Registry's translation, the French text alone being authoritative.

101st Session **Judgment No. 2531**

The Administrative Tribunal,

Considering the complaint filed by Mr M. G. against the World Trade Organization (WTO) on 17 May 2005, the Organization's reply of 7 December 2005, the complainant's rejoinder of 31 January 2006, the WTO's surrejoinder of 9 March, the further submissions filed by the complainant on 4 April and the Organization's comments of 11 April 2006 on those submissions;

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, an Italian national born in 1974, started working for the WTO in September 1998 on the basis of short-term contracts. As from 2 January 2001 he was employed under the same contractual conditions, but without interruption. At the material time he was employed as a clerk in the Editorial and Publications Unit of the Information and Media Relations Division; he was replacing a colleague who was absent on sick leave and performed two kinds of tasks: the physical handling of documentation in the basement of the WTO and the sale of publications in the bookshop.

On 24 September 2003 the complainant signed his performance evaluation report for the period 21 January to 30 June 2003, in which his supervisor gave him the following overall performance rating: "Does not fully meet performance requirements". When the complainant's post was advertised on 27 October 2003, he applied but was informed in a memorandum dated 16 January 2004 that his application had been unsuccessful. Ms M. was appointed to the post instead. By registered letter of 23 January, the Chief of the Human Resources Section informed the complainant that his short-term contract would not be renewed when it expired at the end of January 2004.

The complainant's request for review of the non-renewal decision was rejected on 24 March. On 26 April 2004 he submitted his case to the Joint Appeals Board. The latter issued its report on 28 January 2005, concluding that the decision not to renew the complainant's contract was not legally flawed. In a letter of 14 February 2005, which constitutes the impugned decision, the Director of the Human Resources Division informed the complainant that the Director-General had decided to confirm the non-renewal of his contract.

B. The complainant recalls that, according to the Tribunal's case law, although a decision not to renew a short-term appointment is a discretionary one, it does not fall entirely outside the scope of review by the Tribunal insofar as the latter must check that it is not flawed. He considers that in his case the rules of procedure were breached because the Joint Appeals Board "limited its power of review" on the basis of the Tribunal's case law whereby the latter will not substitute its opinion for that of a selection committee and will exercise only a limited power of review over an appointment decision. In his view, neither that case law nor any internal rule justified the Board restricting its power of review in any way.

The complainant explains that his relations with the person in charge of the bookshop were strained; according to him the latter considered that he should be "entirely at her service and she used and abused [...] his availability". He considers that his working conditions were "particularly unpleasant" and that the fact that he had to perform two kinds of tasks gave rise to an overload of work. That in turn aroused feelings of frustration among some of his colleagues and attracted criticism which was certainly unjustified in view of the energy and dedication he devoted to his work. He maintains that he sought to draw the Administration's attention to his working conditions for the sake of improving his efficiency, but this "upset" his supervisor, responsible for publications, who then tried to ensure that another person would be appointed to the post. He considers that the adverse – and in his view unjustified – performance evaluation reports he received also played a decisive part in the selection procedure. He

contends that his application was turned down as a result of all the above factors, rather than a fair evaluation of his abilities.

According to the complainant, some essential facts were not taken into consideration, particularly in view of the fact that Ms M. did not have the necessary qualifications for the advertised post, especially the required knowledge of languages. He submits that the decision to turn down his application and not renew his contract constitutes an abuse of authority, since it was taken not in the interest of the service but in response to his supervisor's wish to "remove him".

He also criticises the Administration for having initially cancelled the hearing before the Joint Appeals Board because it did not want him to be assisted by legal counsel. The hearing did take place a few weeks later, but the complainant alleges that on that occasion the Board objected to his raising the question of Ms M.'s qualifications, although no statutory provision allowed it to prevent the parties from asking the witnesses certain questions. Because it did not conduct a full examination of the case, the Board in his view "deprived its recommendation of the necessary substantiation".

The complainant further argues that according to consistent precedent reasonable notice is required in the event of the non-renewal of a short-term appointment, at least where several contracts of that type have been held successively and without interruption over a prolonged period. Given that his contracts were renewed without interruption for more than three years, he considers that three months' notice, starting 16 January 2004, would have been reasonable in this case. Lastly, he contends that the confidentiality of the Appointment and Promotion Board's discussions was breached, since his supervisor hinted as early as December 2003, at a time when the Board's recommendation was still confidential, that his application would be turned down.

The complainant submits the following claims:

"1. To set aside the decision of the Director-General of the WTO of 14 February 2005.

2. To set aside the WTO's decision not to renew [his] contract of employment [...].

3. To cancel the appointment of Ms [M.].

4. To reinstate [him] at the WTO under a new employment contract starting 31 January 2004, with the same salary conditions as before.

5. *Subsidiarily to 4,* to order the WTO to pay [him] an indemnity of eight months' salary and the sum of 10,000 [Swiss francs] as compensation for moral injury.

6. *Subsidiarily to 4 and 5,* to refer the case back to the Director-General of the WTO for a new decision, following a review by the Joint Appeals Board which takes account of all the circumstances and which is not restricted to defects reviewed by the Tribunal.

7. *Subsidiarily to 4, 5 and 6,* to order the WTO to pay [him] an indemnity of three months' salary.

8. To order the WTO to draw up and issue [him] an employment certificate expressing satisfaction for [his] work for the WTO and recommending his services to new employers.

9. To order the WTO to refund the legal costs incurred [...] in proceedings both before the Joint Appeals Board and before the Tribunal."

C. In its reply the WTO suggests that the strained relations between the complainant and the person in charge of the bookshop have no bearing on the outcome of the competition. As for the resentment supposedly shown by the supervisor towards the complainant and her alleged wish to remove him, these are no more than "suppositions" which are not corroborated by any specific testimony. The Organization argues that the complainant was "probably overwilling" and therefore spent too much time on minor tasks to the detriment of what his supervisor considered essential.

The defendant contends that the decision to appoint Ms M. was taken in the interest of the service and that, even if she had not been selected, the complainant's application would probably still not have succeeded since he was

preceded by yet another candidate. Moreover, both the interview board and the Appointment and Promotion Board judged that Ms M. was the best candidate and that she had the required language skills. The Organization considers that the Joint Appeals Board was quite right to exclude the matter of the appointment of that candidate from its consideration of the case.

The WTO asserts furthermore that the interview board did not rely only on the opinions of the complainant's supervisor or on the evaluation reports the latter had drawn up. Nor has the complainant demonstrated that these reports were tainted with abuse of authority. It adds that the complainant did not produce a good impression when he appeared before the interview board and that his performance in the competition, far from contradicting the assessments of his supervisor, rather seemed to confirm them.

Referring to Staff Rule 114.8, the Organization explains why it objected to the complainant being represented by legal counsel in the proceedings before the Joint Appeals Board. It submits that the fact that in reviewing cases of this kind the Board's approach is similar to the Tribunal's stems from a constant, long-established practice which does not contravene any general principle of the law of the international civil service or infringe the officials' interests. It argues that the right to produce evidence does not imply that officials are entitled to raise questions which in the Board's view are not directly related to the case. In acting as it did, the Board exercised its discretionary power without infringing the rights of the parties.

The defendant Organization further points out that there is no provision in the short-term Staff Rules requiring notice in the event of the non-renewal of a contract. In this respect it considers that the case law referred to by the complainant is not relevant. It maintains that the complainant was given reasonable notice since the vacancy was advertised more than three months before the post was attributed. He was warned moreover by his supervisor as early as mid-December 2003 that there was a strong likelihood that he would not be selected. According to the Organization, this "indiscretion", which was intended to be helpful to the complainant, had no effect on the competition procedure, since "it could no longer influence [the complainant's] participation in the tests". Lastly, on 16 January 2004, that is two weeks before the expiry of his contract, the complainant was informed in a memorandum that his application had been rejected, which could, according to the defendant, be regarded as reasonable notice in the circumstances.

The defendant points out that the complainant rejected the offer of a settlement whereby he would have received two months' salary in lieu of reasonable notice and one month's salary in compensation for moral injury. It recalls that the complainant had no right to have his contract renewed and has no right to be reinstated. Even on the assumption that the competition was not properly conducted, there is nothing in its view to indicate that the complainant would have been appointed instead of Ms M. His first seven claims must therefore be dismissed.

D. In his rejoinder the complainant presses all his pleas. In his view the WTO has produced no evidence to support its assertion that the interview board had legitimate reasons to reject his application. He contends that, considering the long period during which he worked at the WTO and the quality of his work, he was entitled to expect to continue working for the Organization, even if he failed the competition. He endeavours to demonstrate that the argument by which the defendant seeks to justify the Joint Appeals Board's limited review of the case and its reasoning regarding notice are hardly convincing. He considers that he does not need to explain his decision to reject the settlement offer, which he interprets as the WTO's implicit recognition of his right to obtain at least compensation on the grounds of reasonable notice.

E. In its surrejoinder the WTO asserts that at no time did it ever try "to get rid" of the complainant. It submits that the competition was conducted according to the rules: on the one hand Ms M. meets the selection criteria and on the other hand the complainant has not proved that he was discriminated against or that the interview board made any error of assessment.

Among the annexes submitted with its surrejoinder, the WTO produces three evaluation reports concerning Ms M. drawn up between 1 March 2003 and 31 December 2005, as well as a letter dated 9 March 2006 in which Ms M., at the request of the Tribunal, gave her comments on this case. In her letter, Ms M. sets out to show that she is fully qualified for the post to which she has been appointed, while adding that the complainant "must not drag [her] into his fight to defend his personal interests and should even less cast doubt on the selection procedure".

F. In his additional submissions the complainant comments on the annexes produced with the defendant's surrejoinder and alleges that four of them have been excluded from the case file. He adds that "he has nothing

against Ms M. personally" and is merely objecting to the procedure leading to her appointment. In his opinion Ms M.'s evaluation reports show that she did not meet the requirements laid down in the vacancy notice.

G. In its final comments the WTO states that the complainant's additional submissions contain no new element and that he has not shown that it made an obvious error of judgement in considering that Ms M. meets the selection criteria.

CONSIDERATIONS

1. The complainant was employed by the WTO from 2 January 2001 to 30 January 2004 as a clerk in the Editorial and Publications Unit, on the basis of regularly renewed short-term contracts. Prior to that, between 1998 and 2000, he had worked periodically as an usher or clerk in the Messengers and Drivers Service and in the Conference Office in particular. A post encompassing the duties he performed at the Editorial and Publications Unit was created in October 2003. The complainant entered the competition for the post, but the interview board and the Appointment and Promotion Board did not rank him first and recommended that the post be offered to Ms M., who was subsequently appointed. As a result the complainant's last contract, for the period from 1 to 30 January 2004, was not renewed, pursuant to a decision by the Chief of the Human Resources Section notified to the complainant by registered letter of 23 January, which he received on 28 January.

2. On 25 February 2004 the complainant asked the Director-General of the Organization to review the non-renewal decision, but this request was rejected on 24 March 2004, as a result of which the complainant lodged an appeal with the Joint Appeals Board in accordance with Staff Rule 114.5(a).

3. During the proceedings before the Board, which were marked by a disagreement between the latter and the Administration on the issue of whether the complainant was entitled to be represented before the Board by legal counsel, an attempt was made to reach a settlement but the Organization's offer to pay the complainant the equivalent of three months' salary was not accepted. The Joint Appeals Board issued its recommendation on 28 January 2005. It concluded that the decision not to renew the complainant's contract was not legally flawed, even though the Administration was not entirely immune from criticism insofar as the complainant's working conditions were inadequate and had not been improved and certain shortcomings were apparent in the management of the Service by the complainant's supervisor. On 14 February 2005 the Director-General confirmed the non-renewal decision.

4. The complainant's claims are listed under B, above. He contends that the disputed decision, based on the Joint Appeals Board's recommendation, is flawed on the grounds of breach of the rules of procedure, lack of reasons, the omission of essential facts concerning the quality of his work and Ms M.'s insufficient qualifications, besides being tainted with abuse of authority. He argues, lastly, that the decision not to renew his contract was not preceded by the reasonable period of notice required by the case law.

5. In support of his plea regarding the flawed procedure before the Joint Appeals Board, the complainant chiefly contends that his arguments were not properly examined, because the Board "limited its power of review" of the Director-General's decision on the grounds that the administrative authority in the circumstances held a discretionary power which was subject to only limited review. In the complainant's view, that is to confuse the rules governing the Tribunal's review of discretionary decisions with those which apply before the Joint Appeals Board, which exercises an unfettered power of review. The Tribunal considers that, whilst internal appeal bodies may issue recommendations in the light of their assessment of the circumstances of each case, they cannot be blamed for applying the Tribunal's case law regarding the caution that must be exercised in reviewing the assessments made by an administrative authority when refusing to renew a contract or those made by selection committees when comparing the merits of applicants for a vacant post. The Provisional Rules of Procedure of the Joint Appeals Board wisely stipulate in this respect that the Board shall address the issues before it on the basis not only of the WTO Staff Rules and Regulations, but also "the judgements of international tribunals regarding staff matters, general principles of law applicable to the international civil service, and the works of authors". The Rules further provide that the Board may "in certain circumstances base its conclusions on equity", subject to specifying the reasons for its recommendation. In the case in hand, it did not refuse to consider whether the arguments put forward by the complainant were well founded; it sought to ascertain whether the interview board's decision was based on a mistake of law or of fact or showed discrimination, and it considered whether the decision not to renew the complainant's contract was truly based on objective considerations or was influenced by animosity on the part

of his supervisor. The Joint Appeals Board's long recommendation gives detailed reasons, and there is no evidence to support the complainant's allegations that the adversarial procedure was not fully complied with in the course of the hearing of 10 November 2004, at which many witnesses were heard. The fact that the Board ruled out some of the questions the complainant wished to put to Ms M. does not imply in this case that the procedure was flawed.

6. On the merits the complainant reiterates the arguments he submitted to the Joint Appeals Board, objecting on the one hand to Ms M.'s appointment to the disputed post and on the other to the refusal to renew his contract.

7. On the first point, the complainant denies that Ms M. had the necessary qualifications for the post, especially in terms of language skills, while he considers that the interview board and the Appointment and Promotion Board misjudged his own merits, in particular by basing their opinion on incomplete and unfair assessments made by his supervisor, who played an inappropriate role in the selection process. The Tribunal does not overlook the fact that the relations between the complainant and his supervisor were strained and that the working conditions of the complainant, whose time was divided between the reception and storage of publications in a dilapidated basement and replacement work in the bookshop, were far from satisfactory. But those considerations are unrelated to the reasons why Ms M.'s candidacy was preferred to that of the complainant. While the assessments made of the complainant by his supervisor, mentioning the need for improvement, may have been taken into account, it was chiefly in the light of the replies given by the four candidates to the questions they were asked by the interview board that the competent authorities ultimately made their choice of candidate. There is no evidence to support the complainant's allegations of prejudice against him. As for the assessments made of the candidates' qualities, these may not be rejected by the Tribunal in the absence of any error of law or of fact or abuse of authority. It is to be noted in this regard that none of the submissions entered in the course of the proceedings before the Tribunal either was or should have been removed from the file.

8. With regard to the non-renewal of the contract of the complainant, whose last appointment, for a duration of one month, ended on 30 January 2004, the Tribunal is bound to observe that the conversion of the complainant's job as a clerk into a permanent post open to competition did not entitle him to remain in the job once he had failed to be selected for the permanent post. That did not of course prevent the Organization from offering him another post, but it was not obliged to do so given that his short-term contract had expired. As stated in Rule ST04.2 of the short-term Staff Rules, "[c]ontracts under these rules carry no expectation of renewal or of conversion to any other type of contract". The submissions do not lead to the conclusion that the decision not to renew the complainant's contract and not to assign him to another post showed any mistake of law or of fact.

9. A question remains as to whether the complainant was given sufficient notice of the Organization's intention not to renew his contract. Precedent has it that staff on short-term contracts are entitled, before any decision is taken not to extend or renew their appointment, to "reasonable notice", particularly so that they may exercise their right to appeal and take whatever action may be necessary. It is true that in this case the short-term Staff Rules do not require any notice, except in the event of termination (when notice is limited to seven days), which does not apply in this case. Account should be taken, however, of the fact that the complainant was employed uninterruptedly by the Organization for more than three years. He was officially notified of the non-renewal of his contract – which until then had been regularly renewed – only by a letter he received on 28 January 2004, that is three days prior to the expiry of his last appointment. The defendant Organization suggests that he was well aware that his contract would not be renewed since he had been informed of that fact first unofficially and then officially on 16 January 2004. It even goes so far as to argue that the announcement of the competition for the complainant's post in the vacancy notice of 27 October 2003 constituted the "reasonable notice" required by the case law and that, from that date onwards, the complainant knew full well that if he was not selected he would not continue working for the WTO.

10. The Tribunal considers that it was only through the non-renewal decision received on 28 January 2004 that the complainant was able to know for certain that he would be leaving the Organization and that he would not be offered any other employment, despite the fact that prior to being assigned to the Editorial and Publications Unit he had performed many duties, starting in 1998. Thus the situation is not very different from that dealt with by the Tribunal in its Judgment 2104, which is in fact referred to by the defendant, and it is worth noting that, in its attempt to reach a settlement, the Organization had offered to pay the complainant the equivalent of three months' salary, consisting of two months in lieu of reasonable notice and one month for moral injury. That proposal was reasonable and, in view of the long working relationship between the WTO and the complainant and the very brief time that elapsed between the notification of the non-renewal of the contract and the end of the complainant's appointment, the Tribunal will echo that proposal by ruling that the complainant shall be paid a sum equal to three

months’ salary and allowances. In view of the circumstances of this case, however, it will dismiss his other claims.

11. Since he partially succeeds, the complainant is entitled to costs, which the Tribunal sets at 2,000 Swiss francs.

DECISION

For the above reasons,

1. The WTO shall pay the complainant a sum equal to three months’ salary and allowances.

2. It shall also pay him 2,000 Swiss francs in costs.

3. All other claims are dismissed.

In witness of this judgment, adopted on 17 May 2006, Mr Michel Gentot, President of the Tribunal, Mr Seydou Ba, Judge, and Mr Claude Rouiller, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 12 July 2006.

Michel Gentot

Seydou Ba

Claude Rouiller

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 21 July 2006.