

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

M.
v.
IOM

141st Session

Judgment No. 5132

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms L. B. M. against the International Organization for Migration (IOM) on 19 April 2022 and corrected on 23 May 2022, IOM's reply of 27 September 2022, the complainant's rejoinder of 13 January 2023, IOM's surrejoinder of 17 April 2023, the complainant's additional submissions of 17 June 2023, IOM's comments thereon of 21 August 2023, the complainant's second additional submissions of 13 October 2023 and the email dated 24 October 2023 by which IOM informed the Tribunal that it had no further comments to make;

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 decisions to abolish the post she encumbered and not to renew her fixed-term contract.

The complainant joined IOM in 2010. On 1 September 2011, she was appointed to the post of Regional Research and Project Development Officer at the Policy and Liaison Unit in the IOM Regional Office for West and Central Africa in Dakar, Senegal, as National Officer at

grade NO-B, under a one-year fixed-term appointment, which was subsequently renewed.

In August 2018, the complainant was informed that her appointment, which was due to expire at the end of that month, would be renewed for only six months. When she enquired as to the reasons for this shorter renewal, she was told, in September and October 2018, that the Organization was considering a reorganization of her Unit, which might have an impact on the post she encumbered. In the event, however, her contract was extended until 31 August 2019.

Following a meeting between the Senior Regional Policy and Liaison Officer (SRPLO) and the complainant, where the former informed the complainant that changes to the structure of her Unit were envisaged, the SRPLO confirmed to the complainant, by an email of 3 June 2019, that the post she encumbered would be abolished and replaced by a P-2 position “very soon”*. On 14 June 2019, the complainant was notified that, “further to an organisational restructuring”*, her post would be abolished with effect from 1 November 2019 and that her contract was extended from 1 September 2019 to 31 October 2019 and would not be renewed thereafter. However, this extension was subsequently cancelled and replaced by a one-year extension, until 31 August 2020.

On 31 August 2020, the complainant was offered a one-month extension of her contract from 1 September 2020 to 30 September 2020. By an email of 1 September 2020, Ms D.M., Regional Human Resources Officer, informed the complainant that the Organization could not offer her a two-year fixed-term contract “at that moment for budgetary reasons”*. Ms D.M. indicated, nonetheless, that “[t]he coordination for the renewal of [the complainant’s] [one-year fixed-term] contract [was] still ongoing. In the meantime, to ensure [her] coverage under an IOM contract, particularly with regard to insurance, [Human Resources] [were] sending [her] an interim contract. This contract [would] be cancelled and replaced as soon as [they] receive[d] the necessary authorizations to issue [her] definitive contract.”* On

* Registry’s translation.

11 September 2020, the complainant was offered a four-month contract extension for the period from 1 September 2020 to 31 December 2020, which annulled and replaced the previous contract.

By a letter dated 3 December 2020, the complainant was notified of the decision to abolish the post she encumbered with effect from 31 December 2020 “due to a reduction in the Regional Office budget impacting the Policy and Liaison Unit”. As a result, her contract would be terminated with effect on 4 March 2021, “in consideration of the three-month notification period to which [she was] entitled”. On 7 December 2020, the complainant addressed an email to the Human Resources Management Division (HRM) enquiring about the lawfulness of these decisions. HRM explained to the complainant, in its reply of 10 December 2020, that the extension of her contract for a period of four months only – from 3 December 2020 to 4 March 2021 – “was offered by the Regional Office [...] as they did not have visibility to be able to extend this any further”. Regarding the abolition of her post, HRM indicated that the complainant was aware “since June 2019 of the planned reorganization within the office, and that [her] position would be abolished because of an operational need i.e. management needed to redirect resources to another function rather than the one [she was] fulfilling [...]”.

The complainant’s contract was extended from 1 January 2021 until 4 March 2021, after which she was placed on special leave without pay for a period of one year, to enable her to apply as an internal candidate for any vacancies that might be advertised.

On 1 February 2021, the complainant filed a request for review of the decisions to abolish the post she encumbered and not to renew her contract. She was informed that her request for review was rejected by a letter dated 31 March 2021. On 29 April 2021, the complainant lodged an appeal before the Joint Administrative Review Board (JARB).

On 15 December 2021, the JARB rendered its report to the Director General, concluding that the appeal was without merit. The JARB found, in essence, that the non-renewal of the complainant’s contract was lawful, that appropriate notice had been given, and that the

abolition of her post was justified by the reorganization of her Unit. By a letter of 17 January 2022, the Director General informed the complainant of his decision to dismiss her appeal following the JARB's recommendation. This is the impugned decision.

The complainant requests the Tribunal to quash the "impugned decisions" to abolish her post and not to renew her contract, to reinstate her in a position commensurate with her grade, training, skills and experience, on a one-year fixed-term contract, and that she be paid all salaries, benefits, post adjustments, pension contributions, entitlements and any other emolument she would have received from the date of her separation from service until the date of her reinstatement. Alternatively, she requests to be granted material damages equal to one year's salary, including benefits, post adjustments, pension contributions, entitlements and any other emolument. The complainant also seeks moral damages, costs and interest on all amounts awarded.

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

CONSIDERATIONS

1. The complainant challenges the decision of 17 January 2022 by which the Director General accepted the JARB's recommendation to dismiss her internal appeal in which she centrally requested that the decisions to abolish her post and not to renew her fixed-term contract be quashed. The general background is set out in the preceding account of the facts.

2. It is desirable to recall at the outset that the complainant's detailed grievances were considered by the JARB in its recommendation for the dismissal of her internal appeal which formed the basis of the impugned decision.

In particular, the Tribunal observes that in its report, the JARB reviewed all the information provided by the complainant and the Organization and concluded that the non-renewal of the litigious fixed-term contract was lawful and carried out in line with the relevant rules,

regulations and administrative instructions. The JARB emphasized that under the IOM Unified Staff Regulations and Rules, the Director General had the discretion to renew a fixed-term contract and that such contract did not carry any expectancy, legal or otherwise, of extension or renewal.

The JARB also noted that the complainant was notified in writing of the non-renewal of her contract, within the required notice period, and that clear and valid reasons for such non-renewal, namely the abolition of her post following the reorganization of her Unit at the Regional Office in Dakar, were provided to her.

The JARB further found that the complainant's post "was not abolished as part of a downsizing exercise, but as a one-off", and that the Organization did not breach its duty of care given that the complainant was informed on several occasions, orally and in writing, that funding for her position was not secured, and that her position could end up being abolished. Lastly, according to the JARB, the Organization made reasonable efforts to identify other suitable positions for the complainant even though none materialized in the end.

3. In her complaint, the complainant advances numerous grounds of challenge that repeat the arguments that she raised before the JARB, and which the Tribunal finds appropriate to group as follows:

- first, she maintains that the decision to abolish her post violated the applicable rules and the IOM Guidelines for Managing a Downsizing Exercise (the Guidelines) of the Organization and was procedurally irregular;
- second, she pleads that she was not provided with clear and sufficient reasons and that the justifications offered for the abolition of her post were invalid, inconsistent and not supported by proper documentation;
- third, she contends that the Organization failed to make reasonable efforts to find a suitable alternative position so that she could be retained in its employ;

- fourth, she argues that the non-renewal of her contract was unjustified and unlawful, contravening her legitimate expectation that her appointment would be extended and failing to respect the relevant notice periods;
- fifth, she considers that the Organization demonstrated bad faith and breached its duty of care.

4. In Judgment 4841, consideration 4, the Tribunal recalled as follows its well-settled case law concerning the non-renewal of a fixed-term contract, specifically in situations where the non-renewal relates to the abolition of a post in the context of restructuring:

“[...] The Tribunal’s case law has often reiterated that a staff member appointed on a fixed-term contract does not have a right to the renewal of the contract, when it expires (see, for example, Judgments 4587, consideration 19, 4462, consideration 18, 3586, consideration 6, and 3448, consideration 7). As a result, the Tribunal’s scope of review is limited when an organization decides not to extend or renew a fixed-term appointment because the Tribunal respects an organization’s discretion to determine its own requirements and the career prospects of staff (see, for example, Judgment 3948, consideration 2, and the case law cited therein). Thus, the Tribunal will not substitute its own assessment for that of the organization. The non-renewal of a fixed-term contract may be lawfully justified by the abolition of the post in the context of a restructuring process, provided that the abolition of the post be based on objective and valid grounds, as the abolition of a post must not serve as a pretext for removing unwanted staff, which would constitute an abuse of authority (see Judgment 3940, consideration 3). A restructuring decision must be justified by real needs (see Judgment 4009, consideration 15). An international organization may find that it has to reorganise some or all of its departments or units. Restructuring measures may naturally entail the abolition of posts, the creation of new posts or the redeployment of staff. The steps to be taken in this respect are a matter of an organization’s discretion and are subject to only limited review by the Tribunal (see Judgments 4004, consideration 2, and 3940, consideration 3).

In brief, [...] [n]on-renewal decisions may be set aside only if they were taken in breach of a rule of form or procedure; if they rest upon an error of fact or of law; if some essential fact was overlooked; if there was an abuse or misuse of authority; or if clearly mistaken conclusions were drawn from the evidence (see, for example, Judgment 3299, consideration 6). In turn, restructuring decisions, including the abolition of posts, may be set aside only if they are not taken in accordance with the relevant rules on

competence, form or procedure, if they rest upon a mistake of fact or law, or if they constituted an abuse of authority. The Tribunal will not rule on the appropriateness of the restructuring, as it will not substitute the organization's view with its own (see, for example, Judgments 4004, consideration 2, 2933, consideration 10, and 2742, consideration 34).

[...]"

5. Similarly, it is convenient to recall that in Judgment 4937, consideration 2, the Tribunal said the following regarding the limited power of review that it may exercise in the context of decisions concerning, in particular, the abolition of posts:

"Firm precedent has it that in order to achieve greater efficiency, to make budgetary savings or if funding is no longer available, international organisations may undertake restructuring entailing the redefinition of posts and staff reductions. However, each and every individual decision adopted in such restructuring must respect all the pertinent legal rules, and, in particular, the fundamental rights of the staff concerned (see, for example, Judgments 4599, consideration 11, and 3238, consideration 7). The case law also states that decisions concerning restructuring within an international organization, including the abolition of posts, may be taken at the discretion of the executive head of an organization and are consequently subject to only limited review. The Tribunal will ascertain whether such decisions are taken in accordance with the relevant rules on competence, form or procedure, whether they rest upon a mistake of fact or law, or whether they constituted abuse of authority. The Tribunal will not rule on the appropriateness of the restructuring, as it will not substitute the organization's view with its own (see, for example, Judgments 4844, consideration 3, 4004, consideration 2, and 3582, consideration 6). Nevertheless, any decision to abolish a post must be based on objective grounds and its purpose may never be to remove a member of staff regarded as unwanted. Disguising such purposes as a restructuring measure would constitute abuse of authority (see, for example, Judgments 4353, consideration 6, and 3582, consideration 6). Moreover, a decision to abolish a post must be communicated to the staff member occupying the post in a manner that safeguards that individual's rights. These rights are safeguarded by giving proper notice of the decision, reasons for the decision and an opportunity to contest the decision. The Tribunal has further stated that the need to give reasons in support of adverse administrative decisions arises precisely because the affected staff member must be given an opportunity of knowing and evaluating whether or not the decision should be timely contested (see, for example, Judgments 4353, consideration 7, 3928, consideration 15, and 3041, considerations 8 and 9). [...]"

6. In her first plea, the complainant contends that IOM breached its own rules and did not comply with its applicable Guidelines.

To begin with, it is appropriate to emphasize that Staff Rule 4.4.2 governing fixed-term contracts reads as follows:

“Fixed-term [...] contracts shall expire automatically on the expiration date specified in the letter of appointment. Fixed-term [...] contracts may be extended or renewed at the discretion of the Director General, if the staff member is willing to accept such extension or renewal. At no time, however, shall such contracts be deemed to carry any expectancy, legal or otherwise, of extension, renewal or conversion, irrespective of the length of service.”

As this provision indicates, pursuant to IOM’s internal rules and regulations, the renewal of a fixed-term contract remains at the discretion of the Director General, and such a contract does not carry any legitimate expectancy of renewal at any point in time.

The Tribunal also observes that IOM’s internal rules and regulations do not provide either that fixed-term contracts are automatically renewed in the event of a failure to provide a notice of non-renewal. These internal rules do provide, however, appropriate or recommended notice periods for the non-renewal of fixed-term contracts (see, in this regard, section 3.3.2 of IOM’s Policy on Contracts, Instruction IN/164 Rev. 2, and sections 1.1 and 6.3 of IOM’s Policy on Notice Periods, Instruction IN/247).

7. The complainant submits that, this notwithstanding, in her situation, IOM ignored its own Guidelines dated February 2017, and that, as a result, the abolition of her post was procedurally flawed. This argument is not convincing and must be dismissed for two reasons.

First, while the complainant considers that these Guidelines were binding on the Organization and that IOM was obliged to comply strictly with all the provisions contained therein, her reliance in this regard is clearly misplaced. As the Tribunal previously said in Judgment 4841, consideration 4, in a case involving IOM and pertaining to the same Guidelines, “[these] Guidelines expressly state that they were not intended to be binding, but ‘for information only’. The language of the Guidelines is [indeed] not prescriptive.” They rather constitute a tool designed to assist managers in terms of recommended procedures and

best practices to follow when undertaking a downsizing exercise. They cannot be considered as being part of the staff rules and regulations or of the complainant's terms of appointment.

Second, the Organization emphasizes that in this case, the abolition of the complainant's post did not, in any event, comprise part of a downsizing exercise and as such, did not engage the processes described in these Guidelines. This submission is well founded.

The complainant has not identified any other regulation, rule or policy allegedly breached by the Organization in restructuring its operations in the IOM Regional Office in Dakar.

This first plea is unfounded.

8. In her second plea, the complainant argues that the reasons given to her for the abolition of her post and the non-renewal of her fixed-term contract were not clear, concise or sufficient, that the budgetary reasons relied upon by the Organization to justify this abolition and this non-renewal were false, and that insufficient documentation was offered by IOM in support of the reasons that were relied upon.

9. With respect to IOM's obligation to give valid and sufficient reasons in support of its decision not to renew the complainant's fixed-term contract, the Tribunal recalls that in Judgment 4860, consideration 13, it summarized its applicable case law as follows:

"13. Three preliminary points should be made, derived from the Tribunal's case law. The first is that reasons should be given for a decision not to extend a fixed-term contract. The second and related point is that the reason not to extend must be a valid one (see Judgment 2991, consideration 13). The third point concerns the limited role of the Tribunal in reviewing the reasons. As the Tribunal said in Judgment 4495, consideration 15:

'The obligation to give reasons for a non-renewal have been variously described as providing "valid reasons" (see Judgment 3769, consideration 7), and not "arbitrary or irrational" reasons (see Judgment 1128, consideration 2). While the reasons given in this case may be contestable, they were not of a character to sustain a conclusion they were, for example, not valid or arbitrary or irrational. As the

Tribunal observed in Judgment 3586, consideration 6: “the Tribunal’s scope of review in a case such as this is limited. Firm and consistent precedent has it that an organization enjoys wide discretion in deciding whether or not to extend a fixed-term appointment. The exercise of such discretion is subject to limited review because the Tribunal respects an organization’s freedom to determine its own requirements and the career prospects of staff (see, for example, Judgment 1349, [consideration] 11). The Tribunal will not substitute its own assessment for that of the organization. [...]”

The complainant maintains that contrary to the requirements of the Tribunal’s case law, she has only been provided with general, vague and unsupported rationales which lacked consistency and were not credible. The Tribunal disagrees. The record supports the finding that the Organization provided valid and sufficient reasons for abolishing her post and not renewing her appointment, allowing to safeguard the complainant’s rights, including her prerogative to seek remedial action or launch a formal appeal in respect of the impugned decision.

To that end, the Tribunal observes that in September 2018 and October 2018, the complainant was advised by a senior officer of the possibility that her Policy and Liaison Unit would be reorganized based on changes to the programmatic priorities of the IOM Regional Office in Dakar, which would have implications for the position she encumbered. She was then told that a reorganization of some positions was underway and that there would potentially be redundancy in her position such that it was at risk of being removed or abolished.

The record also indicates that during 2019, the plan to reorganize the Policy and Liaison Unit was revived. This was triggered by increased demands from Member States for IOM to develop frameworks for national and international cooperation and migration management and to support regional policy development, monitoring and evaluation. As the existing structure of the IOM Regional Office in Dakar was not adequate to service and fulfil these changed priorities, it was indicated that the complainant’s position could be discontinued as part of the 2020 budget to allow the associated funds to be diversified and allocated towards meeting the new programmatic objectives, including an international position at the P-2 level. A formal notice of non-renewal dated 3 June 2019 and conveyed to the complainant in writing

then further specified that the Organization was likely unable to extend the complainant's contract. It is not disputed that since she was dissatisfied with this decision, she indeed requested a mediation process that was in fact conducted.

Afterwards, the record further establishes that the need to pursue the reorganization and to adjust the Policy and Liaison Unit's structure to the new priorities determined by IOM Member States remained. In 2020, changes in the IOM Regional Office in Dakar, including the rationalization of some positions, continued to be pursued. The discontinuation of the position encumbered by the complainant was confirmed and approved in IOM's 2021 budget.

The Tribunal finds that the record thus supports the proposition that since 2018, the complainant had been informed of the planned structural reorganization of the Policy and Liaison Unit, including the establishment of an international professional level position, which could result in the abolition of her post and the resultant non-renewal of her contract. On 3 December 2020, the complainant received formal notification that her post had indeed been abolished due to a reduction in the IOM Regional Office in Dakar budget impacting her Policy and Liaison Unit, and that her contract would not be renewed. On 10 December 2020, it was further clarified that operational needs had prompted the decision, emphasizing that the need to redirect resources to another function meant that no further funding was available for the complainant's position.

Although the complainant may disagree with the reasons given, the argument that these reasons were insufficient or unclear is devoid of any merit in the instant case.

10. Turning to the other argument of the complainant to the effect that the reasons offered were false, wrong or unsubstantiated, she essentially asks the Tribunal to substitute its own assessment of the evidence to that of the JARB and to review the appropriateness of the decision reached by the Organization regarding the abolition of her post.

In the instant case, it is worth recalling that the JARB reviewed in detail the evidence offered by both the complainant and IOM and found that “she was provided with clear and valid reasons for [the] non-renewal [of her fixed-term contract], namely the abolition of her post following the reorganization of the Policy and Liaison Unit of the [Regional Office in Dakar]”. In Judgment 4764, consideration 7, the Tribunal remarked that such findings and conclusions of an internal appeal body, when balanced and considered, should be given considerable deference.

The Tribunal also observes that the record supports the finding that the decision to abolish the post encumbered by the complainant was based on programmatic and financial requirements of the IOM Regional Office in Dakar, which had rendered the structure of the Policy and Liaison Unit inadequate to meet increased demands of Member States for policy work and assistance. There is also support in the evidence that changed priorities required some reorganization of the Unit within the scope of its existing budget. The abolition of the complainant’s position likely freed up funds, which were in turn allocated towards the establishment of a new international position at the P-2 level focusing on policy and research. The pleadings finally indicate that, for the avoidance of any doubt, the Organization has clarified that no other staff member had been appointed or assigned to the post encumbered by the complainant as it has been abolished and no longer exists.

11. The other argument raised by the complainant in support of her second plea, namely the alleged failure of the Organization to provide sufficient documentation in support of the reasons offered for the abolition of her post and the non-renewal of her fixed-term contract, is of no assistance to the complainant. In Judgment 4935, consideration 10, in a matter also involving IOM, the Tribunal said the following in this regard:

“[...] As IOM submits, the Tribunal does not impose on international organizations a duty to provide staff members whose positions are abolished with the full set of internal documents used as a basis for such decision. Rather, the Tribunal requires an organization to give such staff members notice within the required time and sufficient reasons for the decision to

abolish their post and for any subsequent decision, including the termination of their appointment. This is the expressed purport of Regulation 9.4. It also accords with the well-settled case law that an international organization necessarily has power to restructure, and, in so doing, may abolish posts. As well, it accords with the case law stated, for example, in consideration 7 of Judgment 3234, that a decision to abolish a post must be communicated to the staff member occupying the post in a manner that safeguards that individual's rights and that these rights are safeguarded by giving proper notice of the decision."

(See also, on this issue, Judgment 3920, consideration 11.)

This applies as well to the instant case.

The second plea of the complainant is therefore unfounded on all grounds.

12. In her third plea, the complainant contends that IOM had a duty to find alternative employment for her prior to her separation and that it has not discharged this duty. She alleges that IOM did not make reasonable efforts to find her alternative employment.

Regarding the identification of an alternative posting, the Tribunal first observes that there is no provision in IOM's rules and regulations requiring the reassignment of a staff member whose contract is terminated or not renewed due to post abolition.

Second, on this specific issue, the Tribunal recalls that in Judgment 3908, consideration 16, it stated that:

"[...] [T]he Tribunal has long recognised the right of an international organisation to restructure and abolish positions [...] This will imperil the continuing employment of the occupants of those abolished positions. However, a concomitant of that right to abolish positions is an obligation to deal fairly with the staff who occupy those abolished positions. That extends to finding, if they exist, other positions within the organisation for which those staff have the experience and qualifications."

In Judgment 4841, consideration 6, in a situation of non-renewal of a contract in connection with the abolition of a post at IOM, the Tribunal also held that "[...] the Organization 'was obliged to explore with the complainant other employment options prior to his separation'".

The Tribunal emphasized, however, that “[...] the Organization was not bound by any specific provision to identify an alternative post. Where the non-renewal of a fixed-term contract is justified, the direct reassignment of the staff member to another adequate post, if it exists, is not mandatory.” The Tribunal also found that it was consistent with the duty of care of the Organization to place the complainant on special leave without pay after the expiry of her fixed-term contract “in order to enable her to apply to post vacancies within IOM as an internal candidate”.

13. In the instant complaint, the record establishes, amongst other things, that the complainant was provided with a list of public vacancies in December 2020, that upon confirmation of her post abolition, the Regional Director and the SRPLO explored alternative employment options with Chiefs of Mission and Heads of Office in the region, that the Head Talent Manager remained in regular contact with the complainant and provided materials, advice and guidance with a view to assisting her in securing a new position, and that the Organization has assisted her in applying for no less than 32 vacancies since 2018. It appears that 11 of those vacancies were cancelled and did not proceed to a selection process, that she was not shortlisted for 14 positions for lack of relevant experience or failure to meet language proficiency requirements, that she was invited to pass a written test for three posts and that she was shortlisted and interviewed for four posts. In addition, it is not disputed that the complainant was placed on special leave without pay after her separation to allow her to continue to apply to vacancies as an internal candidate.

While none of these opportunities materialized for the complainant, it is not sufficient to demonstrate that she was unsuccessful in applying for a range of positions for the Tribunal to conclude that IOM violated its duty towards her in this regard (see, in this respect, Judgment 4841, consideration 6).

On this issue, the Tribunal observes again that in its report, the JARB found that the Organization had made reasonable efforts to identify other suitable positions for the complainant. Even though the

complainant argues that this assessment was erroneous and should be set aside, this is insufficient without more to justify the Tribunal in substituting its own assessment to that of the Organization and its internal appeal body.

This third plea is unfounded as well.

14. In her fourth plea, the complainant contends that the non-renewal of her fixed-term contract was in any event unlawful for three reasons.

First, she claims that she should have been granted a two-year extension at the expiry of her fixed-term contract on 31 August 2020 given that she had by then secured her position over a period of ten years pursuant to section 3.4 of Instruction IN/164.

Second, in the absence of a 90-day notice of non-renewal prior to the expiry date of her fixed-term contract scheduled to end on 31 August 2020, she claims that the latter had been renewed for another year, such that IOM had in essence forfeited its right to give a non-renewal notice to the complainant during the four-month extension up to 31 December 2020, or the further extension up to 4 March 2021 to cover her notice period.

Third, she maintains that in any case, she was not informed of the decision not to renew her contract 90 days prior to its scheduled extended expiry set for 31 December 2020, and afterwards, only given two months and four days as a notification period from 1 January 2021 to 4 March 2021.

15. Regarding her alleged entitlement to a two-year contract, the applicable provisions of IOM's internal rules and regulations simply do not support the argument of the complainant.

On the one hand, while it is true that pursuant to the provisions of Instruction IN/164, the complainant could have been eligible to a two-year fixed-term contract due to her completion of ten years' continuous service on fixed-term and special contracts, this was not an automatic right, but rather one that may have been granted provided that certain conditions were met.

On the other hand, section 3.3.2 of Instruction IN/164, upon which the complainant relies in support of her argument, applies only in situations where a staff member has “tasks of an ongoing nature with funding likely and sustainable for a period of 24 months”. Yet, at the relevant time, the Organization had stated that the availability and sustainability of funding for that period for the tasks performed by the complainant was simply not met, and no evidence indicates otherwise.

16. Regarding the argument that no notice of non-renewal of her fixed-term contract was given to her prior to 31 August 2020, such that her fixed-term contract had thus been renewed for another year, the record indicates that the complainant’s former fixed-term contract was due to expire on 31 August 2020. In view of developments relating to the discontinuation of her post, and while the budget for 2021 was under consideration, it was decided that she would be offered a four-month contract, which would have the effect of extending her appointment until 31 December 2020. The complainant was notified of this proposal and the relevant reasons for it by email dated 1 September 2020. Specifically, she was then advised that notwithstanding the fact that she had completed the required service to be considered for a two-year fixed-term contract under Instruction IN/164, the IOM Regional Office in Dakar was not in a position to make an offer along these lines due to budgetary constraints, that the coordination of the renewal of her current one-year fixed-term contract remained ongoing, and that she would be issued an interim contract in the meantime.

The record also indicates that the complainant was provided with this four-month contract extension on 11 September 2020, which she accepted on 9 December 2020 though reserving her rights and without prejudice. The record further shows that, subsequently, on 3 December 2020, the complainant was formally advised of the abolition of the post that she had occupied and the resultant non-renewal of her current fixed-term contract beyond its scheduled expiry date of 31 December 2020. On 16 December 2020, she was informed that her contract would be extended from 1 January 2021 until 4 March 2021 in line with the notice period set forth in section 6.3 of Instruction IN/247. The

complainant accepted this extension on 6 January 2021, again reserving her rights and without prejudice.

17. Against this factual background, the complainant maintains that since she did not receive a 90-day notice of non-renewal of her one-year fixed-term contract due to expire on 31 August 2020, she was right to infer that it had been automatically renewed for another year effective 1 September 2020. As such, the subsequent extension of this fixed-term contract for four months expiring 31 December 2020 on 11 September 2020, which she only accepted without prejudice and reserving her rights on 9 December 2020, was of no consequence for her. Rather, she considers that she was entitled, at a minimum, to the benefits of the balance of her one-year fixed-term contract up to 31 August 2021.

The Tribunal disagrees with this assertion. None of the applicable rules and regulations at IOM provide for an automatic renewal of fixed-term contracts.

As already stated at consideration 6 of the present judgment, while the applicable IOM rules and regulations provide that a fixed-term appointment may be renewed, it carries no expectation of renewal. On this issue, in Judgment 3448, consideration 7, the Tribunal has itself observed that “[...] [a] person who is employed on a fixed-term contract does not have a right or a legitimate expectation to a contract extension. [...]”. In the instant case, the complainant, who was employed by IOM on a fixed-term contract basis, could therefore not lay claim to any right or legitimate expectation of renewal, neither infer that an “automatic” renewal happened merely because of the absence of any notice of non-renewal.

18. Regarding the last argument that she did not receive a 90-day notice as required by the applicable rules and regulations of IOM, the complainant contends that she was informed of the alleged budgetary constraints for the first time on 2 December 2020 and of the abolition of her post for the first time on 3 December 2020, merely a few weeks before her four-month contract extension expiry date. She considers

that in the end, she was given only “2 months and 4 days” as a notification period, that is, from 1 January 2021 to 4 March 2021.

This submission does not withstand scrutiny. The complainant received adequate notice of the non-renewal of her contract in compliance with section 6.3 of Instruction IN/247. The record indicates that she was notified of this decision on 3 December 2020 and then advised that her separation would be effective 4 March 2021, 90 days later. As a result, the four-month extension of her contract, due to expire on 31 December 2020, was renewed for the period of 1 January 2021 to 4 March 2021. That was sufficient to meet the applicable notice requirements.

This fourth plea is consequently unfounded in every respect.

19. In her fifth and final plea, the complainant maintains that throughout the whole process leading to the abolition of her post and the non-renewal of her fixed-term contract, IOM acted in bad faith and in violation of its duty of care.

The Tribunal has repeatedly stated that bad faith or abuse of authority cannot be presumed, that it must be proven and that the complainant is the one who bears the burden of proof in this regard (see, for example, Judgments 4841, consideration 5, 4688, consideration 10, and 4654, consideration 22, and the case law cited therein). In the instant complaint, the Tribunal considers that the complainant singularly fails to establish bad faith, an abuse of authority or an ulterior motive on the part of IOM that could support a finding that the abolition of her post and the non-renewal of her fixed-term contract was merely a disguised pretext to remove her from IOM’s employment. The complainant also fails to demonstrate the alleged violation by IOM of its duty of care towards her.

This fifth plea is thus unfounded as well.

20. As the complainant provides no basis on which the Tribunal could find that the impugned decision and the decisions to abolish her post and not to renew her fixed-term contract were unlawful, the complaint must be dismissed. The ancillary demands of the complainant

for the filing of additional documents by IOM or in contestation of the authenticity of documents it has filed are unfounded and are likewise rejected.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 30 October 2025, Mr Michael F. Moore, President of the Tribunal, Sir Hugh A. Rawlins, 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.

MICHAEL F. MOORE

HUGH A. RAWLINS

CLÉMENT GASCON

RENÉ M. VARGAS M.