Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

G.

v.

CTA

128th Session **Judgment No. 4141**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr S. G. against the Technical Centre for Agricultural and Rural Cooperation (CTA) on 13 August 2018 and corrected on 17 September, the CTA's reply of 10 October, the complainant's rejoinder of 19 November and the CTA's surrejoinder of 18 December 2018;

Considering the letter of 23 March 2018 whereby the Chairman of the Executive Board of the CTA informed the Director-General of the International Labour Office (ILO) that, following the revision of the CTA Staff Regulations on that date, the Centre had withdrawn recognition of the Tribunal's jurisdiction with immediate effect, and the decision of 30 October 2018 whereby the Governing Body of the ILO confirmed the withdrawal by the CTA of its submission to the Tribunal's jurisdiction "from the date of the [said] decision, except as it regards the complaint [of the complainant]";

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 decision of the CTA to reject his proposal to negotiate an agreed termination of his employment contract.

The complainant was recruited by the CTA on 3 August 2009 as an expert, on an indefinite contract. In his 2016 appraisal, which was finalized on 7 July 2017, his supervisor gave him the overall rating "Below expectations". By a letter of 13 July, the Acting Head of the Corporate Services Department reproached the complainant for "acting [...] towards his supervisor in a manner clearly inconsistent with the conduct expected of a CTA official" in May and in July and advised him that any recurrence could lead to a written warning. Since the complainant was on sick leave until 2 August, he submitted his comments on 3 August. In "the interest of restoring calm", he then apologized to his supervisor and said that he hoped that relations both with his supervisor and with the Acting Head of the Corporate Services Department would improve and that it would be possible to resume "work together on a healthier and more amenable basis". On 15 September, the CTA's medical adviser sent the organization a letter in which he indicated that since his return to work, the complainant was complaining of "unrealistic objectives to meet" and "stress at work" and that his health appeared to be deteriorating. A remedial action plan to reduce the complainant's workload and modify his objectives for 2017 was implemented from 2 October 2017.

On 14 February 2018, the complainant received the draft appraisal report for 2017, which again contained the overall rating "Below expectations". On 19 February 2018, his attending physician wrote to the Director of the CTA. Stating that his patient's symptoms were the result of harassment at the workplace and that his health was deteriorating, he called "urgently" for his working conditions, in particular the hierarchical supervision to which he was subject, to be "modified". The attending physician placed him on sick leave.

On the basis of facts going back to 2013 to support his claim that he had been subjected to harassment intended to push him to resign, the complainant proposed to the Director on 7 March 2018 that an agreed termination of his employment contract combined with the payment of various indemnities be negotiated. On 14 May, faced with what he considered to be an implicit decision to refuse his proposal, he lodged an internal complaint. In a letter of the same date, the Director,

endeavouring to demonstrate that the complainant had not been subjected to any harassment, turned down the request of 7 March. The complainant was informed by a letter of 12 July 2018 that his internal complaint had been rejected on the grounds that, according to the Director, an agreed termination, combined with the payment of significant indemnities, did not constitute an appropriate solution in his case and that, in order to challenge this decision, he "should request a conciliation procedure" in accordance with Article 67 of the Staff Regulations of the CTA. This is the impugned decision.

The complainant filed a complaint with the Tribunal on 13 August 2018. He asks the Tribunal to set aside the impugned decision, "note the termination of the employment contract between the parties" and order the CTA to pay him, with interest, compensation for harassment and for the moral, professional and material injury that he has suffered, as well as costs.

The CTA submits, principally, that the Tribunal is not competent to hear the complaint, given that it withdrew its recognition of the Tribunal's jurisdiction on 23 March 2018. Subsidiarily, it submits that the complaint is irreceivable because the complainant has not exhausted the internal means of redress.

CONSIDERATIONS

1. The complainant impugns the decision of 12 July 2018 whereby the Director of the CTA dismissed his internal complaint, lodged on 14 May 2018, against the decision to refuse to grant him an agreed termination of his employment contract and award him various sums in compensation for alleged misconduct committed by the CTA against him.

2. The CTA, which withdrew its recognition of the Tribunal's jurisdiction by a decision of its Executive Board of 23 March 2018 that was notified to the Director-General of the ILO by a letter of the same date, submits that the Tribunal is therefore not competent to rule on the present complaint. According to the CTA, which had at the same time provided that disputes between itself and its staff members should be

resolved by a new tribunal established at the CTA, its withdrawal from the Tribunal's jurisdiction had taken immediate effect and therefore precluded the Tribunal from considering the aforementioned complaint, registered on 13 August 2018, since it was filed subsequent to the withdrawal.

3. However, as under Article II, paragraph 5, of the Statute of the Tribunal the recognition by an international organization of the jurisdiction of the Tribunal is subject to the approval of the Governing Body of the ILO, the principle that similar acts require similar procedures would require the withdrawal of recognition of jurisdiction also to be subject, before taking effect, to a discussion by the same body. As the Tribunal has previously found, it can only be bound, when an organization decides to withdraw from its jurisdiction, when it has been notified of the ILO Governing Body's deliberations taking note of such a decision (see Judgment 1043, consideration 3).

4. In the present case, it was only on 30 October 2018 that the ILO Governing Body considered the withdrawal by the CTA of its recognition of the Tribunal's jurisdiction. In the decision that it adopted on that date, the ILO Governing Body, having "[taken] note of the intention" of the CTA to withdraw recognition "confirmed that the CTA [would] no longer be subject to the competence of the Tribunal with effect from the date of this decision except as regards the complaint currently pending before the Tribunal". Since it was registered before 30 October 2018, the present complaint – which is the complaint specifically referred to in this decision – does therefore fall within the jurisdiction of the Tribunal, as the ILO Governing Body specifically indicated in its decision.

5. The challenge to the Tribunal's jurisdiction presented by the defendant must, therefore, be rejected.

6. The CTA also argues that the complaint is not receivable because it does not satisfy the requirement of Article VII, paragraph 1, of the Statute of the Tribunal, which provides that a complaint shall not be receivable unless the person concerned has exhausted the internal means of redress open to the organization's staff members.

7. Articles 66 and 67 of the Staff Regulations of the CTA, relating to internal means of redress, provide for two successive procedures prior to filing a complaint with the Tribunal. Under Article 66(2), staff members who intend to challenge a decision adversely affecting them must first submit to the Director of the CTA, within two months, a complaint, which is defined as "a written document requesting that an amicable solution be found to the dispute in question". In the event that the complaint is dismissed, Article 67 provides that a conciliation procedure may be initiated in accordance with the provisions of Annex IV to the Staff Regulations. Pursuant to Article 4 of this Annex, the staff member must then send to the Executive Board a request for the appointment of a conciliator, who must propose the terms of a "just and objective settlement of the dispute".

8. Article 67(3) explicitly states that the exhaustion of internal means of redress means that "the competent authority has previously had a complaint submitted to it pursuant to Article 66(2)", that "the complaint has been rejected" and that "conciliation has failed or the dispute has not been resolved within four months after the date of the conciliator's appointment". Plainly, all of these conditions must be met. As the Tribunal has already found in previous cases involving the CTA, it follows from the provisions in question, read together, that a complainant may file a complaint with the Tribunal only if he has previously lodged an internal complaint and followed the conciliation procedure provided for under those provisions (see Judgments 3067, consideration 5, 3068, consideration 5, and 3135, considerations 11 and 12).

9. In the present case it is uncontested that while he did lodge on 14 May 2018 an internal complaint against the CTA Director's decision not to grant him his initial request, the complainant did not, before filing his complaint with the Tribunal, comply with the obligation to follow through to its end the conciliation procedure that he should have initiated after his internal complaint was rejected by the decision of 12 July 2018.

10. Seeking to convince the Tribunal that his complaint is nevertheless receivable, the complainant maintains that the conciliation procedure is not a mandatory internal means of redress. To support his position, he relies on paragraph 1 of the aforementioned Article 4 of Annex IV to the Staff Regulations, which provides that: "At any time before an application to the [...] Tribunal [...], a person with the right to request such a settlement may request the settlement of the dispute by conciliation in accordance with these rules." The complainant maintains that the use, in this paragraph, of the word "may" means that the procedure is optional and that while – as he recognizes – Article 67 of the Staff Regulations states, to the contrary, that the procedure is mandatory, the resultant ambiguity should, in the light of the *contra proferentem* rule usually applied by the Tribunal in such cases, lead to the provisions in question being interpreted in favour of staff interests rather than those of the organization.

11. However, the Tribunal does not accept this plea. While the provisions of Article 4(1) of Annex IV may be clumsily drafted, they can be understood to mean simply that a staff member has the right to avail herself or himself of the conciliation procedure if she or he intends to challenge a decision to dismiss her or his complaint and must have followed this procedure before filing a complaint with the Tribunal. Furthermore, other provisions contained in Annex IV, such as those under Article 4(11) and (12) relating to filing a complaint with the Tribunal in the event of the failure of the conciliation proceedings or if the dispute has not been resolved within four months, confirm clearly that this procedure is designed as a prerequisite for the filing of a complaint with the Tribunal. Moreover, the provisions contained in the said Annex, to which Article 67 of the Staff Regulations refers solely for the purpose of defining the modalities of the conciliation procedure provided for in that article, cannot, by definition, call into question the mandatory nature conferred upon this procedure by that article itself. In these circumstances, it cannot be considered that the provisions in question discern any real ambiguity; moreover, the Tribunal notes that its Judgments 3067, 3068 and 3135 were adopted on the basis of a version of Annex IV which, with regard to the point under discussion here, was

drafted in similar language to the current version and which did not prevent the Tribunal from determining, as stated above, that the conciliation procedure was mandatory.

12. In his rejoinder, the complainant further contends, with a view to convincing the Tribunal to find his complaint receivable, that the new administrative tribunal established at the CTA would not, for various reasons, provide the required guarantees of independence and impartiality. However, not only is the Tribunal, which is not competent to comment on the qualities and merits of another international tribunal, evidently not able to give credit to such criticisms, but the pleas invoked would not in any case be of such a nature as to allow it to dispense with the aforementioned statutory provisions which prescribe recourse to the conciliation procedure before filing a complainant with the Tribunal. It should further be noted that this plea wrongly disregards the very purpose of this procedure, which is to enable the complainant to resolve the dispute with the CTA by an agreement. Lastly, the fact, also pointed out by the complainant, that the CTA's new administrative tribunal was not established at the time the present complaint was filed has no bearing on its receivability.

13. In light of the above considerations and contrary to the complainant's view, the decision of 12 July 2018 is not a final decision within the meaning of Article VII, paragraph 1, of the Statute of the Tribunal. The complaint being irreceivable for failure to exhaust the internal means of redress available to staff members of the CTA, it must, for this reason, be dismissed in its entirety.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 6 May 2019, Mr Giuseppe Barbagallo, President of the Tribunal, Mr Patrick Frydman, Vice-President, and Mr Yves Kreins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 3 July 2019.

(Signed)

GIUSEPPE BARBAGALLO PATRICK FRYDMAN YVES KREINS

DRAŽEN PETROVIĆ