

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

**P.**  
**v.**  
**FAO**

**137th Session**

**Judgment No. 4775**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms O. P. against the Food and Agriculture Organization of the United Nations (FAO) on 31 August 2020 and corrected on 3 December, the FAO's reply of 8 April 2021, the complainant's rejoinder of 29 April 2021 and the FAO's surrejoinder of 11 August 2021;

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 FAO's decision to "terminate [her] contract after [her] resignation".

The complainant joined the FAO in January 2019 as a Senior Economist, at grade P-5, in the Trade and Markets Division (EST), under a two-year fixed-term appointment. Her initial one-year probationary period was extended to 18 months upon the recommendation of the Deputy Director, EST, in her second Probationary Performance Appraisal Report (PPAR) on 18 October 2019.

By an email of 17 January 2020, the complainant informed the Director, EST, that “[d]ue to [her] family situation”, she would like to resign from her post effective 1 April 2020. The Director, EST, replied on 31 January 2020 that her resignation had been endorsed by the Director, Office of Human Resources (OHR), and that the FAO Shared Services Centre would contact her shortly regarding her separation formalities.

On 18 March 2020, the complainant wrote again to the Director, EST, requesting that she be allowed to withdraw her resignation until the situation caused by the COVID-19 pandemic had improved. The FAO Shared Services Centre replied on 20 March 2020, informing the complainant that her request had been positively considered and that her separation had been suspended. It further informed her that her probationary period would end on 8 July 2020 and that the administrative steps for her separation would resume, once the situation created by the COVID-19 pandemic permitted.

On 18 May 2020, the complainant sent an email to the Director, EST, indicating that she would like to resign effective 5 June 2020 and requesting that the resignation process resume. The Director, EST, accepted the new proposed date of resignation and he relevantly informed her the next day. The complainant separated from the Organization on 5 June 2020.

Prior to that, on 31 May 2020, the Deputy Director, EST, had provided the complainant with her final PPAR, in which he rated her performance “Not satisfactory – fails to meet job requirements” and recommended the termination of her appointment. Having signed her final PPAR, the complainant sent, on 2 June 2020, an email to the Director, EST, and her immediate supervisor, with a copy to the Director, OHR, and the Director, Office of the Inspector General, in which she reproached the FAO for assigning her to a post for which her technical skills were not appropriate, and indicated that she had signed her final PPAR reserving her right to challenge the hiring and separation process.

On 31 August 2020, she filed the present complaint with the Tribunal, noting on the complaint form that she was impugning, pursuant to Article VII, paragraph 3, of the Tribunal's Statute, the FAO's failure to take an express decision on the claim notified to it on 2 June 2020.

The complainant asks the Tribunal to award her 15,000 United States dollars in moral damages for the FAO's abusive termination of her contract after it had accepted her resignation. She also asks the Tribunal to order the FAO to mention "resignation" as the reason for her separation in her personnel file.

The FAO asks the Tribunal to dismiss the complaint as irreceivable for failure to exhaust the internal means of redress.

#### CONSIDERATIONS

1. The complainant has filed a complaint directly with the Tribunal pursuant to Article VII, paragraph 3, of the Tribunal's Statute. She challenges an alleged decision of the FAO to "terminate [her fixed-term appointment] after [her] resignation". She states that the FAO failed to take a decision within the sixty-day period referred to in Article VII, paragraph 3, of the Tribunal's Statute, on the claim she allegedly notified to the Administration on 2 June 2020.

2. The FAO submits that the complaint is irreceivable for failure to exhaust internal means of redress, as the complainant did not lodge an internal appeal prior to filing her complaint with the Tribunal. Furthermore, she has not established any of the exceptional grounds that warrant direct recourse to the Tribunal.

3. The complainant argues that her "claim" should have been acknowledged and that she should have been informed of her right to submit an appeal to the Appeals Committee even after her separation from the FAO; however, she did not receive any reply within sixty days from the date of notification of her claim.

4. While Article VII, paragraph 3, of the Tribunal's Statute allows for direct recourse to the Tribunal "[w]here the Administration fails to take a decision upon any claim of an official within sixty days from the notification of the claim to it", this paragraph must be read in conjunction with paragraph 1 of Article VII. According to Article VII, paragraph 1, of the Statute of the Tribunal, "[a] complaint shall not be receivable unless the decision impugned is a final decision and the person concerned has exhausted such other means of redress as are open to her or him under the applicable Staff Regulations". It follows that the Tribunal cannot hear a complaint against an implicit decision to reject a claim unless the complainant has exhausted all available internal remedies (see Judgments 4517, consideration 4, and 2631, consideration 3).

5. The Tribunal notes that the complainant's alleged claim was in the form of an email, dated 2 June 2020, addressed to the Director and Deputy Director, Trade and Markets Division, and copied to the Director, Office of Human Resources, and the Director, Office of the Inspector General, in which she emphasized that "[she had] signed [her] evaluation [final PPAR] without the intention to forego [her] right to challenge the whole hiring and separation process in front of an ILO Tribunal". However, according to the FAO's Staff Rules, an appeal must be lodged first with the Director-General and then with the Appeals Committee, unless the Director-General's reply to the initial appeal constitutes a final decision and there is an express notification to that effect.

6. Staff Rule 303.1.311, entitled "Appeal to the Director-General", provided as follows:

"Staff members who wish to lodge an appeal regarding a grievance [...] arising out of an administrative decision which they allege to be in conflict, either in substance or in form, with the terms of their appointment or with any pertinent Staff Regulation, Staff Rule or administrative directive, shall state their case in a letter to the Director-General, through their head of department or office. The letter shall be despatched within 90 days from the date of receipt of the decision impugned. Staff members may request the Director-General to take a final decision on their appeal in accordance with Staff Regulation 301.11.1. A reply from the Director-General shall constitute a final decision only if the appellant has received an express notification to that effect."

Staff Rule 303.1.313, entitled “Appeal to the Appeals Committee”, further provided as follows:

“If staff members wish to appeal against the reply received from the Director-General, other than a reply constituting a final decision, or if no reply is received within the applicable time limit referred to in Staff Rule 303.1.312, they may submit an appeal, in a Memorandum of Appeal, to the Chairman of the Appeals Committee, through the Secretary to the Committee.”

7. The complainant argues that, as a former official, she did not have the right to appeal to the Director-General against an administrative decision made by her division directors, since she had separated from the FAO on 5 June 2020. She further submits that Sections 301 and 303 of the FAO Administrative Manual do not mention the possibility for former staff members to make use of the appeals procedure, and that Section 331 of the FAO Manual is not available to former staff members due to their restricted access to the FAO’s intranet after separation from service.

8. Contrary to what the complainant contends, FAO Manual paragraph 331.4, entitled “Appeals by Former Staff Members”, provides that former staff members shall have access to the appeals procedure. FAO Manual paragraph 331.4.1 specifically states that “[f]ormer staff members [...] may lodge an appeal in accordance with the provisions of this Manual Section subject to Manual [paragraphs] 331.4.2 and 331.4.3”. Moreover, as the Tribunal’s case law has long emphasised, “every international civil servant is expected to know the rules and regulations to which [she or] he is subject” (see, for example, Judgments 4324, consideration 11, and 2962, consideration 13). The complainant cannot blame the FAO for her failure to familiarize herself with the Organization’s Administrative Manual.

9. Since the complainant has not exhausted the internal means of redress available to her, as required by Article VII, paragraph 1, of the Statute of the Tribunal, her complaint is irreceivable and must be dismissed.

DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 23 October 2023, Mr Michael F. Moore, Vice-President of the Tribunal, Ms Rosanna De Nictolis, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, Mirka Dreger, Registrar.

Delivered on 31 January 2024 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

ROSANNA DE NICTOLIS

HONGYU SHEN

MIRKA DREGER