

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**C.**  
**v.**  
**CERN**

**122nd Session**

**Judgment No. 3678**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr M. C. against the European Organization for Nuclear Research (CERN) on 24 February 2014, CERN's reply of 19 June, the complainant's rejoinder of 3 September, CERN's surrejoinder of 5 December 2014, the complainant's further submissions of 25 March 2015 and CERN's final comments thereon of 21 April 2015;

Considering Article II, paragraph 5, 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 decision to dismiss him at the end of his probation period.

The complainant joined CERN in January 2013 as an electrical engineer in the Engineering Department on the basis of a five-year limited-duration contract. His appointment was subject to a 12-month probation period.

On 28 January 2013 the complainant had an induction interview with his supervisor, in the course of which he was given seven objectives to achieve during his probation period.

On 26 April the complainant met with his supervisor to review his performance since he had taken up his duties. In an e-mail of 8 May summarising the discussions at that meeting, the supervisor concluded that the complainant still had much to do in order to achieve his objectives.

In the mid-probation period report, drawn up after two meetings on 17 and 28 June, the complainant's supervisor reiterated that, although the complainant had made progress since 26 April, much remained to be done to achieve his objectives. He offered the complainant his support and said that he expected him "drastically" to improve his actions in order to reach the objectives which he had been set by the end of the year. A representative of the Human Resources Department added in the report that, during her meeting with the complainant on 5 July, she had focused on the need for sustained effort on his part in order to achieve his objectives.

On 25 September the complainant again met with his supervisor and the representative of the Human Resources Department. In an e-mail of 1 October summarising the content of that meeting, the supervisor informed the complainant that he was concerned about his lack of progress and encouraged him to seek his help, which he had rarely done in the past.

In the end-probation period report drawn up in November the complainant's supervisor, noting that he had partially achieved four objectives and failed to meet the three others, concluded that his performance had not been at the expected level and that no improvement could reasonably be expected before the end of the year. On 22 November the complainant provided his comments on this report, endeavouring to show that he had fully achieved his objectives. On 27 November the Director-General, acting in accordance with a proposal of the Head of the Engineering Department, informed the complainant that he had decided to dismiss him and that his contract would therefore be terminated on 31 December 2013. That is the impugned decision.

On 9 December 2013 the complainant asked the Director-General to extend his probation period under Staff Regulation R II.1.18. On 16 December the Director-General replied that, under Staff Rule S VI 1.07(a), no internal appeal could be lodged against a dismissal

decision notified during the probation period and that any appeal against such a decision should be referred directly to the Tribunal.

The complainant asks the Tribunal to set aside the decision of 27 November 2013 and to order CERN to redress the material and moral injury which he allegedly suffered. He also requests an award of costs. Lastly, he asks the Tribunal to “give [him] the opportunity to prove by all legal means the facts alleged” in his complaint.

CERN submits that the complaint should be dismissed as devoid of merit.

### CONSIDERATIONS

1. The complainant challenges the Director-General’s decision of 27 November 2013 to dismiss him at the end of his probation period.

Before considering the complainant’s pleas, it should be recalled that, according to the Tribunal’s case law, an organisation owes it to its employees, especially probationers, to guide them in the performance of their duties and to warn them in specific terms if they are not giving satisfaction and are at risk of being dismissed. A staff member whose service is not considered satisfactory is entitled to be informed in a timely manner as to the unsatisfactory aspects of her or his service so that steps can be taken to remedy the situation. Moreover, she or he is entitled to have objectives set in advance so that she or he will know the yardstick by which future performance will be assessed (see Judgment 3128, under 5, and the case law cited therein). These are fundamental aspects of the duty of an international organisation to act in good faith towards its staff members and to respect their dignity (see Judgment 2529, under 15).

2. The complainant submits that he was not informed “that his probation period could have a negative outcome and that his employment contract would therefore be terminated”.

The Tribunal observes that CERN drew the complainant’s attention to his unsatisfactory performance on several occasions and clearly asked him to take steps to achieve the objectives he had been set. For

example, on 8 May 2013, the complainant's supervisor, noting that he was experiencing difficulty, warned him that he would have to make a sustained effort to achieve these objectives. In the mid-probation period report, the same supervisor repeated his warning and said that he expected the complainant to improve "drastically". Lastly, in the e-mail of 1 October 2013 he deplored the complainant's lack of progress and observed that he had not yet quite understood all the responsibilities attached to his post.

It is true that there is no evidence in the file to show that the Organization formally notified the complainant during his probation period that there was an objective risk that his appointment would not be confirmed at the end of that period. However, it is clear from the end-probation period report of November 2013, which was forwarded to him and on which he in fact commented, that his supervisor considered that his performance fell short of the expected level. In addition and as stated above, the complainant was informed on several occasions during his probation period that he was not achieving the objectives which had been set for him in his induction interview. In these circumstances, the complainant must have been aware that he ran a serious risk of not having his appointment confirmed at the end of his probation period.

3. The complainant submits that his supervisor did not provide him with the instructions and guidance which he could legitimately have expected to receive in order to enable him to attain his objectives. It is, however, clear from the evidence in the file that in the mid-probation period report and again in the aforementioned e-mail of 1 October 2013 the complainant's supervisor had encouraged him to ask for his help. This argument must therefore be rejected.

4. The complainant questions the objectivity of the appraisal contained in his end-probation period report. In his opinion, this appraisal involves an "abuse of discretionary power".

The complainant thus disputes the assessment of his performance during his probation period which led to his dismissal. It is firmly established in the case law that the Tribunal has only a limited power

of review over such a decision. Thus, the decision will be set aside if it was taken in breach of a rule of form or of procedure, if it rests on a mistake of fact or of law, or if there has been abuse of authority, *inter alia* (see, for example, Judgments 987, under 2, 1817, under 5, or 2715, under 5). But as far as the assessment of the merits of an official is concerned, the Tribunal will not substitute its own opinion for that of the executive head of the organisation or interfere with it unless it finds that that that person has drawn clearly wrong conclusions from the evidence.

Having examined the report in question, the Tribunal considers that it does not show that the complainant's performance appraisal was tainted by an obvious error of judgement.

5. In addition, contrary to the complainant's submissions, there is no evidence in the file that CERN ignored his comments on his end-probation period report. Indeed, it was only after considering this report and the complainant's comments on it that the Head of the Engineering Department, acting in accordance with paragraph 39 of Administrative Circular No. 2 (Rev. 5), entitled "Recruitment, appointment and possible developments regarding the contractual position of staff members", proposed that the complainant's appointment should not be confirmed.

6. The complainant contends that CERN tried to "get rid of him" after realising that his services were not "necessary". The Tribunal points out that misuse of authority may not be presumed and the burden of proof is on the party that pleads it (see Judgment 2116, under 4). In the instant case, there is nothing in the file to corroborate the complainant's allegations.

7. Similarly, the complainant's statement that "the root of his problems" lay in the treatment amounting to mobbing that he received from his supervisor is not borne out by the evidence in the file.

8. There are no grounds for allowing the complainant's claim that he should be allowed "to prove by all legal means" the facts he alleges, since it is incumbent upon him to submit to the Tribunal in

the course of the proceedings any evidence he considers to be material in support of his case (see Judgment 1248, under 7).

9. It follows from the foregoing that the complaint must be dismissed.

#### DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 6 May 2016, Mr Claude Rouiller, President of the Tribunal, Mr Patrick Frydman, Judge, and Ms Fatoumata Diakité, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 6 July 2016.

*(Signed)*

CLAUDE ROUILLER      PATRICK FRYDMAN      FATOUMATA DIAKITÉ

DRAŽEN PETROVIĆ