R. M. (No. 4)

v.

Global Fund to Fight AIDS, Tuberculosis and Malaria

135th Session **Judgment No. 4590**

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourth complaint filed by Mr M. R. M. against the Global Fund to Fight AIDS, Tuberculosis and Malaria (hereinafter "the Global Fund") on 7 March 2020, the Global Fund's reply of 13 July 2020, the complainant's rejoinder of 19 August 2020, the Global Fund's surrejoinder of 2 December 2020, the complainant's further submission of 2 February 2021 and the Global Fund's final comments of 4 May 2021;

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 grant him compensation under "the grandfathering rules" for the loss of home leave entitlements that he enjoyed before he was transferred from the World Health Organization (WHO) to the Global Fund.

Facts relevant to this case are to be found in Judgment 3924, delivered in public on 24 January 2018, concerning the complainant's second complaint. As explained in that judgment, when the Global Fund was established in 2002, it concluded an Administrative Services Agreement with WHO pursuant to which a range of administrative

services were supplied by WHO, including human resources services. Staff members hired to work for the Global Fund were employed by WHO in accordance with WHO's Staff Regulations and Staff Rules and were assigned to the Global Fund's projects. On 31 December 2008 the Global Fund and WHO terminated the Administrative Services Agreement. The employment of WHO staff members assigned to the Global Fund's projects was terminated, but they were simultaneously offered contracts of employment on 1 January 2009 directly with the Global Fund, which became an autonomous organisation.

The benefits and allowances offered by the Global Fund under its Human Resources Policy Framework were not identical to those offered by WHO. For expatriate staff members, four WHO allowances – namely, home leave travel, education grant travel, rental subsidy and family visit travel – were replaced with a single "expatriate premium", which is a monthly allowance payable upon recruitment for a limited time only. The expatriate premium is calculated as a percentage of a reference salary, taking into account the staff member's country of origin and family status. It remains constant for the first six years of employment, and is then reduced for the next four years, after which the entitlement ceases.

In order to ensure that staff members transitioning from WHO to the Global Fund on 1 January 2009 would not be disadvantaged by the new arrangements, Article 3.3.3 of the Human Resources Policy Framework provided for the "grandfathering" of allowances. In accordance with the Global Fund Rules for "Grandfathering" of WHO Benefits/Allowances and "Mapping" Employees Across From Current WHO Salary to Global Fund Salary (hereinafter "the grandfathering rules"), the overall value of each staff member's allowances immediately before and after their transition from WHO to the Global Fund was compared, and if the comparison revealed a shortfall, compensation was payable.

When the complainant was transferred from WHO to the Global Fund on 1 January 2009, he was entitled to the expatriate premium, but he was not eligible for compensation under the grandfathering rules, because the overall value of his Global Fund allowances was higher

than that of his WHO allowances. In January 2015, after his first six years of employment with the Global Fund, the rate of his expatriate premium was reduced. He challenged that reduction in his second complaint, which the Tribunal dismissed as irreceivable in Judgment 3924, because the complainant had not exhausted the internal means of redress available to him.

As from 1 January 2019, the complainant's entitlement to the expatriate premium ceased. On 24 April 2019 he filed a request for resolution in which he challenged the fact that his payslip for January 2019 did not show any compensation in respect of his former WHO home leave travel entitlements. He emphasised that he was not challenging the cessation of the expatriate premium, but the failure to pay the compensation provided for under the grandfathering rules, according to which his "entitlements at the 31 December 2008 w[ould] be 'grandfathered' for the duration of [his] contract with the Global Fund". His request for resolution was rejected on the basis that his entitlement to such compensation, which was merely a transitional measure, had been determined once and for all on 31 December 2008, and that the grandfathering rules did not require the Global Fund to compare its remuneration package with WHO's on an ongoing basis and for an indefinite period.

The complainant then lodged an appeal with the Appeal Board, which was examined on the basis of the parties' written submissions alone, the complainant having expressed a preference for a written procedure. The Board issued a report on 28 November 2019, recommending that the appeal be dismissed as unfounded. The complainant impugns the Executive Director's decision of 9 December 2019 endorsing that recommendation.

The complainant asks the Tribunal to set aside the impugned decision and to order the Global Fund to pay him a monthly grandfathering compensation in an amount equal to the home leave allowance he would have received had he remained in the employ of WHO, with retroactive effect from 1 January 2019. He also seeks the payment of a monthly grandfathering compensation equal to 1/12th of a day's salary to compensate for the loss of the WHO home leave travel days, with

retroactive effect from 1 January 2019. He claims 15,000 Swiss francs in moral damages and 10,000 Swiss francs in costs.

The Global Fund asks the Tribunal to dismiss the complaint as irreceivable and without merit.

CONSIDERATIONS

1. In his 21 April 2015 request for resolution, which the Tribunal considered in Judgment 3924, delivered in public on 24 January 2018, the complainant objected to the reduction of his expatriate premium as shown on his payslip of 23 January 2015. He argued that the Global Fund had violated the grandfathering principle and asked to be reimbursed in respect of the reduction applied since January 2015 and that the reduction not be applied to his salary until the end of his contract. He also asked that salary increases other than those relating to performance be applied with retroactive effect. In a communication of 19 June 2015, the Acting Head of the Human Resources Department (HRD) rejected the request for resolution. As the complainant did not contest that decision by a request for appeal required under the applicable rules, the Tribunal determined that his complaint lodged directly with it was irreceivable because he had not exhausted the internal means of resisting the decision contained in the 19 June 2015 communication.

2. In his request for resolution of 24 April 2019, which underlies the present complaint, the complainant contested "the non-inclusion of the compensation line in [his] payslips as of 25 January 2019, whilst not challenging the reduction of the Expatriate Premium allowance". Instead of contesting the non-inclusion of the expatriate premium in his payslip, the complainant challenged the absence of any compensation in respect of home leave travel allowance in his 25 January 2019 payslip. He argued that he received that allowance under his contract with WHO and was still entitled to it under his contract with the Global Fund on the basis that that allowance was "grandfathered" across to his Global

Fund contract under the applicable "grandfathering" rules and principles incorporated in the latter contract.

3. In the decision, dated 9 December 2019, which the complainant impugns, the Executive Director accepted the Appeal Board's recommendation to dismiss, as unfounded, the complainant's internal appeal in which he essentially maintained the arguments he had proffered in his request for resolution. The Appeal Board had concluded that the complainant's request for resolution filed on 24 April 2019 was receivable as he filed it within ninety days after he was notified of the decision therein: his 25 January 2019 payslip. This conclusion was in error, as will be seen shortly. The Board also concluded that the complainant's request for appeal was receivable as he filed it on 16 August 2019 within the required sixty days after he received the decision of 19 June 2019.

4. The Global Fund submits that the complaint is irreceivable. It argues, among other things, that to the extent that the complainant's alleged right to compensation stems from the reduction and subsequent elimination of his expatriate premium, his right to claim such compensation crystallized in January 2015 when the premium was first reduced. He should have challenged the absence of compensation within 90 days of his January 2015 payslip. The Fund submits, citing consideration 3 of Judgment 4121, that the complainant's contention that he can challenge the non-payment of a monthly entitlement at any time, by challenging a monthly payslip, is not supported by the case law.

5. In the case leading to Judgment 4121, an employee of another organisation, Mr v.B., purported to contest a promotion decision made in 2006. A letter of 10 January 2005 had informed him that there were inconsistencies in the calculation of seniority with respect to promotions granted between January 2000 and June 2002 and that, consequently, the Administration had decided to credit all those concerned with 3 years' seniority. In his case, this meant adding three years to his seniority at grade A2. By a letter of 16 October 2006, Mr v.B. was informed that he was promoted to grade A3 with effect from 1 September 2006. The calculation of his incremental step on promotion was attached to that

letter. On 31 October 2008 he wrote to the Administration stating that he had verified his payslips and noticed that the measure announced in the letter of 10 January 2005 concerning his seniority had not been implemented. He requested that the three years referred to in the letter be added to his seniority and that he be paid, with retroactive effect, the resulting difference in salary. Following an exchange of correspondence, the Administration replied in early February 2009 that the rules had been properly applied. On 16 March 2009 Mr v.B. filed a request to review that decision. He was informed that his request was time-barred as he was challenging the date of his promotion to grade A3, which had occurred in 2006. The Tribunal determined that the complaint was irreceivable stating that since the decision to promote Mr v.B. was made in 2006, it was at that point in time that time-limits to challenge that decision began to run. The Tribunal further stated that its case law concerning payslips did not entitle a complainant to belatedly challenge a decision out of time if the payslip was simply confirmatory of that decision, as the complainant in that case had sought to do.

6. The Tribunal's reasoning in consideration 3 of Judgment 4121 is applicable to the present case. The complainant would have been aware from his contract with the Global Fund, which came into effect on 1 January 2009, not only that the expatriate premium replaced the allowances he received under his contract with WHO, including the home leave travel allowance. He would thereby have been made aware that those allowances were not "grandfathered" across to his employment with the Global Fund. As the Appeal Board observed, he was fully aware of the contents of the whole expatriate premium and its progressive reduction as shown in the letter of 6 November 2014 from the Head of HRD and demonstrated in his second complaint lodged in 2015. Whilst he contested the reduction of the expatriate premium in his second complaint, albeit out of time, he did not contest the decision concerning his home leave travel allowance until he purported to do so on the basis of his 25 January 2019 payslip. This was too late on any account. His complaint is therefore irreceivable, pursuant to paragraph 2 of Article VII of the Tribunal's Statute.

7. The complaint will accordingly be dismissed in its entirety.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 21 October 2022, Mr Michael F. Moore, President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Hongyu Shen, 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

HUGH A. RAWLINS

HONGYU SHEN

DRAŽEN PETROVIĆ