

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

A.
v.
ICCO

135th Session

Judgment No. 4581

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr J.-M. A. against the International Cocoa Organization (ICCO) on 10 December 2019, the ICCO's reply of 10 July 2020, the complainant's rejoinder of 23 September 2020, the ICCO's surrejoinder of 30 November 2020, the complainant's further submission of 9 February 2021, the ICCO's comments thereon dated 12 March 2021, the complainant's second further submission of 16 June 2021 and the ICCO's final comments of 9 August 2021;

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 amount paid to him by way of a termination indemnity.

In 2010 the Executive Secretary of the ICCO announced that he did not wish to remain in office beyond September of that year. The complainant, who was then serving as Head of the Economics and Statistics Division under a permanent contract, was appointed as acting Executive Director for a two-year period commencing on 1 October 2010 while the process for electing a new Executive Director was set in motion. As this was only a temporary measure, his contractual status

remained unchanged, but he received an additional allowance for performing duties at a higher level.

For reasons linked to the planned relocation of the ICCO's headquarters from London, United Kingdom, to Abidjan, Côte d'Ivoire, the election process was delayed and, in the event, after having served for two years as acting Executive Director, the complainant was appointed to serve as Executive Director from October 2012 until a new Executive Director had been duly elected. This appointment entailed a change of contractual status for the complainant, because the Executive Director of the ICCO is always appointed for a fixed term. His permanent appointment was replaced by a fixed-term appointment, which was granted for an initial duration of three years.

The ICCO's Staff Regulations and Staff Rules provide for the payment of a termination indemnity in specified circumstances, but they also provide that the indemnity is not payable to an official whose fixed-term appointment expires at the end of its term. Notwithstanding this provision, when the complainant's fixed-term appointment as Executive Director was extended for the second time in 2016, it was agreed that, at the end of his appointment, he would be paid a termination indemnity based on 20 months of his salary.

The complainant separated from the ICCO in September 2018 at the end of his contractual term, whereupon a dispute arose regarding the calculation of his termination indemnity. Under Staff Rule 808, this indemnity is calculated on the basis of net basic salary plus post adjustment and allowances, but the complainant received an amount corresponding to only 20 months' net basic salary. Had the post adjustment and allowances been included, the amount paid would have been considerably higher. He insisted that his termination indemnity should include those elements, whilst the ICCO contended that, as this payment was being made on a purely exceptional basis, Staff Rule 808 was not applicable and the allowance owed to him was limited to 20 months' net basic salary.

The termination indemnity was paid in December 2018, but the complainant continued to claim that the amount was insufficient. In April 2019 the ICCO's Administration and Finance Committee reported to

the Council that the indemnity had been paid as calculated by the ICCO and, from the Organization's point of view, the matter was then considered closed. This was confirmed to the complainant in writing on 13 September 2019, in response to a request from his counsel. Within the following 90 days, he filed his complaint with the Tribunal, impugning what he describes as the final decision of 13 September 2019 on the calculation of his termination indemnity.

The complainant asks the Tribunal to set aside the impugned decision and to order the ICCO to pay him the post adjustment and allowances corresponding to his termination indemnity of 20 months. He also claims moral damages in the amount of 100,000 United States dollars and interest at the rate of 5 per cent per annum on both these sums. Lastly, he seeks an award of costs.

The ICCO requests that the complaint be dismissed on the grounds that the Tribunal is not competent to hear it. Alternatively, it requests that the complaint be dismissed as being time-barred and, in any event, unfounded.

CONSIDERATIONS

1. This complaint, which was filed on 10 December 2019, concerns a dispute between the complainant, who was the Executive Secretary of the Organization when he separated on 30 September 2018, and the ICCO, over the amount which it should have paid him for termination indemnity. The complainant, who had by then served for eight years as Executive Secretary, albeit on an interim basis for the first two, seeks an order setting aside the impugned decision, which he identifies as the "final decision" of 13 September 2019. He also asks the Tribunal to order the ICCO to pay him a termination indemnity calculated in accordance with Staff Rule 808 of the ICCO Staff Regulations and Staff Rules, as well as moral damages, interest and costs.

2. The complainant has requested oral proceedings. However, the submissions and evidence produced by the parties are sufficient to enable the Tribunal to resolve the issues raised in this case. Accordingly, the request for oral proceedings is rejected.

3. The dispute between the complainant and the ICCO arose in October 2018 and is evidenced in email exchanges between the complainant and the Director of the Economics and Statistics Division, Dr M.N. The latter informed the complainant, by email of 10 October 2018, that his entitlement to the indemnity was to be calculated in accordance with the ICCO Council decision contained in document ICC/REP/94, the Report of the Council at its 94th Regular Session in September 2016, at which the Council had extended his appointment as Executive Secretary until 30 September 2018. It was specifically stated therein that his termination indemnity was to be “based on 20 months of his salary”. The complainant has however insisted that it is to be calculated in accordance with Staff Rule 808(b), which, according to the ICCO, is not applicable to the Executive Secretary, who always holds a fixed-term appointment which expires at the end of its term. Dr M.N. so informed the complainant in emails, dated 10 October 2018 and 15 October 2018. In the latter email he informed the complainant of the final settlement of his termination entitlements, including his termination indemnity, and advised him that the total amount would be transferred to his bank account as soon as they were signed off on the ICCO’s accounts.

4. In his disagreement with the Administration’s position on the matter, the complainant further referred it to the Chair of the International Cocoa Council and the Chair of the Administration and Finance Committee by email of 4 December 2018. By email of 18 December 2018, Dr M.N. requested personnel in the Finance Division to deposit the complainant’s entitlements, including his termination indemnity, into his bank account. It was the complainant’s email of 14 August 2019, enquiring about the outcome of the Administrative and Finance Committee’s discussions in its 2019 meeting, which occasioned

the 13 September 2019 reply from the Vice-President of the International Cocoa Council that the complainant impugns.

5. The ICCO submits that as relations between the parties began and ended before the ICCO had recognized the Tribunal's jurisdiction, the Tribunal is not competent to hear this case. It is noteworthy that it was on 20 August 2019 that the Executive Director of the ICCO sent a request for recognition of the jurisdiction of the Tribunal to the Director-General of the International Labour Office. At its 337th Session, the ILO's Governing Body approved that recognition with effect from 30 October 2019.

6. Under Article II, paragraph 5, of its Statute, the Tribunal may hear a complaint only when the international organization concerned has addressed a declaration recognizing the Tribunal's jurisdiction to the ILO's Director-General and that declaration has been approved by the ILO's Governing Body. Inasmuch as the ICCO had recognized the Tribunal's jurisdiction at the time when the complainant filed his complaint on 10 December 2019, the Tribunal is competent to hear it pursuant to Article II, paragraph 5, of the Tribunal's Statute.

7. The complaint is unfounded as the complainant was clearly not in the categories of persons who were entitled to the termination indemnity which he seeks pursuant to Staff Rule 808. Staff Rule 808(a), which provides for termination indemnity, relevantly states that "[a] staff member whose appointment is terminated on account of the abolition of his or her post or for reasons of health shall receive termination indemnity in accordance with the following schedule [...]". The complainant was not entitled to termination indemnity under this provision, the calculation of which the schedule sets out in formulae by reference to the completed years of service and the number of months of payment of emoluments. Under Staff Rule 808(b), emoluments include net basic salary, post adjustment and specified allowances. Noteworthy, Staff Rule 808(d)(iii) specifically excluded the complainant from receiving termination indemnity under Staff Rule 808 as it states that no indemnity shall be payable to a staff member whose fixed-term

appointment expires on the date specified in her or his letter of appointment.

8. To the extent that the complainant relies on a promise that Staff Rule 808 would be applied in his favour, he has failed to prove that such a promise was made in those terms.

9. In the foregoing premises, the complaint will be dismissed in its entirety, without there being any need to rule on the objection to its receivability raised by the ICCO.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 8 November 2022, Mr Michael F. Moore, President of the Tribunal, Mr Patrick Frydman, Vice-President of the Tribunal, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 1 February 2023 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

PATRICK FRYDMAN

HUGH A. RAWLINS

DRAŽEN PETROVIĆ