Regulation 10.4, a notice shall be given by the WTO in case of the expiration of a contract in accordance with its terms. Your contract stipulates that your appointment is ‘renewable but conditional to, and not beyond, the term of office of the Director-General, [Mr A.]’. Your last contractual extension stipulated that it was ‘conditional on the term of office of Mr [A.]’. The possibility of adjusting the tenure of appointment is stipulated in your contract with reference to a three-month notice under Staff Rule 111.2 (on ‘Expiration of fixed-term contracts’). These contractual clauses and the remuneration package in your contract as Deputy Director-General reflect adequately and commensurately the nature of your political appointment.

4. Paragraph 22 of document WT/L/509 states that ‘the terms of office of the Director-General and of the Deputy Directors-General shall be staggered, such that the terms of the Deputies expire subsequent to the expiry of the Director-General’s term’. It is a customary practice that the Deputy Directors-General appointed by the previous Director-General remain in office for one month into the term of the following Director-General. This customary practice is reflected in your contract with the WTO. The term of office of Director-General [Mr N.] began today, 1 March 2021. Following

the customary practice reflected in the terms of your contract, your contract expires on 31 March 2021.

5. Pursuant to Staff Rule 111.2(b), the expiration date of a fixed-term contract shall be confirmed by the WTO in writing whenever possible three months beforehand, and in any event no less than two months beforehand. In light of the contractual reference to a three-month notice, you are receiving a notice of three months that begins on 31 March 2021. In practice, this means that the full notice of three months shall be paid in lieu of notice.

6. Pursuant to Staff Regulation 10.4 and Staff Rule 111.2(c), separation from service as a result of the expiration of a fixed-term contract shall not be regarded as a termination and shall not give rise to the payment of an indemnity.

7. Pursuant to Staff Regulation 10.7 and Staff Rule 111.3, you shall receive a separation grant (subject to certain conditions) and payment for the commutation of accrued annual leave. Pursuant to Staff Rule 112.11, the WTO shall pay the cost of removing personal effects and household goods. You may opt instead for the lump-sum payment for removal (pursuant to OFFICE (17)/41).”

7. The notice purported to do four things. The first thing was to assert that the complainants’ contracts expired on 31 March 2021. In fact, this was when they left the employ of the WTO.

8. The second thing was to identify two matters which in combination brought about this result. The first matter was the tenure term. The second matter was a customary practice that Deputy Directors-General would remain in office for a month after the new Director-General took office.

9. The third thing was to intimate that rather than providing written notice (purportedly based on Staff Rule 111.2) as provided in the tenure term, each complainant would receive three months’ notice but paid as three months’ salary and allowances in lieu of notice. The fourth thing was to assert that these arrangements resulted in the expiration of a fixed-term contract and was not to be regarded as a termination giving rise to the payment of an indemnity.

10. The complainants contest this analysis. Fundamentally they argue that they were employed on a fixed-term contract expiring on 30 September 2021. This was one month after the term of office of the former Director-General, Mr A. was originally scheduled to end. The complainants also argue their employment was terminated effective 31 March 2021 and by virtue of that termination, various provisions of the Staff Regulations and Staff Rules, entitled them to payment of a termination indemnity.

11. It is tolerably clear that the complainants' tenure term was drafted on the assumption the former Director-General, Mr A., would remain in office for one full term of four years or two full terms. On this assumption there was intended to be an alignment between the expiry of the second or fourth two yearly contract for a Deputy Director-General and the Director-General's term of office ending one month earlier after four or eight years. The expression "but conditional to, and not beyond, the term of office of the Director-General, [Mr A.]" was intended to reflect this assumption. In the Tribunal's view, the expression was not intended to have any wider operation.

12. What the tenure term did not expressly provide for was the former Director-General, Mr A. not serving a full first or second term. Importantly, the tenure term did create, expressly, a mechanism for bringing to an end a fixed-term contract under which a Deputy Director-General was employed before it had run to full term. The concluding sentence of the tenure term read "[i]t may be terminated by the WTO before that date [...]". On balance the words "that date" are referable to 30 September 2015 or two, four or six years later, that is to say, at the conclusion of the first, second, third or fourth fixed-term contract. This was the contractual source of power for the WTO to bring to an end a fixed-term contract of a Deputy Director-General before its expiry.

13. The Tribunal is satisfied, having regard to these contractual arrangements and the relevant Staff Regulations and Staff Rules, that the notice of 2 March 2021 was "the termination of a contract by the Director-General" for the purposes of Staff Regulation 10.1(c). The

grounds for such a termination were identified in Staff Regulation 10.3. The ground which accorded most closely with the termination in this case, is the ground in Regulation 10.3(c), that is to say, the termination “was desirable in view of the needs of the WTO”. Termination on this ground entitled the staff member to an indemnity (see Staff Regulation 10.6 and Staff Rule 111.8). It is true that the termination was not on terms mutually agreed. But this could not, in the particular circumstances, be raised by the WTO to defeat the complainants’ claim to an indemnity. The decision impugned by each complainant will therefore be set aside.

14. The complainants are entitled to an indemnity as provided in the Staff Regulations and Staff Rules though they restrict their claim to an indemnity equivalent to three months’ salary.

#### DECISION

For the above reasons,

1. The decision of 18 January 2022 impugned by each complainant is set aside.
2. The WTO shall pay each complainant an indemnity in accordance with Staff Regulation 10.6 and Staff Rule 111.8 but limited to three months.

In witness of this judgment, adopted on 14 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.