

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

C. d. L. (No. 3)

v.

OIE

129th Session

Judgment No. 4234

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Mr J.-P. M. C. d. L. against the International Office of Epizootics (OIE) – also known as the World Organisation for Animal Health – on 2 December 2015 and corrected on 29 December 2015, the Organisation's reply of 17 February 2016, the complainant's rejoinder of 13 April and the OIE's surrejoinder of 19 May 2016;

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 to dismiss him.

The complainant joined the OIE in 1994 under a fixed-term appointment. On 1 February 2006 he was appointed Head of the Human Resources and Budget Management Unit. In June 2010, following internal restructuring, the unit was split into two and he was placed in charge of the Human Resources Unit under the supervision of the new Deputy Director General, Ms E. On 16 January and 31 July 2014 he was given two warnings under Article 9.2 of the Staff Regulations of the OIE, relating to the repetition of numerous errors in his work, amongst other things. On 5 August, in response to the complainant's

observations regarding the disciplinary measures imposed on him, the Director General informed him that Ms E. and he planned to review the organisation of the human resources unit with a view to reducing his workload and enabling him to make fewer mistakes. On 15 September, in the wake of an audit ordered by the European Commission which had revealed blatant shortcomings on the complainant's part that were liable to damage the credibility of the OIE, the Director General sent him a call to order instructing him to rectify the situation without delay. The complainant submitted a report on the measures taken to Ms E. on 30 September.

On 17 October 2014 the complainant received an email from Ms E. concerning the recruitment of Mr d.S., who until then had been an OIE external consultant. The email contained the thread of exchanges between Mr d.S. and Ms E., in which there was a statement by Ms E. to the effect that she intended to have the complainant removed from his position as Head of the Human Resources Unit. The complainant had a discussion with the Director General on 21 October. The next day he submitted written allegations of moral harassment by Ms E. and asked the Director General to find a solution.

In November 2014, in the complainant's performance appraisal report for that year, Ms E. mentioned failings and a lack of organisation on his part which had led her to request the redefinition of his duties and responsibilities, and her loss of confidence in his capacity to discharge his responsibilities as the Head of the Human Resources Unit. In his observations dated 8 December 2014, the complainant denied the failings attributed to him but "in a spirit of appeasement"* stated that he did not object to the proposed redefinition.

On 6 January 2015 the complainant received an email from Ms E., who proposed to indicate, in her draft message introducing Mr d.S., that he would be responsible for "matters pertaining to human resources"* . On 13 January the Director General informed the complainant that a meeting would be organised with Ms E. with a view to updating his

* Registry's translation.

duties and responsibilities within the Organisation. Ultimately, however, the meeting did not take place.

On 19 January the complainant was placed on sick leave. Although it was initially expected that his absence would last a few days, it was extended several times. Mr d.S. was assigned to the complainant's post on a temporary basis from 28 January.

On 29 January, while he was still on sick leave, the complainant received an email from Ms E. asking him for the access codes for the electronic staff management files saved on his computer. As he did not reply, the Director-General sent him a letter on 3 February in which he repeated the request for the codes and informed him that if he failed to answer within three days, the IT department would be authorised to take any measures necessary to allow access to the said files. The complainant did not respond to that request. On 5 February he initiated criminal proceedings in the national courts alleging moral harassment by the Director General and Ms E.

On 1 July the complainant was advised of the decision taken by the Director General pursuant to Article 60.2(c) of the Staff Rules to stop paying his full salary from 19 July, the date on which he would have taken six months of sick leave, and not to grant him half pay after that date. By two letters dated 3 August, the complainant requested that the Director General award him 25,000 euros in compensation for the alleged moral harassment and reconsider the decision of 1 July. His requests were rejected on 7 September.

The same day, the Director-General sent the complainant a proposal for his dismissal under Article 9.2 of the Staff Regulations and Article 90.1 of the Staff Rules, referring to the numerous errors and oversights that the complainant was alleged to have committed in his work. That proposal, and the complainant's observations thereon, were submitted to the OIE Council, which met on 1 October and heard the parties. Following its meeting, the Council announced that the complainant was to be dismissed with immediate effect.

On 8 October the complainant requested that the decision of 1 October be reconsidered. By a letter of 22 October 2015, which constitutes the impugned decision, he was informed that his request had been denied.

The complainant requests the cancellation of the decisions of 1 and 22 October 2015, “the restoration [...] of his pay entitlements, including social security contributions and contributions to the OIE pension fund” from 19 July 2015 until the end of his fixed-term contract on 11 September 2016, compensation of 15,000 euros for the moral injury that was allegedly caused to him and the payment of the indemnity on termination provided for in Article 80.3 of the Staff Rules. Furthermore, he requests that these sums bear interest of 5 per cent for late payment, that compound interest be paid and, lastly, that the OIE be ordered to pay costs.

The OIE requests the Tribunal to dismiss the complaint in its entirety and to award costs against the complainant.

CONSIDERATIONS

1. By his third complaint, the complainant impugns the decision of 22 October 2015 which confirmed the OIE Council’s decision of 1 October ordering his dismissal with effect from the latter date.

2. The impugned decision dismissing the complainant was adopted after a period of tension between, on the one hand, the complainant, who was Head of the Human Resources Unit, and, on the other hand, the Director General and his Deputy. The performance appraisal for 2014 was unfavourable to the complainant and had given rise to an exchange of observations between 8 December 2014 and 13 January 2015 that reflected vastly divergent points of view. The complainant was placed on sick leave from 19 January 2015. On 29 January and 3 February 2015 he was asked to provide his access codes so that the personal files of OIE staff members could be managed. He did not respond to those requests, which, according to the OIE, warranted his dismissal eight months later. On 5 February he initiated

criminal proceedings in the national courts alleging moral harassment by the Director General and his Deputy. On 1 July the OIE decided to stop paying the complainant his full salary as from 19 July. On 3 August the complainant sent a request to the Director General for compensation of 25,000 euros for moral harassment. On 7 September the OIE notified him of its proposal for his dismissal. On 1 October 2015 the Council announced that he was to be dismissed with immediate effect.

3. In his first plea, the complainant argues that the OIE Council, which took the decision to dismiss him, did not comply with the necessary safeguards of impartiality, particularly since the Director General, who had proposed the disciplinary measure, and the OIE's counsel were present during the discussion and the decision to dismiss him could not be challenged in an "independent internal appeal".

The proposal to dismiss the complainant was drawn up by the Director General and was introduced by the OIE's counsel at the Council's meeting. It is not disputed that the Director General and his Deputy did not leave the meeting room after the complainant was heard. The OIE explains in this regard that although those two senior officials are not members of the Council, the applicable rules state that they have to attend its meetings in order, among other reasons, to provide secretarial support. According to the Organisation, they "facilitated" the rest of the meeting but did not participate in the actual deliberations. These explanations are confirmed by the minutes of the meeting of the Council on 1 October 2015, which the Tribunal has examined *in camera*.

However, the fact remains that, under a general rule of law which is not unique to the international civil service, a person called upon to take a decision affecting the rights or duties of other persons subject to her or his authority must withdraw in cases in which her or his impartiality may be open to question on reasonable grounds. The duty to act impartially is incumbent not only on the authority competent for issuing the final decision, but also on bodies responsible for making a recommendation to this authority (see Judgments 2667, consideration 5, and 3958, consideration 11).

The circumstance that the complainant had initiated criminal proceedings against the Director General was liable to cast doubt on the latter's impartiality, particularly because in this case the disciplinary action had been taken more than six months after the events and shortly after the submission of the request for compensation for harassment. The Tribunal observes in this respect that the proposal for a disciplinary measure was issued on the same day that the request for compensation for moral harassment was rejected. In these particular circumstances, the Director General ought to have entrusted the matter to the next most senior official whose impartiality could not be disputed (see Judgment 3958, consideration 13).

It follows that the plea is well founded.

4. In his second plea, the complainant alleges a violation of the double jeopardy principle in that the dismissal decision was based on conduct for which administrative decisions and two warnings had already been issued.

5. The dismissal to which the complainant was subject is the most severe disciplinary measure provided for in Article 9.2 of the OIE Staff Regulations.

In this case, it was motivated by errors and omissions in the management of the personal files of staff members, and specifically the complainant's refusal while he was on sick leave to provide the access codes to the electronic staff management files despite the Organisation's repeated requests; his appraisals since 2008, and in particular the 2014 appraisal, which referred to a succession of "professional errors"; and the warnings issued to the complainant and the reasons on which they were based.

6. The complainant rightly considers that the double jeopardy principle was breached. The measure of dismissal could not be based on conduct that had already been the subject of disciplinary measures, namely the warnings of 16 January and 31 July 2014.

7. As to the errors and omissions in the management of staff files which were referred to in the performance appraisal reports, these were professional shortcomings. Such shortcomings cannot be equated with misconduct (see, for example, Judgments 247, consideration 13, 1163, consideration 5, 1208, consideration 2, and 3853, consideration 6). Misconduct involves a breach of the duties of an international civil servant in respect of conduct which may trigger disciplinary proceedings and lead to a disciplinary measure. That is not the case for professional shortcomings, which may give rise to various administrative measures, such as a reminder of the applicable rules, a note in a personal file, an unfavourable appraisal or even the non-renewal or termination of a contract (see, for example, Judgment 1405, consideration 4).

The professional shortcomings mentioned in the performance appraisal reports – the last of which led to a 95 per cent downwards adjustment in the complainant’s annual merit bonus – could not give rise to a disciplinary measure.

8. The refusal to comply with his superiors’ instruction to provide the access codes for the electronic staff management files does constitute misconduct. However, as stated above, all the other criticisms directed at the complainant were either the subject of disciplinary measures or concerned professional shortcomings which could not lead to a disciplinary measure. It follows that the complainant’s dismissal was unlawful.

9. As a result, the decision of 1 October 2015 dismissing the complainant, as well as the decision of 22 October 2015 confirming it, must be set aside, without there being any need to examine the other pleas.

10. The Tribunal considers that the material injury suffered by the complainant will be fairly redressed by ordering the OIE to pay him the equivalent of the salary and various indemnities which he would have received if he had been in service from 1 October 2015 until the end of his fixed-term contract on 11 September 2016, net of any substitute income and income from employment received during that period. The Organisation will also be required to pay him the equivalent of the

pension contributions that it would have had to pay for him during the same period. All these amounts shall bear interest at the rate of 5 per cent per annum as from the date on which they fell due until the date of their payment, but an order for the payment of compound interest is not warranted.

The complainant further requests payment of the termination indemnity provided for in Article 80.3 of the Staff Rules to which, according to him, he would have been entitled at the end of his contract. That claim cannot be granted. Article 80.3 relied on by the complainant covers the termination of a current appointment. Since the Tribunal has set aside the complainant's dismissal and ordered the payment of his salary until the end of his contract, the applicable provision is Article 80.1 of the Staff Rules, which provides that a fixed-term appointment expires without notice or indemnity on the date specified in the letter of appointment.

11. The unlawful dismissal caused the complainant substantial moral injury.

Given, in particular, the damage to the complainant's honour and professional reputation resulting from the grounds on which his employment was terminated, the Tribunal considers it appropriate to award him 10,000 euros in moral damages under this head.

12. As the complainant succeeds for the main part, he is entitled to costs, which the Tribunal sets at 5,000 euros.

13. The OIE has submitted a counterclaim that the complainant should be ordered to pay its costs. It is plain from the foregoing that this counterclaim must be dismissed.

14. The complainant's other claims must be dismissed.

DECISION

For the above reasons,

1. The decisions of 1 October 2015 and 22 October 2015 are set aside.
2. The OIE shall pay the complainant material damages and interest thereon, calculated as indicated in consideration 10, above.
3. The Organisation shall pay the complainant moral damages of 10,000 euros.
4. It shall also pay him costs in the amount of 5,000 euros.
5. All the complainant's other claims are dismissed, as is the OIE's counterclaim.

In witness of this judgment, adopted on 8 November 2019, Mr Patrick Frydman, President of the Tribunal, Ms Fatoumata Diakité, Judge, and Mr Yves Kreins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 10 February 2020.

(Signed)

PATRICK FRYDMAN

FATOUMATA DIAKITÉ

YVES KREINS

DRAŽEN PETROVIĆ