

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

*Registry's translation,
the French text alone
being authoritative.*

B.
v.
OACPS

141st Session

Judgment No. 5115

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr A. B. against the Organisation of African, Caribbean and Pacific States (OACPS) on 22 November 2023, the OACPS's reply of 2 January 2024, the complainant's rejoinder of 20 February 2024, the OACPS's surrejoinder of 18 March 2024, the complainant's further submissions of 24 April 2024 and the OACPS's final comments of 6 June 2024;

Considering the comments submitted by the complainant on 13 November 2025 and by the OACPS on 13 and 14 November 2025 in response to the Tribunal's request for further submissions;

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 challenges the decision to terminate his employment contract on the grounds of a serious breach of its terms.

The complainant, a South African national, joined the OACPS in 2020, after having accepted, on 3 March 2020, an offer of employment for the grade P-5 post of Chef de Cabinet of the Organisation's Secretariat at its Headquarters in Brussels (Belgium) for the period from 1 March 2020 to 28 February 2025.

In March 2020 the Protocol Directorate of the Belgian Federal Public Service (hereinafter “the Protocol Directorate”) issued the complainant, via the OACPS Secretariat, with a special type D identity card for diplomats.

However, in an email of 28 March 2023, the Protocol Directorate informed the OACPS Secretariat that, according to information it had received, the complainant had applied for a special type D identity card despite already holding a type F identity card, which was granted to family members of a European Union citizen who had applied for a residence permit for the purposes of family reunification, and the complainant had received it as the parent of children with Belgian nationality. The Directorate stated that, if this were the case, the complainant should return one of the two cards, as it was “clearly stipulated that staff members [could] not have two identity cards”^{*}.

In a memorandum of 12 April 2023, the Assistant Secretary-General for Administration, Finance and Human Resources (AFHR) (hereinafter “the Assistant Secretary-General AFHR”) informed the complainant that the Secretariat had been advised that he was simultaneously in possession of a type F identity card issued by the municipality where he lived and a special type D identity card, which contravened the rules in force. The complainant was therefore asked to hand over the special type D identity card to the Organisation’s AFHR Department.

The complainant replied the same day, explaining that he had received a permit to work temporarily as a researcher at a Brussels university and that, with the university’s support, the permit had been replaced by a “residential card for work purposes”. The complainant stated that, as his work was temporary, he had not changed his South African residential status, maintained a South African residential address, had “never applied for financial emigration” and remained a South African tax resident submitting annual tax returns in South Africa. Moreover, during the first week of March 2020, he had informed the Municipality of Tervuren – which had issued his type F

^{*} Registry’s translation.

identity card – that he was to receive a type D special identity card and that his type F residential identity card should be cancelled. However, he had recently learned that the Municipality had not done so owing to a communication error between it and the Belgian Ministry of the Interior. Lastly, the complainant stated that he had returned his type F identity card to the Municipality of Tervuren on 5 April 2023 and had received confirmation that it had been cancelled.

In a memorandum of 24 May 2023 in response to the complainant’s communication of 12 April 2023, the Assistant Secretary-General AFHR reiterated that possessing both type F and type D identity cards simultaneously contravened the rules in force in Belgium and the relevant provisions of the Organisation’s Staff Regulations. She pointed out that the situation could cause disrepute to the Secretariat, which had validated the application for a diplomatic card. She stated that the facts showed that the complainant’s main residence was in Belgium, where he carried out his professional activities and educated his children. These facts confirmed his permanent residence status, which “from a legal point of view”, conferred rights and imposed obligations on him under Belgian law. On the basis of this *prima facie* evidence, the complainant was considered to have misled the Secretariat and unduly benefited from privileges and advantages to which he would not have been entitled if he had “honestly declared [his] status in Belgium”. In particular, in 2021, the complainant had requested compensation for transportation of his personal effects from South Africa, although he was already resident in Belgium with a type F identity card. The Assistant Secretary-General AFHR then informed the complainant that, in view of the seriousness of the case, the Secretary General had decided to initiate disciplinary proceedings against him. The complainant was therefore invited to submit a response to the Assistant Secretary-General, in her capacity as Chair of the Disciplinary Committee, within 15 days, together with documentary evidence of his residence status, his activities in Belgium and his tax situation. Lastly, the Assistant Secretary-General told the complainant that the Organisation “reserve[d] all rights regarding a breach of contract and damages if it turn[ed] out that [he] [had] decided not to disclose essential information to the

OACPS at any stage [of performance] of [his] contract where parties [were] bound by good faith obligations towards each other”.

On 5 June 2023 the complainant sent to the Secretary General a letter in which he expressed his dissatisfaction with the Assistant Secretary-General’s attitude towards him at various meetings of the Organisation’s executive management. He therefore requested an investigation into her accusations, which he disputed, so that the facts could be swiftly ascertained after obtaining the perspectives of both parties.

The complainant’s counsel responded on 14 June 2023 to the letter of the Assistant Secretary-General AFHR of 24 May 2023 by writing to the Secretary General directly. In essence, he argued that the type F identity card held by the complainant was temporary and did not grant him either permanent resident status in Belgium or Belgian citizenship. Consequently, no rules had been broken when the Secretariat requested the Protocol Directorate to issue the complainant with a special type D identity card. The Secretariat’s reputation was therefore not at risk and the complainant had lawfully benefited from the privileges and immunities granted to OACPS staff members. The complainant’s counsel pointed out, *inter alia*, that he no longer held the dual status at issue, as he had contacted the Belgian authorities as soon as he had been informed of the administrative issue in question. He also disputed the grounds for disciplinary proceedings since they were based on a confusion between a type F identity card, which was only a temporary residence document, and a type “F+” identity card, which was a document certifying permanent residence in Belgium.

By a letter of 5 July 2023, the Secretary General sent the complainant an “invitation to amicably and jointly terminate [the] contractual relationship” between him and the Organisation. The Secretary General stated, *inter alia*, that “recent discoveries” had demonstrated that the complainant had declared an address in South Africa as his place of residence when he was recruited in 2020, despite having been officially registered as a resident of the Brussels region since February 2019, and that he had provided wrong information about his date of arrival in Belgium. The Secretary General considered that the various faults of which the complainant was accused constituted serious misconduct and

a “breach of contract on [the complainant’s] behalf, a breach that is of such grave extent that the contractual relationship [could] not be continued[, and that] [his] actions [were] tantamount to a breach of trust and the position of Chef de Cabinet [was] a high position with a lot of responsibility”.

On 18 July 2023 the Assistant Secretary-General AFHR notified the complainant of the Secretary General’s decision to dissolve the disciplinary committee set up following the communication of 24 May 2023 and “to take the legal route”^{*} to deal with his case.

By a letter of 9 August 2023, the Secretary General informed the complainant of his decision to terminate the Organisation’s contractual relationship with him on 14 August 2023. In particular, he stated that research and additional discoveries had made it possible to establish that the “facts” alleged against the complainant were not of a “mere disciplinary nature” and warranted the initiation of legal proceedings for a “fundamental breach of contract”. The Secretary General added that the content of the contract between the complainant and the Organisation offered an explicit contractual basis for a termination on account of the breaches identified, in particular pursuant to Article 16(9) of the “applicable” version of the Staff Regulations of the OACPS Secretariat, and that the legal basis for an early termination of a contract could also be found in Article 1184 of the former Belgian Civil Code, which provided that any contract could be terminated in the event of a serious breach by the other party.

On 6 September 2023 the complainant lodged an appeal, “in accordance with the provisions of Annex VII – Discipline [of the 2011 version] of the Staff Regulations [...]”, against that decision. He argued that it constituted a disciplinary dismissal and that the procedure prescribed by the Organisation’s rules in that regard had not been followed.

By a letter of 28 September 2023, the Organisation’s external counsel replied to the complainant that he had been dismissed not as a “mere disciplinary measure, but as a legal decision that was taken and

^{*} Registry’s translation.

based on his observed grave breach of [his] contract [of employment]”. He stated that, notwithstanding the letter of 6 September 2023, the Organisation’s Secretariat and its Secretary General upheld the dismissal decision of 9 August 2023.

The complainant asks the Tribunal to set aside the decision of 28 September 2023, as well as the initial decision of 9 August 2023. He claims 338,595 euros in material damages and 40,000 euros in moral damages, as well as costs.

The OACPS asks the Tribunal to dismiss the complaint primarily as irreceivable and subsidiarily as unfounded. The Organisation also asks the Tribunal to order the complainant to pay its costs.

CONSIDERATIONS

1. In addition to his monetary claims, the complainant asks the Tribunal to set aside the decision of 28 September 2023 rejecting his appeal against the decision of 9 August 2023 by which the Secretary General terminated his appointment as Chef de Cabinet of the OACPS Secretariat.

2. First of all, the Tribunal observes that both parties’ submissions refer to the provisions of the Staff Regulations of the OACPS Secretariat in the version adopted by the Council of Ministers on 2 December 2011. However, the Staff Regulations were revised on 17 December 2020, that is prior to the termination of the complainant’s employment contract. Nevertheless, the applicability to the dispute of the 2020 version of the Staff Regulations, which would normally be the rule, is open to question, as it is apparent from the file that the contract expressly provided that “[the complainant’s] conditions of service [were to] be governed by the Staff Regulations (ACP/41/050/11 Rev.1) of the [OACPS] Secretariat”, that is the version of the Staff Regulations adopted in 2011.

However, for reasons which will become apparent below, the Tribunal considers that it is not in any event necessary to decide which version of the Staff Regulations is applicable in the present case.

3. In its comments filed in response to the Tribunal's request for further submissions, the Organisation submits, in addition to the objections to receivability already raised in its previous submissions, that the complainant's appeal against the decision to terminate his contract of employment was not brought within the prescribed time limit. It contends that the complaint is therefore irreceivable as the complainant has failed to exhaust the internal means of redress.

4. According to Article VII, paragraph 1, of the Statute of the Tribunal, "[a] complaint shall not be receivable unless the decision impugned is a final decision and the person concerned has exhausted such other means of redress as are open to her or him under the applicable Staff Regulations". In accordance with the Tribunal's case law, a complainant cannot be treated as having exhausted the internal means of redress available unless the internal appeal was filed in compliance with the formal requirements and within the prescribed time limit (see Judgments 5081, consideration 3, 5032, consideration 15, 5013, consideration 7, 4973, consideration 3, 4929, consideration 4, 4742, consideration 6, 4573, consideration 3, 4103, consideration 1, and 3829, considerations 4 and 7). Consequently, the fact that an internal appeal is lodged by a complainant out of time renders her or his complaint irreceivable (see, for example, Judgment 4830, consideration 7).

5. In order to respond to the Organisation's objection to receivability, it is necessary to determine what internal means of redress were actually available to the complainant.

6. First of all, the Tribunal notes that the 2011 version of the Staff Regulations provided staff members with two distinct internal appeal procedures depending on the type of contested decision.

On the one hand, in respect of administrative decisions, Article 22(1) of the Staff Regulations provided that "[a]ny member of staff may make a request to, or lodge [an internal] complaint with, the Secretary General concerning his/her personal situation within the Secretariat in accordance with the Internal Grievance Mechanism provided for in Annex VIII of these Staff Regulations". Paragraph 1 of

Annex VIII to the Staff Regulations, entitled “Internal Grievance Mechanism”, stated that “all staff grievances arising out of their interpersonal relationships and the application of conditions of employment other than matters arising out of disciplinary action, shall be raised in the first instance with the member of staff’s supervisor” (emphasis added). Paragraph 2 of Annex VIII specified that, “[u]nless there are other special circumstances, any [internal] complaint by a member of staff shall be made in writing within seven (7) calendar days of the event giving rise to the filing of the complaint”. Moreover, paragraph 3 of Annex VIII provided that, “[i]n the case where the [internal] complaint is about the Secretary General, the member of staff shall first submit his/her complaint to the Secretary General, in writing stating his/her complaint. If a satisfactory response is not received from the Secretary General within thirty calendar days the member of staff may file his/her complaint with the Chairman of the Committee of Ambassadors.”

On the other hand, in respect of disciplinary action, Article 46 of the 2011 Staff Regulations provided that “[a]ny failure by a member of staff to comply with his/her obligations under these Staff Regulations shall render him/her liable to disciplinary action in accordance with Annex VII of these Staff Regulations”. Annex VII to the 2011 version of the Staff Regulations, entitled “Discipline”, provided, in the first paragraph of the section on “Appeal to a Panel of Legal Experts”, that “[i]f a person is dismissed by the Secretary General, on the advice of the Disciplinary Committee, he/she may, within 30 calendar days, request for his case to be examined by a Panel of Legal Experts constituted by the Committee of Ambassadors”.

7. Next, the Tribunal observes that the 2020 version of the Staff Regulations also offers staff members two distinct internal remedies depending on the type of contested decision.

In respect of administrative decisions, Article 22 of the Staff Regulations (2020 version), entitled “Grievances”, provides that “[a]ny member of staff may submit [an internal] complaint regarding his/her employment within the Secretariat of the OACPS in accordance with the

grievance mechanism set out in Annex IX”. Article 1(1) of Annex IX to the Staff Regulations, entitled “GRIEVANCE MECHANISM”, states that “any member of staff may lodge [an internal] complaint against an individual decision affecting him/her and which he/she considers in breach of the Staff Regulations or other rules governing his/her appointment”. To this end, Article 3(1) of Annex IX provides that a period of 14 calendar days is allowed for submitting an “[internal] complaint to [...] [the] immediate supervisor [of the staff member concerned]”, starting from the event giving rise to that complaint. According to Article 3(13) of Annex IX, where the Secretary General “is personally involved in the event giving rise to the [internal] complaint, the member of staff shall, by derogation to the preceding paragraphs, submit his/her complaint directly to the Secretary General” within 14 calendar days “of the event giving rise to it”.

With regard to disciplinary action, Article 46 of the 2020 version of the Staff Regulations repeats the wording of the provision in the 2011 version stating that any member of staff who fails to comply with the obligations laid down by the Organisation’s rules is liable to disciplinary action in accordance with Annex VIII to the Staff Regulations, although the list of disciplinary measures has been revised. Article 10(1) of Annex VIII to the Staff Regulations, entitled “DISCIPLINE”, provides that a member of staff who wishes to challenge “a disciplinary measure of dismissal, imposed on him/her by the Secretary General, may request for his case to be examined by the Panel of Legal Experts”. Article 10(3) of the Annex sets a time limit of 30 days for filing a request to this end with the Secretary General.

8. It follows that if, in the present case, the decision of 9 August 2023 were to be regarded as disciplinary action for the purposes of Article 46 of the Staff Regulations (in both versions) and, more specifically, as a dismissal for the purposes of the annex dealing with discipline (that is Annex VII in the 2011 version of the Staff Regulations or Annex VIII in the 2020 version), an appeal against that decision could be lodged within 30 days of its notification. In that scenario, as the complainant contends, his appeal was lodged within the prescribed time limit and he exhausted the internal remedies available to him.

Indeed, he lodged his appeal against the decision of 9 August 2023 on 6 September 2023, that is 28 days after its notification.

If, by contrast, the decision of 9 August 2023 were to be regarded as an administrative decision – a view supported by the Organisation – the complainant’s appeal would have had to be submitted either within seven calendar days (unless there were other special circumstances), as set out in paragraphs 1 and 2 of Annex VIII to the 2011 version of the Staff Regulations, or within 14 calendar days, as set out in Article 3(1) of Annex IX to the 2020 version of the Staff Regulations. In the scenario that the decision in question were to be regarded as administrative, irrespective of which version of the Staff Regulations is applicable, it would have to be found that the complainant did not in fact exhaust the internal means of redress within the prescribed time limit.

The Tribunal considers, in that regard, that the complainant’s situation falls under the second scenario.

9. The evidence in the file shows that the complainant was clearly informed on 18 July 2023 of the Secretary General’s decision to dissolve the Disciplinary Committee initially set up to examine his case and to take the “legal route” to deal with his situation. In addition, and as indicated above, in his decision of 9 August 2023, the Secretary General stated that he considered that the “facts” alleged against the complainant were not of a “mere disciplinary nature” and justified pursuing “a legal track on the basis of a fundamental breach of contract”. The Secretary General plainly decided to terminate the contract in question because of what he considered to be a breach of the complainant’s obligations and, accordingly, a breach of the particular trust that should exist between the Organisation and the staff member performing the duties of Chef de Cabinet. The Secretary General also expressly stated that, in his opinion, the employment contract provided a legal basis for termination due to breach of contract alone, without recourse to disciplinary proceedings.

10. It is clear from the foregoing that the Organisation, rightly or wrongly, presented the impugned decision as an administrative decision, and not disciplinary action. In the circumstances of the case, the Tribunal considers that the complainant could not, of his own accord, reclassify the type of decision adopted by the Secretary General and that he should therefore have complied with the applicable time limit for lodging an internal appeal against the notified decision in view of the classification selected by the Organisation.

It follows that, in the present case, whichever version of the Staff Regulations is to be taken into consideration, the complainant did not properly exhaust the internal remedies provided.

11. In the comments filed in response to the Tribunal's request for further submissions, the complainant nevertheless seeks to argue that he did in fact exhaust the internal remedies. He submits to that effect that Annex VII to the 2011 Staff Regulations – which, as stated above, he considers to be applicable in the present case – sets a 30-day time limit for lodging an appeal against the decision of 9 August 2023.

The Tribunal notes, however, that even if the 2011 version of the Staff Regulations were applicable in this case, the 30-day time limit referred to by the complainant in fact related to a stage that followed the initial internal complaint. Paragraphs 7 to 9 of Annex VIII to the 2011 version of the Staff Regulations stipulated that, if an amicable settlement was not reached, a member of staff who had lodged an internal complaint could refer the matter to the Grievance Committee, which would advise the Secretary General on the appeal in question. The Secretary General would then take a decision on the basis of the Committee's advice. Finally, according to paragraph 10 of Annex VIII, “[w]here a member of staff [was] aggrieved by the decision of the Secretary General, he/she [could] file a petition with the Secretary General within thirty days of receipt of the decision, requesting for a review of the matter”. The 30-day time limit cited by the complainant, which was not the time limit applicable in the circumstances, therefore has no bearing on his failure to lodge an internal complaint against the decision to terminate his contract within the seven-day time limit laid down in Annex VII to the

Staff Regulations. As already stated above, if it were the 2011 version of the Staff Regulations that should be taken into consideration, it is aforementioned Article 3(2) and (3) of Annex VIII to the Staff Regulations, according to which the time limit for lodging an internal complaint was “seven (7) calendar days of the event giving rise to the filing of the [internal] complaint”, that would apply.

It follows that the complainant’s line of argument is unfounded.

12. The complainant further contends that, if the 2020 version of the Staff Regulations were applicable to the dispute, it would be a breach of “the principle of the protection of acquired rights”^{*} to require him to comply with the time limit of 14 calendar days for lodging an internal complaint prescribed in that version of the Staff Regulations, rather than the 30-day time limit provided for in the 2011 version. He adds that the Staff Regulations “[did] not specify anywhere that their provisions could be amended at any time or freely adapted by the administration”^{*} and that, “[on] the contrary, [...] any amendment [to the Staff Regulations] must be adopted by the Council of Ministers on the recommendation of the Committee of Ambassadors”^{*}.

However, the Tribunal notes first of all that, as already stated above, the complainant is mistaken regarding the time limit for appeal laid down in the 2011 version of the Staff Regulations. It was seven calendar days – unless there were other special circumstances – and not 30 days as the complainant maintains.

Next, it should be pointed out that the change to the time limit within which an administrative decision must be challenged had the effect of increasing the time limit from seven calendar days (2011 version) to 14 calendar days (2020 version). The Tribunal does not see how this extension of the time limit for appeal, which changed the law in a manner favourable to staff, could have infringed an acquired right of the complainant.

^{*} Registry’s translation.

Lastly, the Tribunal notes that, contrary to what the complainant appears to submit, the 2020 Staff Regulations were adopted by the Council of Ministers, by decision of 17 December 2020.

The complainant's argument that one of his acquired rights was unlawfully infringed must therefore also be rejected.

13. The complainant further submits that the time limit for an internal appeal against an administrative decision, as laid down in the aforementioned provisions, is "manifestly inadequate"* and has the effect of restricting "the very exercise of his right to challenge an individual decision within a reasonable and foreseeable timeframe"*, thereby infringing the Organisation's duty of care and the principle of sound administration and violating his right to an effective appeal.

However, the Tribunal considers that, if the 2020 version of the Staff Regulations were applicable in this case, a time limit of 14 calendar days for lodging an internal appeal cannot be regarded as unreasonable in the light of the Tribunal's case law on the subject.

If it were the 2011 version of the Staff Regulations that was applicable in the present case, the Tribunal notes that a time limit of seven calendar days would apply for lodging an internal complaint against an administrative decision, "unless there [were] other special circumstances". While the time limit is indeed brief, it is not so to a degree that would breach the principles of the right to effective appeal and the right to due process (see, for comparable cases, Judgments 4897, consideration 4, and 4795, consideration 7). If the complainant considered that he did not have enough time to submit his internal complaint, he could have justified exceeding the time limit by invoking "special circumstances". However, the Tribunal observes that in the present case the complainant did not rely on the existence of such circumstances. It should also be pointed out that the 28 days taken by the complainant to lodge his internal complaint far exceed the seven-day time limit. Consequently, the fact that the complainant was subject to the time limit rules laid down in the 2011 version of the Staff

* Registry's translation.

Regulations cannot be considered to have unlawfully infringed his rights.

This argument must therefore also be rejected.

14. The complainant also contends that he was misled by the Organisation as to the internal appeal procedures to be followed in his case.

However, as indicated above, the letter of 18 July 2023 and the decision of 9 August 2023 made it clear that the OACPS had decided not to complete the disciplinary procedure initially commenced to deal with the complainant's case and instead to follow a "legal track" based on a breach of the complainant's contract and a consequent breach of the trust between him and the Organisation. In the light of the foregoing considerations, the Tribunal finds that, in the particular circumstances of the case, the complainant was not therefore misled as to which of the internal appeal procedures he was required to follow in order to challenge the decision to dismiss him. The Organisation did not conceal anything from him with the intention of hindering the exercise of his right to internal appeal, nor did it deprive him of the opportunity to exercise that right in breach of its duty of care or the principle of good faith.

This last plea must also be rejected.

15. The Tribunal observes that the determination of the legal nature of the letter from the Organisation's counsels of 28 September 2023, sent to the complainant in response to his appeal of 6 September 2023, is irrelevant to the outcome of the dispute, since the appeal was in any event time-barred.

16. It follows from all the foregoing considerations that the present complaint must be declared irreceivable for failure to exhaust the internal means of redress, in accordance with Article VII, paragraph 1, of the Statute of the Tribunal.

17. The complaint must therefore be dismissed in its entirety, without it being necessary to rule on the Organisation's request that certain documents be disregarded.

18. The complainant has applied for oral proceedings. However, in view of the reason given above for dismissing the complaint and the fact that the parties were invited to express their views on this subject in further submissions requested by the Tribunal, an oral hearing would serve no purpose. The application will therefore be dismissed.

19. Referring, in particular, to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, the Organisation requests that all names of individuals and all personal data be anonymised in the judgment in the present case.

However, for the same reasons as those set out in Judgments 4940, consideration 11, and 4759, consideration 10, in response to identical requests submitted by the same organisation, that request must be dismissed.

20. Finally, the Organisation has submitted a counterclaim for the complainant to be ordered to pay it the sum of 5,000 euros in costs for the proceedings before the Tribunal.

However, the Tribunal considers that, although the complaint must be dismissed, it was not vexatious. There is therefore no reason to allow the Organisation's counterclaim.

DECISION

For the above reasons,

The complaint is dismissed, as well as the OACPS's counterclaim.

In witness of this judgment, adopted on 14 November 2025, Mr Patrick Frydman, Vice-President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, 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.

(Signed)

PATRICK FRYDMAN JACQUES JAUMOTTE CLEMENT GASCON

RENÉ M. VARGAS M.