

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

A.
v.
IOM

141st Session

Judgment No. 5130

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr F. A. against the International Organization for Migration (IOM) on 12 September 2022, IOM's reply of 14 February 2023, the complainant's rejoinder of 6 April 2023 and IOM's surrejoinder of 7 July 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 not to renew his fixed-term contract further to the abolition of his position due to budgetary constraints.

The complainant joined IOM on 1 July 2019, as Project Officer in the National Officer (NO) category, at its Mission in the Netherlands ("IOM Netherlands" or "the Mission"). He was granted a one-year fixed-term contract which was subsequently renewed for one more year, i.e. until 30 June 2021. After the expiry of his contract, he was placed on special leave without pay from 1 July 2021 until 30 June 2022 in order to remain an internal candidate for IOM vacant positions during that period.

By a letter of 23 March 2021, the Chief of Mission informed him that due to budgetary constraints IOM Netherlands would not be able to renew his contract beyond its expiry date and that his service with IOM would therefore come to an end on 30 June 2021. On 1 April 2021, the complainant sought additional information regarding the budgetary constraints leading to the decision not to renew his contract, and he also sought written proof of the lack of funding for his position.

In his response of 16 April 2021, the Chief of Mission explained that the position held by the complainant had been created to assist the Mission diversify its project portfolio and to spread efforts to generate new donors and streams of funding. The aim was to move away from being heavily dependent on Assisted Voluntary Return and Reintegration (AVRR) funding and the objective for this position was that it would be covered from miscellaneous resources for a period of two years, after which it would be integrated into successfully developed projects. This had not materialised and, in the absence of new donors or funds, the position held by the complainant had to continue to be financed from IOM Netherlands Miscellaneous Income Reserve Fund (MI). However, this was no longer sustainable for the Mission in uncertain times, as MI was a reserve fund built from past savings to cover unexpected costs or future financial obligations. The Chief of Mission added that the Mission was neither downsizing nor restructuring and that he had received notification of non-renewal of his contract due to the aforementioned reasons resulting in the abolition of the position he held.

On 20 May 2021, the complainant submitted a request for review of the 23 March 2021 decision, requesting the setting aside of the contested decision, extension of his contract with reinstatement in his former position or reassignment to a mutually agreed position or, alternatively, material damages equal to the salaries, entitlements, emoluments and benefits he would have received had his contract been extended for a further year, moral damages and costs. The complainant also requested the disclosure of any plan and/or document regarding the downsizing or restructuring of the Mission, of any communication regarding the decision to abolish his position, and of the date of the

decision to change the source of funding for his position, along with a copy of such decision.

On 19 July 2021, the Director of Human Resources (HRM) rejected the complainant's request for review following which, on 16 August 2021, the complainant filed an appeal with the Joint Administrative Review Board (JARB), reiterating in the main the requests put forward in his request for review. Having held oral proceedings, the JARB issued its report on 2 May 2022. Noting that the complainant had been given due notice of the decision not to renew his contract and that the record fully supported the Administration's position, namely that said decision was based on financial constraints and considerations, it recommended rejecting the appeal in its entirety.

By a letter of 13 June 2022, the Director General informed the complainant of his decision to endorse the JARB's recommendation and thus to reject his appeal along with all his requests for redress. This is the impugned decision.

The complainant asks the Tribunal to set aside the decision to abolish his position and not to renew his contract. He claims material damages in an amount equal to the salary, together with entitlements, emoluments and benefits, he would have received had his position been extended for a further year, reduced by his earnings during seven months of employment. He also claims 40,000 euros in moral damages for the damage to his career, the loss of professional standing caused by the unlawful decisions, and IOM's breach of its duty of care towards him. He seeks 15,000 Swiss francs in costs and interest on all amounts awarded at a rate of 5 per cent per annum, from 23 March 2021 through the date the remedies ordered are fully implemented. Lastly, he seeks any other relief the Tribunal deems fair and necessary.

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

CONSIDERATIONS

1. The complainant impugns the decision of 13 June 2022 by which the Director General endorsed the recommendation of the JARB and dismissed his internal appeal against the non-renewal of his fixed-term contract further to the abolition of his position due to budgetary constraints.

2. The Tribunal recalls that, according to its consistent case law, the wide discretion an international organization enjoys in deciding whether or not to renew a fixed-term appointment is subject to only limited review, as the Tribunal respects the organization's freedom to determine its own requirements and the career prospects of staff (see, for example, Judgment 4503, consideration 7). However, this discretion is not unfettered, and the Tribunal will set aside such a decision if it was taken without authority, in breach of a rule of form or of procedure, if it was based on an error of fact or of law, if some essential fact was overlooked, if there was abuse of authority, or if clearly mistaken conclusions were drawn from the evidence. The Tribunal has further held that its role in reviewing a decision not to renew a fixed-term contract for budgetary reasons is limited (see, for example, Judgments 4953, consideration 4, 4834, consideration 2, and 3367, consideration 11). As explained in Judgment 3163, consideration 8, and reiterated in Judgments 4953, consideration 23, and 4834, consideration 9, it is necessary for the complainant to establish that "the exercise of the discretionary power miscarried because the decision-maker was led into error by proceeding on a misunderstanding about what the material facts were".

3. The complainant first argues that IOM erred in law and in fact by not applying its Guidelines for Managing a Downsizing Exercise ("the Guidelines") to his case. He contends that the abolition of his post amounted to a downsizing and that, by ignoring the Guidelines, the JARB and the Director General misapplied the law.

4. The Tribunal notes that while the Guidelines do not offer a definition for “downsizing”, they prescribe that all downsizing plans should include: (i) a description of why downsizing is necessary; (ii) the list of the positions affected with justification provided for each position; (iii) a restructuring plan, if required; (iv) the budgetary impacts of downsizing; (v) the chosen downsizing method; (vi) a downsizing timeline; (vii) a communication strategy; and (viii) a plan for asset management, disposal of equipment, and knowledge retention. Therefore, the Guidelines clearly envisage situations where a number of positions are adversely affected, thereby impacting many staff members, and do not refer to a single non-renewal of a fixed-term contract due to budgetary constraints. No such downsizing or restructuring exercise was undertaken in connection with the non-renewal of the complainant’s contract, and accordingly, the Guidelines were not applicable to the complainant’s case.

5. The complainant next submits that the funding source of his position was arbitrarily shifted from the IOM’s main budget line, the AVRR fund, to the MI fund, a small and insecure line, and that this was done without his knowledge. He contends that the JARB erred in fact and in law, and infringed his right to an effective internal appeal by disregarding this allegation. He further claims that IOM’s failure to disclose this information not only undermined his job security but breached its duty of care, good faith, and transparency.

6. IOM, in response, argues that it acted within its lawful discretion in determining the funding arrangements for the complainant’s position, emphasizing that budgetary allocations and changes between funding lines fall within the Organization’s managerial prerogative. Furthermore, IOM maintains that it fully respected the complainant’s right to an effective internal appeal, noting that the JARB found the decision to be lawful, justified, and unaffected by bias or improper motive.

7. As IOM submits, correctly, while the Terms of Reference of the complainant's initial contract may have mentioned certain budget lines, the complainant's Personnel Action forms, shared with him alongside his initial contract in July 2019 and his contract extension in July 2020, explicitly stated that funding for his position was "[a]ccording to monthly projectization". This meant that the complainant's position was not funded from a stable, regular budget line but from temporary funds. IOM retained the discretionary power to adjust allocations as operational needs required and was under no obligation to maintain a budget allocation that was no longer in the best interest of the Organization.

Accordingly, the complainant's pleas regarding an unlawful change in the funding source giving rise to violation of his right to an effective internal appeal, and breach of duty of care, good faith, and transparency are therefore without merit.

8. The complainant further submits that IOM failed to establish an objective basis for the non-renewal of his appointment, contending that there was no evidence of significant budgetary constraints and that the decision was not founded upon a thorough assessment. He further asserts that no comparative review or restructuring plan was disclosed to support the measure.

9. In this regard, the JARB carefully examined the record to determine whether IOM's financial justification was genuine. It found that the Chief of Mission had informed the complainant as early as 19 March 2021 of the Mission's financial difficulties and had acted transparently. After an oral hearing, the JARB requested additional data on the complainant's project development record. In his response of 6 December 2021, the complainant admitted he had worked on only two project proposals in 2020, none in 2021, and that both were rejected by donors. Consequently, no new funding was secured through his efforts. Furthermore, financial records showed that the overall Mission budget did in fact shrink in 2019, 2020, and again in 2021, a fact the complainant acknowledged. The JARB also stressed that the MI fund, from which the complainant's position was primarily funded, was not

intended to cover long-term funding for particular positions, which confirmed that the non-renewal decision was grounded in objective financial realities.

10. The complainant points out that IOM Netherlands recruited four Senior Operations Assistants, at the G-6 grade, after the non-renewal of his contract. However, as explained by IOM, those positions were directly related to IOM's AVRR project and funded by that project. Their recruitment had no bearing on the budget issues that had led to the non-renewal of the complainant's contract. Moreover, the complainant's contracts explicitly stated that extensions were subject to the availability of funding and the continued need for the post, and carried no expectancy, legal or otherwise, of extension or renewal, regardless of the length of service.

11. As said above, decisions concerning the non-renewal of fixed-term appointments for financial reasons are subject only to limited review by the Tribunal. In the present case, IOM has discharged its burden of proof demonstrating that the financial reasons were genuine. The complainant, by contrast, has not established that the non-renewal decision was taken without authority, in breach of a rule of form or of procedure, based on an error of fact or of law, that any essential fact was overlooked, that there was abuse of authority, or that clearly mistaken conclusions were drawn from the evidence. Accordingly, the complainant's plea must fail.

12. The complainant also alleges that IOM failed to make reasonable efforts to identify another position for him. It is well-established case law that an organisation has a duty to explore possible options or to make reasonable efforts for the reassignment of a staff member whose post has been abolished (see, for example, Judgments 4097, consideration 9, and 2902, consideration 14). In consideration 16 of Judgment 3908, the Tribunal stated that, while it has long recognized the right of an international organization to abolish positions, which will imperil the continuing employment of the occupants of those abolished positions, a concomitant of that right is an

obligation to deal fairly with the staff who occupy those abolished positions. This obligation extends to finding, if they exist, other positions within the organization for which those staff have the experience and qualifications.

Relevantly, it was stated in Judgment 4935, consideration 21:

“Historically, the Tribunal generally considered the extent of an organization’s duty to reassign staff members whose positions were abolished mainly in relation to the type of contract they held, the nature of the post and/or the role to which they were assigned, their length of service with the organization, and recognized a greater duty in respect of staff who held permanent positions (see, for example, Judgment 3754, consideration 16). Nonetheless, in consideration 10 of Judgment 4097, the Tribunal stated that it does not follow that other classes of staff of differing status should be afforded no protection by principles it has developed in circumstances where their post is abolished and attempts are being made to reassign them.”

The Tribunal is cognizant of the nature of the IOM’s funding structure as a project-based organization. This is significant, among other things, in that the employment of a large number of staff members is linked to the duration of the specific projects for which they are engaged (see Judgment 4935, consideration 23).

13. In light of this and the particular circumstances of this case, the Tribunal finds that IOM made reasonable efforts to support the complainant in finding alternative employment, thereby dealing fairly with him and discharging its duty towards him. Specifically, IOM retained the complainant on special leave without pay for one year after the expiry of his contract so as to enable him to apply for vacant IOM positions as an internal candidate. IOM also offered the complainant a virtual Career Support Programme free of charge and it also contacted IOM units in an effort to identify a suitable position. Accordingly, the complainant’s plea is without merit.

14. As the complainant has failed to substantiate his case, his claims for setting aside the impugned decision, as well as for material damages, moral damages, legal costs, and other relief, must be dismissed.

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.