

113th Session

Judgment No. 3112

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs C.O. C. against the International Institute for Democracy and Electoral Assistance (International IDEA, hereinafter “the Institute”) on 28 April 2010 and corrected on 26 May, the Institute’s reply of 13 August and the corrigendum of 10 September, the complainant’s rejoinder of 30 September, the Institute’s surrejoinder of 21 October, the complainant’s additional submissions of 8 December 2010 and the Institute’s final comments of 10 January 2011;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

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

A. The complainant is a Romanian national born in 1968. She applied for the position of Contract and Grants Officer which was advertised by the Institute in June and July 2009 as a two-year fixed-term position. Although not specified in the vacancy announcement, two positions were to be filled.

Following an interview, the complainant wrote to the Institute on 13 August asking whether the position was local or international. On 25 August the Assistant Human Resources Officer sent her an e-mail indicating that the Institute had decided to make her an offer of appointment. He provided details concerning monthly salary, pension contributions, insurance premiums and taxation. On 26 August the complainant replied that she was ready to discuss a formal and detailed offer of appointment. That same day the Assistant Human Resources Officer therefore forwarded to her a “formal offer” and a draft letter of appointment in which it was stated that the three-year appointment would start in October or November 2009 and that the position was at level VII. The specific dates of appointment were to be confirmed upon acceptance of the offer. An exchange of e-mails ensued between the complainant and the aforementioned officer concerning the specific terms and conditions of employment, following which the complainant sent him an e-mail on 14 September indicating that she had decided to “theoretically” accept the conditions detailed in the draft letter of appointment of 26 August. The officer forwarded to her on 17 September a letter of appointment signed by the Director of Finance and Administration together with the job description. On 18 September the complainant acknowledged receipt of that letter but asked why the duration of the appointment had been reduced from three to two years, adding that she had to consider whether she could take up the position as from 1 November 2009 as proposed. The Assistant Human Resources Officer replied on 21 September that, as stated in the vacancy announcement, the appointment was for two years and that there had been a mistake on the formal offer; he proposed discussing this with her by telephone. After a further exchange of e-mails, the officer asked the complainant on 29 September to sign and return the letter of appointment by 30 September, failing which the offer of appointment would be withdrawn.

On 30 September the complainant wrote an e-mail to the Secretary-General expressing dissatisfaction with respect to the

negotiations concerning her appointment and, in particular, the fact that she might be treated as a local recruit. She asked him to decide whether she would be entitled to the benefits granted to internationally recruited staff if she joined the Institute. That same day the Assistant Human Resources Officer notified her that the offer of employment was withdrawn since she had not signed and returned the letter of appointment before the deadline.

The complainant subsequently wrote several e-mails to the Administration alleging inter alia that she had been prejudiced by the Institute's decision to withdraw its offer of appointment and enquiring about internal means of redress. On 7 December 2009 she wrote to the Secretary-General stating that she had received no information as to internal means of redress and that she would "further investigate and consider other possibilities for lodging a complaint with competent authorities". By an e-mail of 5 February 2010 the Director of Finance and Administration informed the complainant that the Institute was not in a position to entertain her claims given that no valid employment agreement had been concluded. That is the decision the complainant impugns before the Tribunal.

B. The complainant alleges that the Institute rejected her "appeal" without any independent "analysis" and deprived her of the possibility of exercising her right of appeal. She also contends that the recruitment process was procedurally flawed.

She objects to the Institute's decision to modify unilaterally a "binding agreement", which in her view constitutes abuse of authority. She explains that on 26 August it made her a formal offer of appointment according to which the duration of appointment was three years. Since she had accepted the conditions detailed in that offer, the Institute was not entitled to change the duration of appointment to two years, as it did in the letter of appointment. In her view, the Institute was "under a binding contract" to appoint her once she had accepted the formal offer, and the appointment did not materialise solely because of its failure to issue an appropriate letter of appointment.

According to the complainant, the Institute acted in bad faith insofar as the final decision concerning the local or international status of the position was made after the shortlisted candidate for the other position of Contract and Grants Officer had been recruited. She contends that the Institute then made her a “discriminating offer” in the hope that she would reject it, and acted in breach of the principle of equal treatment. Moreover, the deadline she was given to sign the letter of appointment was determined arbitrarily and caused her “huge stress”. She adds that the decision to withdraw the offer of appointment had an important negative impact on her professional life and “future earning capacity”.

She asks the Tribunal to declare the selection and appointment process unlawful, to set aside the decision of 5 February 2009 and to award her material damages in an amount equivalent to the salary, pension contributions and allowances she would have received had she been appointed for the period from 1 November 2009 to 31 October 2012. She also claims exemplary damages, moral damages in an amount of 50,000 euros and costs in the amount of 5,000 euros. She further asks to be granted interest at the rate of 8 per cent per annum on all amounts owed to her if the Institute does not pay them on the date determined by the Tribunal in its judgment. In addition, she asks the Tribunal to order the Institute to circulate the judgment to its “Council, Board of Advisors and all Staff Members”.

C. In its reply the Institute contends that the complaint is irreceivable as the complainant did not enter into an employment contract with the Institute. Since she has never been a staff member, she is not entitled to contest the terms of employment it was ready to offer her. In its view, the exchange of correspondence it had with the complainant did not constitute a contract of employment, particularly since the parties disagreed as to the duration of employment and the issue of entitlement to international benefits.

Subsidiarily, it rejects the allegation of unequal treatment explaining that the complainant, like the other candidate, was offered

a level VII position and that, at the material time, all staff members holding a position of that level were recruited locally, in accordance with the Institute's policy of recruiting locally for positions at levels VII to IX. Only one "exception" was made to that policy, it was in 2004, when a staff member holding a level VII position was granted international benefits, but that was an "anomaly".

The Institute asserts that it acted in good faith throughout the entire negotiation process. It emphasises that the complainant was informed, during the initial interview, that the position was local, and that she was given reasonable time to accept the offer of appointment. Indeed, the initial offer was made on 25 August and the deadline for accepting it was 30 September. As for the duration of the appointment, the Institute explains that the vacancy announcement indicated that it was a two-year position and that there was an "innocent error" in the formal offer made to the complainant.

D. In her rejoinder the complainant presses her pleas. She explains that she filed her complaint with the Tribunal "as a person who, whether or not having the status of an official or former official, is alleging non observance of the terms of appointment". She acknowledges that she did not sign a letter of appointment but contends that she agreed to all important terms of employment when she accepted the formal offer of appointment on 14 September. In her view, there was no ambiguity in the formal offer as to her entitlement to international benefits; confusion arose only in subsequent communications from the Institute. Regarding the duration of the appointment, she notes that, according to the defendant, the vacancy announcement indicated that the position of Contract and Grants Officer was for two years, but authorisation was subsequently granted to extend the duration of appointment to three years for one of the positions but not for the other. According to the complainant, this shows that the two candidates for the same position were treated differently. She therefore maintains that the Institute acted in breach of the principle of equal treatment.

The complainant makes several new claims, asking the Tribunal to order the Institute to provide the “real number” of posts for the position of Contract and Grants Officer “as reported annually to the Governing Arm”, to submit the “papers” of the selection process and those related to the appointment of the other Contract and Grants Officer, to provide documents showing that the decision to appoint the other candidate for three years was authorised, to produce evidence of the place of residence of the other candidate at the time of appointment and to submit the provisions of the Administrative Procedures Manual concerning allowances and grants.

E. In its surrejoinder the Institute emphasises that, although the vacancy announcement specified that it was a two-year position, the offer of appointment made to a selected candidate may differ depending on the result of the interview process.

The Institute contends that her claims concerning the “real number” of positions of Contract and Grants Officer are irrelevant to the case, as is her request for documents concerning the selection of the other candidate and for provisions of the “Administrative Procedures Manual”. It adds that the Manual of Administrative Policies and Procedures has not yet been finalised.

F. In her additional submissions the complainant argues that she was entitled to international benefits, since the “consistent policy” to which the Institute refers to explain that staff holding level VII positions are not granted international benefits conflicts with Staff Rule 1.4, according to which the concept of a locally recruited staff member applies only to those recruited to work in field offices.

G. In its final comments the Institute explains that Staff Rule 1.4 deals only with recruitment by field offices and therefore does not conflict with its policy concerning recruitment at headquarters. It adds that the complainant cannot derive a right to benefits from a mistake made in 2004.

CONSIDERATIONS

1. The determinative issue is whether the complainant is an “official” within the meaning of Article II, paragraph 5, of the Statute of the Tribunal, which provides:

“The Tribunal shall also be competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials and of provisions of the Staff Regulations of any other international organization [...].”

2. It is clear that the Tribunal is not competent to hear complaints from external applicants for a post in an organisation that has recognised its jurisdiction (Judgment 2657, under 3). In the same judgment, under 5, the Tribunal also explained:

“[P]ersons who are applicants for a post in an international organisation but who have not been recruited are barred from access to the Tribunal. It is only in a case where, even in the absence of a contract signed by the parties, the commitments made by the two sides are equivalent to a contract that the Tribunal can decide to retain jurisdiction [...].”

3. The facts upon which this complaint arises are detailed above. It is not necessary to summarise them here. It is clear that the parties at no time entered into a contractual relationship. The letter of appointment sent to the complainant on 26 August 2009 states that it is an offer of appointment. The complainant viewed this document as a draft that could not be signed until agreement was reached on all of the issues involved. Following the complainant’s indication of her willingness to accept that the letter of appointment was the Institute’s formal offer, she advised that she “theoretically accept[ed]” the conditions detailed in that letter.

4. However, upon receiving the letter of appointment of 17 September signed by the Director of Finance and Administration, the complainant noted that the term of the appointment had been reduced from three years to two years. In response to her e-mail questioning the change, the Assistant Human Resources Officer replied that the post was advertised as a two-year fixed-term contract

and that the original offer was prepared from a template and the duration was mistakenly not changed. The complainant expressed surprise at the explanation and requested a schedule of her entitlements in accordance with the Staff Rules since she was relocating from outside Sweden. In response, the Assistant Human Resources Officer advised that the position entitled her to various allowances. However, since the Administration classified the position as “local,” she would not be eligible for a Relocation Allowance.

5. By an e-mail of 25 September the complainant questioned the post’s “local” classification. In particular, she “[was] surprised to see that this matter [was] still outstanding and [that the Assistant Human Resources Officer] revert[ed] to [the] initial position that the provisions of the [...] Letter of Appointment [did] not even confirm”. She added that the vacancy announcement did not indicate that the post was “local.” In fact, it contained strong textual indications to the contrary. Moreover, she argued that the Staff Rules entitled her to a Relocation Allowance even if the Institute did classify her post as “local”.

6. On 29 September the Assistant Human Resources Officer responded to the complainant that the benefits issue was already settled. He noted that, in a telephone conversation he had with her in August 2009, he informed her that the organisation would recruit locally and that she would therefore have to bear the expenses arising from her relocation. “[A]t no point,” he added, “was it mentioned that [the Institute] offer[ed] a relocation package.” The officer stated that the offer was clear and final and that, by order of the Director of Finance and Administration, the Institute would retract its offer if the complainant did not accept it by 5 p.m. on the following day, 30 September.

7. Approximately half an hour before the deadline, the complainant wrote to the Secretary-General, complaining that the Institute had offered her employment but withheld international benefits. She asked that the Secretary-General clarify her entitlements

in view of the Staff Rules and the letter of appointment. With reference to the deadline imposed, she made the following observation:

“[...] please consider this message as my official reply to [the request to sign the letter of appointment by 30 September]. You may appreciate that, while my signing this Letter of Appointment would put me in a position where the Institute would have to honour all its obligations according to the Staff Rules, I would prefer, to the benefit of us all, to clarify this matter prior to entering into any contractual commitment.”

At 5.10 p.m. the Assistant Human Resources Officer informed the complainant that the Institute had retracted its offer.

8. As the complainant herself acknowledged, there were still unresolved issues that she wished to have settled before entering into a contract. Accordingly, it cannot be said that at that time there was any contractual relationship between the parties, let alone an employment relationship. As there was no employment relationship, the complainant was not an official of the organisation. It follows that the Tribunal is not competent to hear the complaint and that, therefore, it must be dismissed.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 9 May 2012, Ms Mary G. Gaudron, Vice-President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Ms Dolores M. Hansen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 4 July 2012.

Mary G. Gaudron
Giuseppe Barbagallo
Dolores M. Hansen
Catherine Comtet