

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

**A.**  
**v.**  
**WHO**

**134th Session**

**Judgment No. 4526**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr F. A. against the World Health Organization (WHO) on 18 July 2019, WHO's reply of 4 December 2019, the complainant's rejoinder of 28 January 2020 and WHO's surrejoinder of 14 May 2020;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions;

Considering that the facts of the case may be summed up as follows:

The complainant challenges the decision to terminate his contract for misconduct.

To support its Polio Eradication Initiative in Pakistan, WHO hires locally approximately 750 nationals of Pakistan as "contractors" to provide various services for that project. For logistical reasons, WHO outsources the administration of these contractors to the United Nations Office for Project Services (UNOPS). An agreement between UNOPS and WHO sets out the respective roles and responsibilities of the two agencies *vis-à-vis* the contractors. In practice, this means that the contractor enters into a contract (a Local Individual Contractor Agreement or "LICA") with UNOPS to provide specified services to WHO. The Terms and Conditions of the LICA state that the holder of such a contract has the legal status of an independent contractor and is not a staff member of

the Organization. They also expressly provide that any dispute is to be resolved by the contractor and WHO amicably, failing which the dispute may be referred by either party to arbitration under the UNCITRAL rules.

The complainant provided services to WHO under three successive LICA contracts as a Program/Data Assistant. One of his responsibilities was to provide guidance to other LICA holders on the procedures for requesting annual leave. On 23 December 2018 a colleague (Dr A.) telephoned the complainant asking how he could request annual leave for the period 26-28 December. The complainant replied that the leave request would have to be signed by Dr A.'s first and second level supervisors. He also pointed out that both he (the complainant) and the first level supervisor would be absent the following day (24 December). Dr A. informed the complainant that his first level supervisor had already approved his leave request verbally.

On 24 December 2018 the complainant emailed Dr A.'s leave request form directly to the latter's second level supervisor for approval. On receiving the request, the second level supervisor noticed that the signatures of Dr A. and the first level supervisor had both been copied and pasted onto the form. He immediately asked the first level supervisor whether he had authorised this and whether he had actually approved the leave request. The first level supervisor confirmed that Dr A. had made a verbal request to take leave, but said that he had told Dr A. to follow the proper procedure and had certainly not authorised the copying and pasting of signatures. Explanations were then sought from both the complainant and Dr A. They provided different accounts, each accusing the other of having copied and pasted the signatures. In light of these conflicting explanations, a disciplinary process was initiated and the complainant and Dr A. attended a hearing on 5 April 2019. The disciplinary committee found that both signatures had been copied and pasted by the complainant and that his actions constituted fraud and misrepresentation. It recommended that his LICA contract be terminated immediately.

In light of the disciplinary committee's report, WHO instructed UNOPS to terminate the complainant's LICA contract as of 30 April 2019. UNOPS notified the complainant of this decision by a letter of

25 April 2019. The complainant then sent WHO a request for review of the termination decision, whilst his counsel informed WHO that the complainant was initiating proceedings in the High Court of Peshawar. WHO responded by drawing their attention to the fact that WHO was immune from suit before the national courts and referring them to the dispute resolution mechanisms provided for in the complainant's LICA contract. The complainant nevertheless filed the present complaint with the Tribunal, impugning the decision of 25 April 2019.

In subsequent exchanges of correspondence, WHO again referred the complainant to the provisions of his LICA contract concerning disputes and, as part of the amicable dispute settlement process provided for therein, invited him to submit his claims to WHO in writing within ten days. The complainant did so, after which, at WHO's invitation, he attended a meeting to discuss the matter, but he was not satisfied with the outcome. Shortly before filing its surrejoinder before the Tribunal, WHO wrote to the complainant again, indicating that it remained willing to arrange a further meeting to pursue the discussion.

The complainant asks to be retroactively reinstated in his former position until December 2019, when his LICA was due to expire. He thus seeks the payment of the salary and allowances, including step increments, that he would have received for the remaining eight months of his contract, had it not been terminated. He also requests that his contract be extended for a further period of one year. In the event that WHO is unable to prove that the copy of the Terms and Conditions of his contract produced by WHO before the Tribunal is not a forgery, as he alleges, he seeks reinstatement until the end of the Polio Eradication Initiative program.

WHO submits that the Tribunal is not competent to hear this complaint, as the complainant is neither an official nor a former official of WHO and his employment was not governed by the WHO Staff Regulations and Rules. Subsidiarily, it submits that the complaint is devoid of merit.

## CONSIDERATIONS

1. The complainant filed his complaint in the Tribunal on 18 July 2019. He identified the defendant organisation in the complaint form as WHO. The Organization has raised, as a threshold issue, whether the Tribunal is competent to consider this complaint. It argues that the complainant was never a staff member or official of WHO and, accordingly, the dispute is beyond the scope of the Tribunal's jurisdiction conferred by Article II of the Tribunal's Statute.

2. The complainant's grievance arose from a decision communicated to him by letter dated 25 April 2019, terminating what was styled his "Individual Contractor Agreement". Without descending into detail, the termination arose because of his perceived misconduct. Central to the question of whether the complainant was a staff member or official of WHO were a succession of contracts under which he worked and which, save as to dates, were in substantially the same terms. The first contract concerned his engagement in the latter part of 2017, the second for the period 1 January 2018 to 31 December 2018 and the third for the period 1 January 2019 to 31 December 2019. This last-mentioned agreement was the operative agreement at the time of the termination of his services in April 2019.

3. The complainant raises the issue of whether the Agreement was a forgery and suggests WHO must prove that it is not. However, if he rests his case in whole or in part on the contention it is a forgery, he bears the burden of proving that is so. He has not, and his argument is unfounded.

4. The Individual Contractor Agreement was constituted by several documents. The first, which can for present purposes be described as the principal agreement, identified what those documents were. Relevantly they were the principal agreement, Annex A (Terms and Conditions of UNOPS Individual Contractor Agreement) and Annex B (Terms of Reference). The principal agreement identified at the outset the parties to it as, in this case, the complainant and the United

Nations Office for Project Services (UNOPS). Later in the principal agreement under the heading “Special Conditions (Operational Arrangements)” it declared that the contract was issued on behalf of WHO and that the complainant’s “contractual rights and responsibilities are with WHO [...] and not with UNOPS.” Additionally, the principal agreement declared, at this point, that “[e]xcept where the context requires otherwise, all references to ‘UNOPS’ shall be construed as references to WHO [...]”. There then followed a list of six specific provisions where the principal agreement declared a reference to UNOPS should be treated as a reference to WHO. This raises a legal question of whether the entire Individual Contractor Agreement should be treated as an agreement with WHO, with UNOPS having acted as its agent. But it is unnecessary, for reasons which will emerge shortly, to resolve this issue.

5. Annex A contains two important provisions. One is Article 6 which was entitled “LEGAL STATUS OF THE INDIVIDUAL CONTRACTOR”. This article declared that, in this case, the complainant had the status of an independent contractor and nothing in the agreement should be interpreted as establishing a relationship of employer and employee.

6. Article 6 also declared that, in this case, the complainant should not be regarded for any purpose as a “staff member of UNOPS or any other entity of the United Nations”. This latter expression would include WHO regardless of whether the provisions discussed in consideration 4 require the reference in Article 6 to UNOPS to be treated as a reference to WHO.

7. The second important provision in Annex A is Article 17, which required that any dispute between the parties be submitted, in the absence of amicable settlement, to arbitration under the UNCITRAL Arbitration Rules and that any arbitration award is to be treated as a final adjudication of the dispute.

8. The Tribunal recently concluded in Judgment 3551, consistent with more recent case law, that a person in a situation broadly analogous to that of the complainant could not avail himself of the Tribunal's jurisdiction as he was not an official of the defendant organisation. Not only was the existence of an arbitration clause viewed as relevant in Judgment 3551 in determining the status of the complainant, the existence of such a clause has, in a number of cases concerning individuals on contract, been treated as evidencing an agreement to exclude the jurisdiction of the Tribunal (see, for example, Judgments 1938, consideration 4, 2017, consideration 2(a), 2688, consideration 5, 2888, consideration 5, and 3705, consideration 4).

9. The complainant advances no argument in his rejoinder contesting the argument of WHO that he was not an official of WHO.

10. Accordingly, the complainant is not an official of WHO who can invoke the jurisdiction of the Tribunal under Article II, paragraph 5, of its Statute. His complaint must be dismissed because it is irreceivable. In these circumstances, there is no reason to hold oral proceedings and the complainant's application to that end is rejected.

#### DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 17 May 2022, Mr Michael F. Moore, President of the Tribunal, Mr Patrick Frydman, Vice-President of the Tribunal, and Ms Rosanna De Nictolis, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 6 July 2022 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

PATRICK FRYDMAN

ROSANNA DE NICTOLIS

DRAŽEN PETROVIĆ