S.

v.

Energy Charter Conference

141st Session **Judgment No. 5112**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr B. S. against the Energy Charter Conference ("the organisation") on 14 June 2022 and corrected on 11 July 2022, the organisation's reply of 9 September 2022, the complainant's rejoinder of 23 October 2022 and the organisation's surrejoinder of 31 October 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 neither party has applied;

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

The complainant challenges the termination of his appointment due to unsatisfactory performance.

The complainant joined the Energy Charter Secretariat, the secretariat of the organisation, in February 2021, as Principal Co-ordinator of the Knowledge Centre. His initial temporary appointment from 1 February to 31 December 2021 was subsequently extended for one year until 31 December 2022. His letter of appointment expressly stated that in accordance with Staff Rule 1.2, Staff Rules 10.1 and 10.2 on "Duration of Appointment" and "Probationary Period" did not apply to his appointment and that either the complainant himself or the

Secretary-General might terminate the appointment, at any time, by giving one month's notice.

In a memorandum of 9 February 2022 to the Chair and the members of the Advisory Board, the Secretary-General sought the Board's endorsement of his proposal for the termination of the complainant's appointment with one month's notice on the grounds of unsatisfactory performance and unprofessional behaviour. On 15 February 2022, the Chair of the Advisory Board forwarded the 9 February memorandum to the complainant and invited him to provide his written response, which the complainant did on 21 February 2022. The Advisory Board submitted its report to the Secretary-General on 14 March 2022. Noting the absence of any evidence that the complainant had received prior formal warnings regarding his alleged unsatisfactory performance or behaviour from the Secretary-General, his immediate supervisor or the Senior Management at large, the Board recommended against the termination of his appointment on the ground that important conditions for a termination decision "d[id] not appear to have been met". On 16 March 2022, the complainant tested positive for COVID-19. Two days later, on 18 March 2022, the Secretary-General informed him by letter of his decision to terminate his appointment for unsatisfactory performance, with effect from 31 July 2022.

On 30 March 2022, the complainant reached out to the Staff Committee seeking advice on the internal means of redress available to him in respect of the termination decision. In an email of the next day, the Staff Committee advised him that there were no more internal means of appeal according to the Staff Manual. On 13 May 2022, the complainant wrote to the General Counsel and the Chair of the Advisory Board seeking information and advice on whether the Secretary-General's decision to terminate his appointment was final or there were remedies open to him to contest it internally. The complainant also sought to be provided with the written record of the Secretary-General's "Consultation on Personnel Issues", as per Rule 25.1, and any other documents related to the termination decision. The General Counsel responded that same day advising the complainant that, according to the Staff Manual, an official wishing to

contest a decision ought to address the Secretary-General in writing within ten days following notification of the disputed decision, requesting it to be modified or withdrawn. The Chair of the Advisory Board responded in two emails sent a few hours apart that same day. In the first email, he advised the complainant that, since the Advisory Board had given its advice and the Secretary-General had taken his decision, there was no further appeal possible within the organisation and, if the complainant wished to contest the termination decision, he needed to refer to the Tribunal. In the second email, the Chair of the Advisory Board advised him that, as the Secretary-General had taken an administrative decision, he (the complainant) could "request advice from the Advisory Board in accordance with Regulation 25 a) i) to exhaust internal means of appeal" noting that "[s]uch request for advice would be subject to conditions stipulated in Rule 25.2(b)".

On 16 May 2022, the complainant wrote to the Secretary-General asking him to withdraw the decision to terminate his appointment. The complainant reiterated his request to the Secretary-General on 22 May 2022. Having received no reply, on 2 June 2022, the complainant addressed to the Advisory Board (i) a request for advice regarding the Secretary-General's decision to terminate his appointment, and (ii) a complaint of harassment as he considered the Administration's actions against him constituted harassment. While acknowledging that his request for advice was late, the complainant asked the Advisory Board to nevertheless consider it admissible due to exceptional and duly justified circumstances. The complainant requested the Advisory Board to provide its views on the decision to terminate his appointment (a second time), whether the Secretary-General's actions against him constituted harassment, and whether his reintegration into the Secretariat could be recommended or whether he could be compensated for the prejudice he had sustained from the unlawful termination and harassment. The complainant also requested "the recordings made about [his] profile" and, in particular, the "written conclusions of the consultation on personnel issues of Article 25.1".

By an email of 6 June 2022, the Chair of the Advisory Board informed the complainant that the Board had declined his request for advice in respect of the termination decision because the applicable deadlines set out in Rule 25.2(b) had not been respected. In particular, the complainant had failed to "address the Secretary-General in writing within ten days following notification of the disputed decision, requesting that it be modified or withdrawn" and he had also failed to submit a request for advice to the Advisory Board "not later than forty days from the notification of the impugned decision". The Chair of the Advisory Board noted that the Board could not find any exceptional circumstances or duly justified and documented reasons that would have prevented the complainant from respecting the applicable deadlines. As for the complaint of harassment, the Board asked the complainant to clarify whether he had proceeded in accordance with Regulation 25-bis c) and d) and to explain how the information he had requested was relevant to his harassment complaint.

On 14 June 2022, the complainant filed the present complaint with the Tribunal impugning the Secretary-General's 18 March 2022 decision and asking the Tribunal to set it aside, to order his reinstatement or, alternatively, to award him compensation equal to the amounts he would have received during the remaining months of his contract, including for social security and pension, to award him 20,000 euros in moral damages, and costs.

The organisation asks the Tribunal to dismiss the complaint as irreceivable for failure to exhaust the internal means of redress.

CONSIDERATIONS

1. The complainant impugns the decision contained in a letter, dated 18 March 2022, by which the Secretary-General informed him that his employment would be terminated with effect from 31 July 2022. Paragraph 1 of that letter stated:

> "I hereby duly notify you that I have decided to terminate your appointment with the [organisation] Secretariat due to unsatisfactory performance, with effect from 31 July 2022, the date four months and two weeks from today.

> In accordance with the terms and conditions stated in your appointment letter, dated 18 December 2020, your appointment may be terminated at any time, by giving one month's notice; however, due to my recent initiative to align the period of notice for temporary officials with that of the establishment table staff, I am providing you with a period of more than four months."

This was to satisfy Regulation 13 b) of the Staff Manual, which stated that the "termination of an appointment by the Secretary-General shall be notified in writing to the official concerned, with a statement of the grounds for such termination and on a period of notice, according to grade and length of service".

2. Regulation 13 a) i) of the Staff Manual, empowered the Secretary-General, after consultation with the Advisory Board, to terminate the appointment of an official "if he or she consider[ed] that the official d[id] not give satisfactory service, fail[ed] to comply with the duties and obligations set out in [the] Regulations, or [was] incapacitated for service". The facts reveal that the Secretary-General consulted with the Advisory Board established under Regulation 25 a) of the Staff Manual albeit that he did not abide by its recommendation against terminating the complainant's appointment. Regulation 25 a) i) of the Staff Manual, also relevantly stated that:

> "This [Advisory] Board shall advise the Secretary-General, at the request of the official concerned:
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> i) on any individual dispute arising from a decision of the Secretary-General and which an official, former official or the duly qualified claimants to their rights consider inequitable to themselves or contrary to the terms of the appointment or to the provisions of these Staff Regulations or of applicable Staff Rules or applicable Staff Circulars;"

According to Rule 25.3(c), once he received the report of the Advisory Board, "[t]he final decision in the matter, which shall be taken by the Secretary-General within 60 days after the Board has transmitted its report to him or her, shall be notified to the official concerned, who shall at the same time be sent a copy of the Board's advice". This was done.

3. The complainant submits that the termination of his appointment was in breach of internal rules and international practices, because it was done without any prior warning or complaint concerning his performance. He further submits that the decision was taken on the basis of unjustified allegations and because of an unjustified deviation from the recommendation of the advisory body.

4. In addition to submitting that the decision to terminate the complainant's appointment was lawful on the basis that it was taken in accordance with the applicable internal rules, the organisation submits that the Tribunal "lacks jurisdiction" to entertain the complaint (meaning that the complaint is irreceivable), because the complainant failed to exhaust the internal means of redress that were available to him under the Staff Regulations and Staff Rules. It points out that, pursuant to Regulation 25 a) ii) and Rule 25.2(b) of the Staff Manual, an official who considers a decision by the Secretary-General to be inequitable or contrary to the terms of appointment, or to the provisions of the Staff Regulations or of the applicable Staff Rules or Staff Circulars "shall address the Secretary-General in writing within ten days following notification of the disputed decision, requesting that it be modified or withdrawn".

5. The organisation notes that the complainant was notified of the termination decision on 18 March 2022, but did not request the Secretary-General to withdraw it until 16 May 2022, almost two months after he was notified of the decision. The organisation also refers to Rule 25.2(b) of the Staff Manual, which required him to submit a request to the Advisory Board not later than forty days after he was notified of the termination decision. It points out the complainant's statement that his request was submitted to the Board on 2 June 2022, which was seventy-four days after he had been notified of the termination decision. Citing Rule 25.4 of the Staff Manual, the organisation submits that the complaint is irreceivable in the Tribunal because the complainant had failed to exhaust his internal means of redress.

Rule 25.4(a) and (b) of the Staff Manual stated that:

> "(a) Once the internal means of appeal have been exhausted, officials or, where applicable, any other persons designated in Article II (6) of the Statute of the ILO Administrative Tribunal, may appeal to the Tribunal against an administrative decision which they consider as an injury to them, alleging non-observance, in substance or in form, of the terms of appointment, the Staff Regulations or Staff Rules.
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> (b) In accordance with the provisions of Article VII (2) of the Statute of the ILO Administrative Tribunal, the decision impugned must be a final decision of the Secretary-General, and the appeal must be filed within 90 days after the appellant was notified of that decision."

6. The Tribunal has consistently stated that for a complaint to be receivable, a complainant must exhaust the internal means of redress, and to do so she or he must comply with the time limits and the procedures set out in an organization's internal rules and regulations, and that there are very limited exceptions from the requirement that she or he must comply with Article VII, paragraph 1, of its Statute. Accordingly, the Tribunal stated the following in consideration 4 of Judgment 3947:

> "Regarding Article VII, paragraph 1, consistent principle has it that a complainant must comply with the time limits and the procedures, as set out in the organisation's internal rules and regulations. The following was stated, for example, in Judgment 1653, consideration 6:
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> 'According to Article VII, paragraph 1, of the Tribunal's Statute, a complaint 'shall not be receivable unless the decision impugned is a final decision and the person concerned has exhausted such other means of resisting it as are open to him under the applicable Staff Regulations'. So where the staff regulations lay down a procedure for internal appeal it must be duly followed: there must be compliance not only with the set time limits but also with any rules of procedure in the regulations or implementing rules.'"

In the same vein, it was stated in Judgment 1469, consideration 16, that to satisfy the requirement in Article VII, paragraph 1, that internal means of redress must be exhausted, the complainant must not only follow the prescribed internal procedure for appeal, but she or he must follow it properly and in particular observe any time limit that may be set for the purpose of that procedure.

It has also been stated that a staff member of an international organisation cannot of her or his own initiative evade the requirement that internal remedies must be exhausted prior to lodging a complaint with the Tribunal. Accordingly, the following was relevantly stated in Judgment 3458, consideration 7:

> "It is firm case law that a staff member is not allowed on his or her own initiative to evade the requirement that internal means of redress must be exhausted before a complaint is filed before the Tribunal (see Judgments 3190, under 9, and 2811, under 10 and 11, and the case law cited therein)."

There are limited exceptions to the requirement in Article VII, paragraph 1. The following was relevantly stated in Judgment 3714, consideration 12:

> "The Tribunal has established through its case law that exceptions to the requirement of Article VII, paragraph 1, of the Statute that internal remedies be exhausted will be made only in very limited circumstances, namely where staff regulations provide that the decision in question is not such as to be subject to the internal appeal procedure; where for specific reasons connected with the personal status of the complainant she or he does not have access to the internal appeal body; where there is an inordinate and inexcusable delay in the internal appeal procedure; or, lastly, where the parties have mutually agreed to forgo this requirement that internal means of redress must have been exhausted (see, in particular, Judgments 2912, consideration 6, 3397, consideration 1, and 3505, consideration 1). Moreover, the complainant bears the burden of proving that the above conditions are satisfied [...]"

Also, in Judgment 3829, consideration 7, the Tribunal relevantly said:

> "[T]ime limits are an objective matter of fact and it should not rule on the lawfulness of a decision which has become final, because any other conclusion, even if founded on considerations of equity, would impair the necessary stability of the parties' legal relations, which is the very justification for a time bar. In particular, the fact that a complainant may not have discovered the irregularity on which she or he purports to rely until after the expiry of the time limit is not in principle a reason to deem her or his complaint receivable (see, for example, Judgment 3663, under 7, and the case law cited therein).
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> It is true that the Tribunal's case law, as set forth in Judgments 1466, 2722 and 3406 for example, allows exceptions to this rule where the complainant has been prevented by *vis major* from learning of the impugned

> decision in good time, or where the organisation, by deliberately misleading the complainant or concealing some paper from her or him, has deprived that person of the possibility of exercising her or his right of appeal, in breach of the principle of good faith."

And, in Judgment 3027, consideration 7, referring to Judgment 1734, consideration 3, it said:

> "The observance of time limits is not an empty formality but essential to sound management. Only in exceptional cases may they be waived, namely when to demand strict compliance would cause a flagrant miscarriage of justice and good faith must instead prevail. Of course the rules of good faith apply to organisation and employee alike. It would be in bad faith for the organisation to make a staff member bear the consequences of any obscurity in the rules or in its dealings with him. Thus the Tribunal has often ruled that time limits and other procedural requirements should not set traps [...]. Likewise, good faith requires the staff member to pay due heed to the organisation's rules on such matters as dispute procedures. [...]"

7. The complainant appears to acknowledge that he did not comply with the applicable time limit of ten days following notification of the termination decision within which to address the Secretary-General in writing requesting that it be withdrawn, and/or with Rule 25.2(b) of the Staff Manual, including by not submitting a request to the Advisory Board not later than forty days after he was notified of that decision. He however argues, in effect, that he should not be penalized by applying the strict time limits because of exceptional circumstances, which he submits, the Advisory Board should have concluded on his request for its advice.

8. The complainant submits that the exceptional circumstances resulted because, to him who was not a lawyer, the rules which were some 108-pages long and were constantly being revised, lacked clarity concerning the steps that he needed to take in order to exhaust the internal means of redress that were open to him, which the Secretary-General "exploited". The Tribunal however recalls its case law, which states that international organizations have a duty of care towards their employees and must provide clear rules and regulations, as well as their clarifications when requested, but they cannot be solely responsible for every situation stemming from confusion regarding the rules, as

employees are also charged with the duty to inform themselves, and to request clarification when necessary so that the system can work efficiently to the best advantage of both the organisation and the staff members either as a group or individually (see, for example, Judgment 3213, consideration 7). The Tribunal also recalls its case law in Judgment 4829, consideration 9, which states that "part of an organisation's duty of care towards its staff is to provide procedural guidance to a staff member who is mistaken in the exercise of a right insofar as that may allow them to take effective action. If there is still time, it must inform a staff member of the available means of redress (see Judgment 4369, consideration 4, and the case law cited therein). In addition, if a member of staff pursues a grievance by an incorrect procedure, but there is another procedure which would be appropriate, the organisation is under a duty to advise the staff member to follow the appropriate procedure (see Judgment 4006, consideration 13)."

9. It is apparent that the complainant was uncertain about the steps he should have taken to contest the termination decision. The facts reveal that this uncertainty was not unique to him, but also to the Staff Committee and the Chair of the Advisory Board. The complainant states that although he received the termination decision on 18 March 2022 (by email) he could only open it around 28 March 2022. According to him, he had tested positive for COVID-19 on 16 March 2022 (which he confirms by a certificate) and was sick until the end of March 2022. Additionally, he states that the termination letter conveyed to him the impression that the advice the Advisory Board gave to the Secretary-General was final, as the email under cover of which it was communicated to him stated: "Please find attached a letter signed by Secretary General [...], as well as the Final Advisory Report" (complainant's emphasis). Moreover, he points out that he was given conflicting and misleading advice from Energy Charter Conference bodies as to how and whether he had exhausted the internal means of redress that were open to him to contest the termination decision.

10. The Tribunal notes the complainant's statements that on 30 March 2022 he sought advice from the Staff Committee, indicating that he intended to appeal against the termination decision to the Tribunal, but he had noted the Tribunal's requirement in Article VII, paragraph 1, of its Statute that he had first to exhaust his internal means of redress available to him. He requested the Staff Committee's advice as he was not certain that he had exhausted those means of redress by reference to Rule 25.2(b) of the Staff Manual. In its reply the following day, the Staff Committee advised him that "there [were] no more internal means of appeal according to the current Staff Manual". As the facts reveal, he then made essentially the same enquiry of the General Counsel and the Advisory Board, on 13 May 2022. By return email on the same day, the Chair of the Advisory Board stated, among other things, that "[s]ince the Advisory Board ha[d] given its advice and the [Secretary-General] ha[d] taken his decision there [was] no further appeal possible within the organisation [and that] [i]f [he] would like to contest the decision of the [Secretary-General], [he] need[ed] to refer to [the Tribunal]". Later that day, the Chair advised him that he needed to request advice from the Advisory Board. On that same day the General Counsel advised the complainant that he needed to apply to the Secretary-General to modify or withdraw the decision, which the complainant did on 16 May 2022 and again on 22 May 2022. As he received no reply from the Secretary-General, he lodged a request for advice with the Advisory Board concerning, inter alia, the termination of his appointment.

11. However, in the first place, the Staff Committee is not an Energy Charter Conference body whose advice to the complainant on this issue fixes the organisation with responsibility for the advice it proffered to the complainant. In the second place, the complainant's submission to the effect that the General Counsel and the Chair of the Advisory Board misled him regarding the steps he should have taken and provide exceptional circumstances that prevented the application of the stipulated time limits is unmeritorious. This is in light of the fact that when he sought their advice, the stipulated time limits had already passed.

12. It therefore follows that, as the complainant had failed to comply with the time limits stipulated in Regulation 25 a) ii) and Rule 25.2(b) of the Staff Manual, this complaint is irreceivable in the Tribunal, pursuant to paragraph 1 of Article VII of the Tribunal's Statute, and will be dismissed in its entirety.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 5 November 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.