

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

T.
v.
IOM

141st Session

Judgment No. 5135

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms C. T. against the International Organization for Migration (IOM) on 13 October 2021, IOM's reply of 8 February 2022, the complainant's rejoinder of 19 March 2022, IOM's surrejoinder of 20 June 2022, the complainant's additional submissions of 13 October 2022 and IOM's final comments thereon of 20 December 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 contests (i) the decision rejecting her request that the Director, Human Resources Management (HRM), recuse himself from any involvement in her appeals due to an alleged conflict of interest; (ii) the decision to maintain the composition of the Joint Administrative Review Board (JARB) panel constituted to review her internal appeals; and (iii) the decision to reject her request for direct appeal to the Tribunal.

The complainant joined IOM Ethiopia in June 2017 as a Migration Policy and Liaison Officer, at grade P-3, under a one-year fixed-term contract. Her contract was thereafter renewed several times. On

13 January 2022, her contract was terminated for health reasons effective 28 February 2022.

In a letter of 15 August 2021, addressed to the Director General in connection with an internal appeal lodged by the complainant that same day, the complainant's counsel made, on her behalf, two preliminary requests in connection with said appeal and other "upcoming appeals".

The first preliminary request was that the Director, HRM, recuse himself from exercising the powers conferred upon him by Instruction 217 Rev.3 of 20 December 2019, "Request for Review and Appeal to the Joint Administrative Review Board" (IN/217 Rev.3), including the power to propose the composition of the JARB, on the ground that, as the complainant had already lodged complaints of abuse of power and harassment against him, he had a conflict of interest which rendered the exercise of his powers under IN/217 Rev.3 contrary to due process and the principles of natural justice. The second preliminary request was that the Director General grant his consent for the complainant to appeal directly to the Tribunal, i.e. without first exhausting the internal appeal process, on the ground that, as the complainant's grievances concerned actions of the Organization's senior management that were generally known to staff and the JARB was comprised of staff who might have already formed an opinion regarding the complainant's case, their impartiality could not be guaranteed. The complainant's counsel added that maintaining the complainant's claims under the consideration of the Administration would be a grave miscarriage of justice and would expose the complainant to further retaliation and distress.

In a letter of 30 August 2021, the Chief of Staff informed the complainant and her counsel of the decision to reject the preliminary requests formulated in the 15 August 2021 letter and to proceed pursuant to the procedure set out in IN/217 Rev.3. Regarding the first preliminary request, the Chief of Staff explained that no actual or perceived conflict of interest could be identified which would preclude the Director, HRM, from exercising his usual functions in connection with the complainant's internal appeals and that, in any event, no formal complaint had been filed by the complainant in this regard. Regarding the second preliminary request, he indicated that the Director General

considered that her dispute was amenable to internal resolution, as it concerned matters falling squarely within the mandate of the JARB under IN/217 Rev.3. He found no basis for the claim that the panel would be comprised by staff who had predetermined the outcome and whose impartiality was in question, and no evidence for the contention that the internal appeal process would serve to expose the complainant to retaliation.

On 10 September 2021, the complainant's counsel wrote back to the Chief of Staff maintaining that the Director, HRM, was implicated in an appeal she had previously lodged, and that his actions had misled and prevented her from exercising her right of appeal and constituted, among other things, institutional harassment. The complainant's counsel added that, in line with Instruction 90 (IN/90), by submitting a request for review with allegations of misconduct, the complainant had put the Administration on notice that she had a grievance against the Director, HRM, concerning behaviour defined in IN/90 as harassment and abuse of authority. If the Director, HRM, had not disclosed to the Director General the existence of the complainant's claims against him, this very failure brought into question his impartiality and objectivity. The complainant reiterated that the Director, HRM, should recuse himself.

In a letter of 16 September 2021 to the complainant's counsel, the Chief of Staff rejected the complainant's submissions as misconceived and devoid of merit, maintaining that the Director, HRM, had no conflict of interest and that pursuant to paragraph 30 of IN/217 Rev.3, the complainant was entitled to object to the Chair of the JARB and one member of the proposed panel without the requirement to provide reasons, a right she had already exercised thus obliging IOM to proceed to constitute a revised panel. The Chief of Staff reiterated the Director General's conclusion that the matter would proceed pursuant to the procedure set out in IN/217 Rev.3, adding that there would be no further correspondence on the issue; should the complainant wish to contest the matter further, she could do so in the context of her submissions to the JARB in the course of her internal appeal.

On 4 October 2021, the complainant's counsel objected to the revised composition of the JARB in the complainant's first appeal, notified on 21 September 2021, and he also objected to the composition of the JARB in the complainant's second and third appeals, notified on 27 September 2021. By a letter of 7 October 2021, the Director, HRM, rejected the complainant's objections and informed her that pursuant to IN/217 Rev.4, the JARB's revised composition could not be subject to further objection and that it was in the interest of efficiency and justice for all three appeals to be reviewed by the JARB in the same composition, noting nonetheless that the JARB would review each of the three appeals separately and would issue a distinct report and recommendation for each case.

On 13 October 2021, the complainant filed the present complaint with the Tribunal. In the section of the complaint form entitled "The impugned decision", she identifies the 16 September 2021 decision by the Chief of Staff as the impugned decision. However, in the section of the complaint form entitled "The pleadings – Relief claimed", she asks the setting aside of the "impugned decisions", and in her brief she challenges three decisions.

The complainant asks the Tribunal: (i) to set aside the impugned decisions; (ii) to make a determination that there were conflicts of interest on the part of the Director, HRM, the Director General and the Chief of Staff vis-à-vis her; (iii) to "[s]et aside proposed the [JARB]"; (iv) to find that the actions of the Director General and/or Chief of Staff prove bias and prejudice against her; (v) to award her moral damages for violation of provisions on conflict of interest and duty of care; (vi) to award her punitive damages for abuse of authority by the Director General and/or Chief of Staff; (vii) to award her damages for pain and suffering; (viii) to set aside the Director General's decision rejecting her request to directly seize the Tribunal; (ix) to award her damages for institutional harassment; (x) to conduct an investigation into the procedure followed to appoint and select the JARB members and/or to compel the Administration to provide proof of the procedures followed; (xi) to conduct an investigation and make a determination on her claim of retaliation and fear thereof; (xii) to award her moral damages for

procedural impropriety and violation of her due process rights; (xiii) to find that the Director General's "pronouncement on matters before appeal" established a conflict of interest on those matters; and (xiv) to award the "[c]ost of the [a]ppeal".

IOM asks the Tribunal to dismiss the complaint as irreceivable in its entirety for failure to exhaust internal remedies, as required by Article VII, paragraph 1, of the Tribunal's Statute, and for failure to disclose a cause of action, as required by Article II, paragraph 5, of the Statute. Subsidiarily, IOM asks the Tribunal to dismiss the complaint as devoid of merit.

CONSIDERATIONS

1. The complainant challenges three decisions, which were made in response to preliminary requests put forward by her counsel in a letter to IOM, submitted in connection with her internal appeal of 15 August 2021, namely:

- (i) the decision to reject her request that the Director, HRM, recuse himself from any involvement in her cases due to an alleged conflict of interest. This decision was conveyed in letters from the Chief of Staff dated 30 August 2021 and 16 September 2021 (the first decision);
- (ii) the decision to maintain the composition of the JARB panel constituted to review her first three internal appeals under IN/217 Rev.3 of 20 December 2019. This decision was conveyed in letters from the Chief of Staff dated 30 August 2021 and 16 September 2021, and a letter from the Director, HRM, dated 7 October 2021 (the second decision); and
- (iii) the decision to reject her request for direct appeal to the Tribunal regarding her cases, as communicated in the Chief of Staff's letter of 30 August 2021 (the third decision).

Specifically, the complainant was informed of the Director General's view that the dispute was amenable to internal resolution, as it pertained to the application of the IOM Unified Staff Regulations and

Rules and alleged infringements of her statutory and contractual terms of appointment, matters falling within the JARB's mandate under IN/217 Rev.3.

2. IOM raises several objections to receivability, one of which is well-founded and decisive. IOM contends that the impugned decisions are not challengeable before the Tribunal, as they do not constitute final decisions within the meaning of the Unified Staff Regulations and Rules, and the Tribunal's Statute, due to a failure to exhaust the internal means of redress.

IOM asserts that none of the three decisions impugned before the Tribunal have been challenged internally through a request for review or subsequent internal appeal under IN/217 Rev.3. Furthermore, regarding the third decision, IOM submits that the complainant's claims are irreceivable *ratione materiae*, as she does not allege the breach of any entitlement arising from her terms of appointment, including the provisions of the Unified Staff Regulations and Rules. According to IOM, in order for the complainant to appeal directly to the Tribunal without prior internal appeal, she was required, under Staff Rule 11.3.1, to first secure the agreement of the Director General. In the absence of such agreement, the complainant had no right to a direct appeal, and the Director General's refusal to accede to her request did not constitute an actionable violation of her rights.

3. As to the first and second impugned decisions, the Tribunal finds them to be mere internal steps in the process, and, as such, they are not open to direct challenge before the Tribunal.

IN/217 Rev.3, paragraphs 30 to 32, read:

“30. Upon receipt of the notification of the composition of the Board in accordance with paragraph 29 of this Instruction, the appellant has the right to object to the Chairperson and/or one additional member without stating his or her reasons for the objection.

31. The objection shall be filed in writing to the Director of HRMD within 15 calendar days following the appellant's receipt of the notification of the composition of the Board. The appellant may submit the objection by email or in hard copy.

32. In the event of an objection by the appellant, the Director of HRMD shall identify another Chairperson and/or member from among the same list of appointments described under paragraph 23 of this Instruction to serve on the Board in the place of the person(s) objected to. In doing so, due account shall be taken of the provisions of paragraph 26 of this Instruction. The Director of HRMD shall notify the appellant by email or in hard copy of the revised composition of the Board within 10 calendar days following receipt of the appellant's objection, if any. The revised composition shall not be subject to further objection by the appellant."

Pursuant 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 redress as are open to her or him under the applicable Staff Regulations".

Not every decision taken by an international organization constitutes a final decision within the meaning of Article VII, paragraph 1. The decision-making process typically involves a sequence of steps or findings culminating in a final decision. Intermediate steps or findings do not, in themselves, constitute final decisions. While they may be challenged as part of a challenge to the final decision, they cannot, on their own, form the subject of a complaint to the Tribunal (see Judgments 4704, consideration 5, 4404, consideration 3, 3961, consideration 4, 3876, consideration 5, and 3700, consideration 14).

More specifically, regarding the opinions of internal appeal bodies, the Tribunal has consistently held that these are internal steps in the process leading to final decisions and cannot be challenged directly before the Tribunal (see Judgments 4978, consideration 9, 4791, consideration 3, 4721, consideration 7, 4637, consideration 5, 4392, consideration 5, and 2113, consideration 6).

The rationale underlying this case law, which characterizes advisory opinions of internal appeal bodies as mere internal steps, applies all the more to decisions rendered during the course of an internal appeal process concerning specific procedural requests from the parties, such as those for hearings, recusal of panel members, or disclosure of documents. Concerning, more particularly, requests for recusal, the Tribunal has underlined, in consideration 3 of Judgment 4570, rendered on the complainant's second complaint, that "a decision concerning the

composition of an internal body is not a final administrative decision amenable to review by the Tribunal, but merely a step in the process leading to a final administrative decision. As such, it may be challenged before the Tribunal only in the context of a complaint impugning the decision to be taken at the end of the internal appeal procedure” (see also Judgments 4297, consideration 7, and 4131, consideration 4). This principle squarely applies to the present case, where the complainant sought the recusal of the Director, HRM, and a change in the JARB’s composition.

The existence of a specific process, under paragraphs 30 to 32 of IN/217 Rev.3, for addressing partiality objections does not elevate the decision of the Director, HRM, to a final decision within the meaning of Article VII, paragraph 1, of the Tribunal’s Statute, notwithstanding that such decision by the Director, HRM, cannot be “subject to further objection by the appellant”. It remains a mere step in the internal appeal process, leading to the opinion of the internal appeal body and, subsequently, to the final decision of the competent authority. Any issues regarding decisions on partiality objections raised by the complainant can and must be raised if and when the final decision is challenged.

4. Turning to the decision to reject the complainant’s request to file a complaint directly with the Tribunal, it is noted that Staff Rule 11.3.1 read:

“A staff member may, in agreement with the Director General, appeal directly to the Administrative Tribunal of the International Labour Organisation without first following the procedures provided for in Staff Regulations 11.1 and 11.2 and Staff Rules 11.1.1 and 11.2.1, in accordance with the provisions of the Statute and Rules of Procedure of that Tribunal.”

In the present case, the complainant requested authorization to file a complaint directly with the Tribunal, but this request was rejected by the competent authority. Furthermore, she has failed to establish before the Tribunal that she was otherwise exempted from the obligation to exhaust internal remedies (see Judgment 4661, consideration 2). Conversely, there is evidence on record that the complainant’s claims were promptly and thoroughly addressed by the Director General and

the Chief of Staff. There was no implied rejection that might have justified the complainant's direct challenge before the Tribunal.

Consequently, the complainant has failed to exhaust the internal means of redress available to her and lacked authorization to bypass them.

5. In conclusion, the complaint is irreceivable in respect of all three impugned decisions and will be dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 4 November 2025, Mr Michael F. Moore, President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Rosanna De Nictolis, 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

ROSANNA DE NICTOLIS

RENÉ M. VARGAS M.