Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

112th Session **Judgment No. 3072**

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Ms E.A. M.-P. against the International Labour Organization (ILO) on 9 February 2010 and corrected on 18 March, the Organization's reply of 20 May, the complainant's rejoinder of 20 July and the ILO's surrejoinder of 24 September 2010;

Considering Article II, paragraph 1, 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, a French national born in 1954, joined the International Labour Office, the Organization's secretariat, in 1981. She has an appointment without limit of time and holds a grade G.5 post. On 16 October 2008 a vacancy notice for a grade G.6 post in the Human Resources Development Department (HRD) was published on the ILO intranet site. It specified that the proposed appointment was for 12 months, with the possibility of an extension until the end of 2009 and that the application deadline was 24 October 2008. The complainant did not apply. However, on 28 January 2009 she submitted a grievance to the Director of HRD seeking the cancellation of the competition procedure.

Having received no answer, on 26 May she filed a grievance with the Joint Advisory Appeals Board, in which she alleged that the competition in question had lacked transparency and objectivity owing to various procedural flaws. In particular, she stated that the deadline for submitting applications had been too short. In its report of 7 September, the Board noted that, in the Organization's opinion, the post in question had to be filled in accordance with the provisions applying to technical cooperation programmes, but the Board considered that the Organization had not abided by the rules laid down in Annex I to the Staff Regulations, more specifically those stipulating a minimum deadline of one month for the submission of applications and making provision for consultation of Staff Union representatives. It inferred from this that the competition was tainted with procedural flaws. However, since it noted that the length of the appointment was 12 months with a possible extension until the end of 2009 and that the Office had followed established practice in good faith, it did not recommend that the Director-General should cancel the competition and the appointment of the successful candidate, but that, in recognition of the fact that the complainant had been denied the opportunity to participate in the competition, he should award her compensation in the amount of 2,000 Swiss francs for the injury suffered. It also recommended that, if the post were maintained after 2009, a new competition should be held in compliance with the provisions of Annex I to the Staff Regulations.

By a letter of 9 November 2009 the Executive Director of the Management and Administration Sector informed the complainant that the Director-General "d[id] not see what injury [she] c[ould] have suffered which m[ight] justify payment of compensation", particularly since the post in question had been created for a very limited period and she had not shown any interest in it within the application deadline. That is the impugned decision.

B. The complainant submits that the competition procedure was neither objective nor transparent. Firstly, she contends that the

eight-day deadline for submitting applications which was indicated in the vacancy notice is contrary to paragraph 9 of Annex I to the Staff Regulations, which states that at least one calendar month will be allowed for applications. She also argues that the Office "deliberately shortened" this deadline in order to favour the successful candidate, who already held the post. Secondly, she asserts that, in breach of paragraph 12 of Annex I, Staff Union representatives were not given an opportunity to comment on the recommendation of the Selection Board to appoint the successful candidate.

She asks the Tribunal to quash the impugned decision, the competition procedure and the ensuing appointment, to order the opening of a new competition and to award her compensation for the injury suffered. She also claims costs in the amount of 5,000 Swiss francs.

C. In its reply the Organization requests the joinder of the instant case with the third complaint which the complainant filed on 4 March 2010 (see Judgment 3073, also delivered this day), on the grounds that the impugned decisions are liable to influence her career in a very similar manner because, in each case, the complainant's appointment would have resulted in her promotion to grade G.6. Moreover, it points out that the disputed post has not existed since 31 December 2009 and that the requests for the cancellation of the competition procedure and subsequent appointment have therefore become moot. In addition, the candidate appointed at the end of the competition separated from service when the post ceased to exist and it has not therefore been possible to invite her to express an opinion on the complaint, as the Tribunal requested.

On the merits, the Organization explains that the purpose of the competition in question was to fill a post financed from the ILO's Regular Budget Supplementary Account (RBSA). According to an Office Procedure of 23 April 2008, any new staff positions under the RBSA are treated "as technical cooperation positions". Since the latter are filled by direct selection by the Director-General, the

provisions of Annex I to the Staff Regulations do not apply. The Organization nevertheless draws attention to the fact that, for several years, calls for candidatures have been issued for these posts and that the selection procedure follows "some of the stages laid down" in the annex. The Organization holds that, since it is not disputed that the eight-day deadline for submitting applications was clearly indicated in the vacancy notice, the principle of equal opportunities has been respected. It adds that the argument that a very short deadline was set in order to favour the successful candidate is disproved by the fact that 95 people applied.

Lastly, the Organization states that the complainant may not rely on paragraph 12 of Annex I to the Staff Regulations since, in its view, it protects only the interests of officials who have taken part in a competition, and the practice of the Office is to fill posts financed by technical cooperation funds without consulting Staff Union representatives as to the recommendation of the Selection Board.

D. In her rejoinder the complainant objects to the joinder of her second and third complaints, since they do not have the same purpose.

She contends that appointment by direct selection to a post financed by the RBSA is unlawful, because the Staff Regulations make provision for this possibility only in respect of posts in technical cooperation projects. She submits that, since the post advertised was a "position contributing fully to the Organization's regular functions", the procedure set forth in Annex I to the Staff Regulations ought to have been followed.

E. In its surrejoinder the Organization maintains its position. It draws attention to the fact that new staff positions under the RBSA and those in technical cooperation projects are financed from voluntary contributions. These jobs do not hold out any career prospects because of the uncertainty as to the lasting nature of their funding. It considers that this similarity justifies the fact that they are filled by direct selection by the Director-General.

CONSIDERATIONS

1. In October 2008 the ILO published on its intranet site a vacancy notice for a grade G.6 post of assistant in HRD. The duration of the appointment was 12 months, with a possible extension until the end of 2009. Applications had to be submitted within eight days. Of the 95 people who applied, four were shortlisted. The successful candidate was appointed for 12 months as from 1 December 2008.

2. On 28 January 2009 the complainant submitted a grievance to HRD in order to request the cancellation of the competition in question, in which she had not participated.

Having received no answer within the three-month period laid down in the Staff Regulations, she filed a grievance with the Joint Advisory Appeals Board. She submitted that the competition was tainted with procedural flaws, particularly because paragraph 9 of Annex I to the Staff Regulations stipulated that at least one calendar month must be allowed for the submission of applications. The Board issued its report on 7 September. While it recognised that the procedure which had been followed reflected well-established practice, it recommended that the Director-General should find that, owing to the shortness of the above-mentioned deadline, the complainant had been denied the opportunity to participate in the competition and that he should award her compensation for the injury suffered.

By a letter of 9 November 2009 the complainant was informed that the Director-General had refused to follow that recommendation and had dismissed her grievance. The Director-General took the view that, since "the post in question [wa]s not a career post" and had been created for a very short time, and since the complainant had done "nothing to signal [her] interest in the post" within the period of time set for the submission of applications, she had not suffered any injury justifying the payment of compensation. That is the decision impugned before the Tribunal.

3. The Organization asks the Tribunal to join the instant complaint with that which the complainant filed on 4 March 2010,

which also challenges an appointment made after a competition. This joinder is not warranted, because the two complaints do not relate to the same facts and do not raise the same issues of law.

4. The complainant mainly echoes the arguments accepted by the Board. She therefore submits that the competition was tainted with procedural flaws because the provisions of Annex I to the Staff Regulations were not applied. She adds that, as the post was not one which could be filled by the Director-General by direct selection, it ought to have been filled by competition. She submits that even if a competition had been optional, once the Organization had decided to open a competition, the procedure laid down in Annex I ought to have been followed.

These issues need not be settled.

5. The complainant does not deny that she saw the vacancy notice when it was published and that she realised that the deadline for submitting applications was only eight days instead of the normal period of at least one calendar month. In these circumstances, she has not shown that it was physically impossible for her to submit an application within the specified deadline, like the 95 candidates in this competition. As she was not a candidate in the competition, although there was nothing to prevent her from being one, the complainant has no cause of action to challenge the procedure and its outcome. The complaint must therefore be dismissed as irreceivable.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 18 November 2011, Mr Seydou Ba, President of the Tribunal, Mr Claude Rouiller, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 8 February 2012.

Seydou Ba
Claude Rouiller
Patrick Frydman
Catherine Comtet