

**P. (No. 2)**

*v.*

**OPCW**

**128th Session**

**Judgment No. 4165**

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Ms I. R. P. against the Organisation for the Prohibition of Chemical Weapons (OPCW) on 14 November 2017, the OPCW's reply of 8 March 2018, the complainant's rejoinder of 25 May and the OPCW's surrejoinder of 20 August 2018;

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 not to pay her certain entitlements upon separation from service.

The complainant joined the OPCW in October 2012 under a temporary assistance contract for the period 1 October 2012 to 29 September 2013. Her letter of appointment specified that she had no entitlement to special leave, special post allowance, education grant, dependency allowance, termination indemnities or repatriation grant. The letter also provided that her authorised travel expenses on initial appointment and separation would be paid and that she would be entitled to the cost of removal of her personal effects and household goods up to a maximum determined weight. On 27 September 2013

she signed another temporary assistance contract for the period 1 October 2013 to 1 February 2014, which was extended until 30 June 2014. The letter of appointment included the same provision as the earlier one concerning the exclusion of some entitlements. The complainant was then granted a special services agreement for the period 1 July to 30 September 2014 and, with effect from 1 October 2014, she was granted a fixed-term contract. She resigned with effect from 25 January 2015.

On 3 February 2015 she wrote to the Human Resources Branch requesting, on the basis of either her temporary assistance contracts or her fixed-term contract, the payment of the repatriation grant, a lump sum in lieu of the travel allowance, the payment of the removal and non-removal allowance and the assignment grant. On 24 February she was informed that her request was denied. On 22 April she submitted a request for review of that decision, which was in turn rejected on 21 May. The Director-General considered that her claim for the repatriation grant should be rejected as her temporary assistance contracts expressly excluded such entitlement. The Director-General also noted that her temporary assistance contracts excluded any entitlement to a full or partial removal allowance; the contracts provided that she was only entitled to the shipment of her personal effects and household goods up to a certain weight. Since she was not employed on 30 September 2013, there was no legal basis for considering her two successive temporary assistance contracts as being equivalent to a fixed-term contract, or as constituting continuous service; hence she was not eligible for entitlements provided for in the rules but excluded in her temporary assistance contracts. The Director-General added that since she was not eligible for the removal allowance, she was not entitled to request a non-removal allowance or a lump-sum payment. He also rejected the claim for a lump-sum payment in lieu of the travel allowance on the ground that she had not claimed it within the prescribed time limit with respect to the period when she was employed under temporary assistance contracts. Regarding the claims made on the basis of her fixed-term contract, he held that she was not entitled to travel expenses or to removal expenses as she had resigned before completing one year of service. Nor was she entitled to an assignment grant or lump-sum

payment as she was residing in the Netherlands when she signed her contract.

On 22 June 2015 the complainant lodged an appeal with the Appeals Council against the decision of 21 May 2015. In its report of 18 July 2017 the Appeals Council recommended that the appeal be dismissed on the grounds that applicable rules were respected and that the decision of 24 February 2015 was made to best represent the facts.

By a letter of 16 August 2017, which is the impugned decision, the complainant was informed that the Director-General had decided to reject her appeal. A copy of the decision of 21 May 2015 outlining in detail the reasons behind the Director-General's decision was attached.

The complainant asks the Tribunal to set aside the impugned decision, and to award her material damages based on the entitlements that she would have received had her "contract" been defined as a fixed-term contract. She also seeks an award of moral damages for undue delay, costs, interest on all amounts awarded by the Tribunal, and such other relief the Tribunal may deem just, fair and appropriate.

The OPCW asks the Tribunal to dismiss the complaint as time-barred, or as devoid of merit.

## CONSIDERATIONS

1. The complainant joined the OPCW under a temporary assistance contract for the period from 1 October 2012 to 29 September 2013. Her letter of appointment, dated 26 September 2012, which she signed on arrival on 2 October 2012, stated that the contract was in accordance with the terms and conditions specified therein; subject to the provisions of the Staff Regulations and Rules and Administrative Directives issued thereunder, and to any changes that may be made to them from time to time. The "Special Conditions" in the letter stated the following, among other things, in paragraph 3:

"[...]

- e) This contract does not include any entitlement to special leave, special post allowance, education grant, dependency allowance, termination indemnities or repatriation grant. [...]

- f) As an internationally recruited staff member with a temporary assistance contract, your authorised travel expenses on initial appointment and separation from service shall be paid.
  - g) Internationally recruited staff members on temporary assistance contracts of six months or more shall be entitled to the cost of removal of personal effects and household goods up to a maximum weight of 100 kilograms by surface.
- [...]
- i) This contract shall expire on the expiration date indicated in paragraph 2 and it does not carry any expectancy of extension or conversion.”

2. On 27 September 2013 the complainant signed another letter of appointment, dated 25 September 2013. She was thereunder appointed under a temporary assistance contract from 1 October 2013 to 1 February 2014. The letter of appointment contained the same “Special Conditions” as the letter of appointment of 26 September 2012. That appointment was extended until 30 June 2014 by a letter of 30 January 2014. It stated that the extension was “in accordance with the terms and conditions specified in the letter of appointment of 25 September 2013 [...]”. With effect from 1 October 2014, the complainant was appointed on a fixed-term contract but she resigned with effect from 25 January 2015. The OPCW rejected her request of 3 February 2015 for the payment of a repatriation grant, a lump sum in lieu of the travel allowance, the removal and non-removal allowances, and the assignment grant that she requested either under the temporary assistance contracts or the fixed-term contract. Her internal appeal against this decision was dismissed. She was informed of this by letter dated 16 August 2017 issued by the Head of the Human Resources Branch on behalf of the Director-General. He stated that, “[f]or the reasons given by the Appeals Council, as well as for [...] all the other reasons set forth in the Director-General’s decision dated 21 May 2015 and the Organization’s Response and Surrejoinder [and that] the Director-General ha[d] decided to maintain his decision to reject [her] request for review. For [her] convenience, a copy of the Director-General’s decision dated 21 May 2015 outlining in detail the reasons behind the Director-General’s decision [was] attached to this letter.”

3. The complainant asks the Tribunal to set aside the impugned decision because the Director-General wrongly found that she was not entitled to the benefits which she requested. In her complaint brief she states that her claim for relief is made under her two temporary assistance contracts. It is apparent that she no longer pursues claims under her fixed-term contract. She further seeks material damages based on the entitlements that she would have received had her contracts been requalified as a fixed-term contract, moral damages for undue delay, costs, interest (at the rate of 5 per cent per annum) on all the amounts awarded by the Tribunal and such other relief the Tribunal may deem just, fair and appropriate.

4. The complainant notes that the OPCW challenged before the Appeals Council the receivability of her claims on the ground that they were time-barred. In her rejoinder to the Appeals Council she stated that the OPCW did not object to the competence of the Appeals Council to consider the appeal that raised issues of entitlements under the two temporary assistance contracts but challenged the receivability of the claims relating to them to the extent that she challenged the terms or the validity of those contracts. The Tribunal observes that it was on this basis that the OPCW had argued that the complainant's challenge was time-barred because she did not, in effect, contest validity within two months of signing the contracts. Staff Regulation 11.1 gives a staff member "the right of appeal against any administrative decision alleging non-observance of the terms of appointment, including relevant Staff Regulations and Rules, and against disciplinary action", while Staff Rule 11.2.03 requires a staff member to lodge the appeal within two months of the date of notification of the decision.

5. In her rejoinder to the Appeals Council, the complainant objected to OPCW's submission on receivability on the ground that the issue was not mentioned in the Director-General's decision which rejected her request for review. However, as, by the complainant's admission, the OPCW challenged the receivability of her appeal insofar as it aimed at contesting the validity of the terms of her two temporary assistance contracts, the Tribunal finds that any claims made in the

complaint concerning the validity of the temporary assistance contracts are irreceivable as they should have been raised in 2012 and 2013 respectively. Before the Tribunal the complainant presents no acceptable bases to derogate from the established principle that time limits are an objective matter of fact that must be complied with (see, for example, Judgments 2821, under 8, and 2181, under 7). She does not establish that her case falls under the exceptions foreseen by the case law (Judgment 2821, under 9).

6. The complainant submits that the OPCW's failure to requalify her temporary assistance contracts as a fixed-term contract of one year and nine months' duration and to pay her the resulting benefits involved errors of fact and law. She argues that there was an abusive use of temporary assistance contracts, which deprived her of some rights granted to holders of fixed-term contracts; that the break of service of one day (30 September 2013) between her two temporary assistance contracts was deliberate; that she worked half day on that day with the "knowledge, support and authorisation" of the OPCW and that the Director-General erred in finding differently and in deciding that there was a break of service. The Tribunal sees no evidence of such authorisation. The complainant insists that the OPCW should have requalified the contracts and asks that all benefits that she was denied as a result of the failure to do so should be assessed and awarded as if she held a fixed-term contract. She relies on Judgments 2838 and 3110.

7. The Tribunal observes that Judgments 2838 and 3110 were cases involving persons employed on a number of short-term contracts with breaks in service by another organisation that had specific rules governing the conditions of service of its short-term officials. It was on this basis that the Tribunal ordered that the short-term contracts be converted to fixed-term contracts. In the present case the complainant has not referred to any provision in the OPCW's regulatory regime that is similar to the rules in question in those Judgments. Moreover, unlike the circumstances in Judgment 3225, consideration 7, the Tribunal finds no basis, in the present case, on which to consider that the complainant's two temporary assistance contracts gave rise to a legal relationship

between her and the OPCW which was equivalent to that on which fixed-term staff members may rely. This plea is therefore unfounded.

8. The complainant submits that the impugned decision is vitiated by insufficiency of reasoning. She states that the Appeals Council's recommendation is a "bald statement", with no genuine examination of the substance of the appeal and the impugned decision merely endorsed its recommendation and referred to the reasons given in the decision of 21 May 2015. She insists that the endorsement by the Director-General of the Appeals Council's recommendation is manifestly insufficient to allow her to properly understand the decision. The Tribunal observes that the Appeals Council's report, which recommended that the complainant's internal appeal be dismissed as the applicable rules had been respected and that the decision of 24 February 2015 was made to best represent the facts, was succinct. However, the opinion of the Council and the impugned decision provided sufficient bases in themselves and by reference to other texts to enable the complainant to challenge the decision and the Tribunal to exercise its power of review (see Judgments 3184, under 10, and 3772, under 10 and 11). The plea is therefore unfounded.

9. The complainant's plea that there was inordinate delay in the internal appeal process is also unfounded. The operative word is "inordinate". She lodged her internal appeal on 22 June 2015. The Appeals Council issued its report to the Director-General on 18 July 2017 and the impugned decision was issued on 16 August 2017. This was not inordinate delay given the time that the pleading process took. The plea of inordinate delay is therefore unfounded.

#### DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 10 May 2019, Mr Giuseppe Barbagallo, President of the Tribunal, Ms Dolores M. Hansen, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 3 July 2019.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

HUGH A. RAWLINS

DRAŽEN PETROVIĆ