Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

P. (No. 2)

v.

ILO

135th Session **Judgment No. 4624**

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Ms V. P. against the International Labour Organization (ILO) on 17 October 2018, corrected on 19 November and 5 December 2018, the ILO's reply of 10 January 2019, the complainant's rejoinder of 17 February 2019 and the ILO's surrejoinder of 22 March 2019;

Considering Articles II, paragraph 1, 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 takes issue with the type of contract successively awarded to her by the ILO and seeks adequate compensation for the injury she considers she has suffered.

In April 2010 the complainant was hired under a short-term contract funded from the ILO's regular budget in the Procurement and Contracting Bureau (hereinafter "the Procurement Bureau") of the International Labour Office (hereinafter "the Office"), the ILO's secretariat. Her appointment was extended with effect from 1 January 2012, but in the form of fixed-term (one-year) technical cooperation contracts, financed from extra-budgetary funds. She was promoted to grade P3 in January 2013. Her fixed-term technical cooperation contract was

extended periodically until 31 August 2017, though the last extensions were for only six months and then two months.

On 24 June 2015 the complainant was placed on sick leave by her doctor following a diagnosis of an occupational disease. She resumed work gradually from September 2015, but was unable to return to working full time. She worked half time until February 2016, when she began working on an 80 per cent basis.

When a competitive recruitment procedure was initiated at the end of 2015 for the post of procurement officer at grade P3, funded from the Organization's regular budget, the complainant applied but was not successful because an external candidate was selected. On 26 May 2016 the complainant lodged a grievance seeking the cancellation of the competition, then referred the matter to the Joint Advisory Appeals Board (JAAB). In a letter of 24 July 2018 she was notified of the Director-General's decision, on the basis of the JAAB's opinion, to award her 5,000 Swiss francs in compensation for any injury arising from the conduct of the competition procedure, as well as 2,500 Swiss francs for the length of the procedure before the JAAB. The complaint filed by the complainant with the Tribunal against that decision is the subject of Judgment 4625 delivered in public today.

In the meantime, in a letter of 1 August 2016 the complainant's doctor requested the Office's medical service to assign her to a different department on account of the pressure placed on her by her immediate supervisors, which, according to him, had led to her occupational disease. In this connection the complainant filed a harassment grievance on 24 November 2016, which was the subject of her first complaint to the Tribunal, ruled on in Judgment 4313, delivered in public on 24 July 2020. In that judgment, the Tribunal found that the fact that the complainant had not been apprised of all material evidence likely to have a bearing on the outcome of her claims during the internal procedure for the consideration of her grievance constituted a serious breach of the requirements of due process (consideration 7). However, the Tribunal also found that it was not appropriate to remit the case to the Organization and that it did not have information allowing it to determine the existence of harassment with certainty. As the Tribunal

considered that the complainant had been deprived of the right to have her harassment grievance properly investigated, it awarded her moral damages in the amount of 25,000 Swiss francs.

Meanwhile the complainant had again been placed on sick leave by her doctor in December 2016.

On 25 February 2017 the complainant lodged a grievance alleging that the technical cooperation contracts that she had held and their successive extensions had been granted to her unlawfully as her duties mainly related to projects funded from the Organization's regular budget.

The complainant was put on special leave without pay between 1 March and 31 May 2017. On 25 May 2017 she submitted her resignation for health reasons, with effect from 1 June 2017.

In a letter of 1 June 2017 the Director of the Human Resources Development Department rejected the grievance that the complainant had lodged on 25 February 2017. The complainant submitted an appeal to the JAAB on 25 June 2017. In its report dated 8 June 2018 the JAAB found that it had been improper to grant the complainant successive technical cooperation contracts that were extended several times, as her post mainly related to activities arising under the ILO's regular programme. In consequence the JAAB recommended that the Director-General take the necessary measures to ensure that the rules governing use of technical cooperation contracts were strictly applied.

In a letter of 18 July 2018 the complainant was informed of the Director-General's decision to endorse the JAAB's finding that the Office had not observed "certain" rules concerning technical cooperation contracts. The Director-General was likewise of the view that the Administration ought to have monitored the complainant's work situation more closely on receiving her doctor's recommendation, although measures had subsequently been taken in connection with the consideration of her harassment grievance. It had also been decided to award the complainant the sum of 20,000 Swiss francs in compensation for the injury suffered. That is the impugned decision.

The complainant asks the Tribunal to adequately redress the injury she considers she has suffered. To this end, she seeks an award of 50,000 Swiss francs in compensation for the physical and psychological injury caused by the Organization's failure to reassign her for health reasons, the harm to her dignity that she suffered, a breach of the duty of care and the discrimination she considers she experienced because of her disability. Moreover, she seeks damages of 50,000 Swiss francs on account of the ILO's non-compliance with its own rules governing technical cooperation contracts. She further claims a sum equivalent to one year's salary for the material injury arising from the loss of a valuable opportunity to pursue a career at the ILO, including loss of future earnings, with interest at the rate of 5 per cent, from the date of her resignation, 31 May 2017. Lastly, the complainant seeks an award of costs and any other appropriate corrective action required to remedy the situation fully and finally.

The ILO asks the Tribunal to dismiss the entire complaint as completely unfounded.

CONSIDERATIONS

1. The complainant seeks an order setting aside the decision taken by the ILO Director-General on 18 July 2018 to award her 20,000 Swiss francs in compensation for the injury suffered on account of the Organization's non-compliance with particular rules that it had laid down in respect of technical cooperation contracts. She also asks the Tribunal to award her:

– the sum of 50,000 Swiss francs on account of the ILO's failure to observe the rules that it had laid down;
– the sum of 50,000 Swiss francs in compensation for the physical and psychological injury caused by the Organization's failure to reassign her for health reasons, the harm to her dignity that she suffered, a breach of the duty of care and the discrimination she considers she experienced on account of her disability;

– a sum equivalent to one year's salary for the material injury arising from the loss of a valuable opportunity to pursue a career at the ILO, including loss of future earnings, with interest at the rate of 5 per cent, from the date of her resignation, 31 May 2017.

2. To begin with, the complainant asserts that despite the fact that she regularly provided services that came under the Organization's regular budget, from January 2012 she only held precarious technical cooperation contracts, which are intended solely to cover duties specific to extra-budgetary projects. She further observes that a regular budget position was not created in the Procurement Bureau, contrary to the provisions of Office Procedure IGDS Number 16 (Version 1) concerning the management and use of Programme Support Income (PSI). She notes in that respect that the JAAB and the Director-General both explicitly acknowledged that her allegation that the Office had improperly awarded her a renewable technical cooperation contract was justified. She therefore concludes that the ILO did not comply with its own financial obligations regarding the actual nature of her employment contract.

3. The Tribunal observes that the parties agree that the ILO breached some of its obligations in this area by only appointing the complainant under a technical cooperation contract that was renewed several times.

Thus, the complaint in reality concerns the lack of adequate compensation awarded on this account in the impugned decision of 18 July 2018. First, according to the complainant, that compensation is inadequate because it does not cover all the injury directly resulting from the improper use of technical cooperation contracts that were renewed several times or the serious repercussions which that may have had on her health and career prospects at the ILO. Second, she submits that the reasoning stated for the impugned decision is inadequate since it does not take into consideration the injury caused to her by the failure to grant her request for reassignment for health reasons submitted in August 2016.

4. In respect of the injury that purportedly resulted from the unlawful use of technical cooperation contracts renewed several times, the Tribunal notes that, even supposing that it was unlawful to extend the technical cooperation contract after a given date, that alone does not suffice to establish that the complainant was entitled to have her employment contract converted into a contract funded from the Organization's regular budget. Paragraph 12 of aforementioned Office Procedure IGDS Number 16, in any event, provides only for the conversion of positions such as that held by the complainant to regular budget positions "progressively and where feasible". However, the Organization asserts, without being effectively contradicted by the complainant, that such a conversion was not possible in this case owing, in particular, to the lack of budgetary resources available for that purpose.

Furthermore, the complainant did not complain that the technical cooperation contracts that she had held for five years were unlawful until 25 May 2017, that is, when the two last extensions of her contract covered periods of only six and then two months, and she resigned on 31 August 2017. The period for which the complainant's contractual situation may give rise to compensation is therefore strictly limited, even assuming it has been established to be unlawful.

In these circumstances, the Tribunal considers that the complainant is not in any event entitled to claim a higher level of compensation under this head than she has already received pursuant to the impugned decision.

5. Moreover, the Tribunal cannot see how the fact that the complainant was appointed under a technical cooperation contract had a considerable impact on the extent of the injury to her health she submits she has suffered.

There is nothing to suggest that the complainant's occupational disease or the harassment to which she asserts she was subjected by her immediate supervisors would not have occurred if the complainant had been appointed at the time under a fixed-term contract financed from the Organization's regular budget.

6. Specifically with regard to the injury arising from the failure to take due account of her request for reassignment for health reasons submitted in August 2016, the complainant regrets that, in breach of an international organisation's duty of care, following her occupational disease no specific action was taken in response to her doctor's request dated 1 August 2016 recommending that the Office's medical adviser should support her reassignment to another department, which, according to her, led to her state of health deteriorating.

7. The Tribunal observes that the Organization acknowledged of its own accord that the complainant's health situation should have been monitored more closely when it received her doctor's warning and that the complainant was awarded damages on that account pursuant to the impugned decision.

The Tribunal further notes that various measures were in fact taken in response to the doctor's recommendation. The submissions show that measures were decided by the complainant's supervisors when she returned to part-time work, including the removal of several tasks that were particularly difficult to manage and were at a stage of progress that required full-time presence at work. In addition, three temporary reassignments were proposed to the complainant following the submission of her harassment grievance, all three of which she refused for reasons that do not persuade the Tribunal. The distinction the complainant states she wishes to make between a request for reassignment for health reasons and reassignment proposals following a harassment grievance appears entirely artificial to the Tribunal since the aim is essentially the same in both cases: to reassign the person concerned permanently or temporarily with a view, in particular, to protecting her or his health.

Against this background, the complainant's objection that the JAAB did not allow her to enter a third round of submissions on this issue is in any event unfounded.

8. The complainant also contends that the Director-General's decision did not adequately justify the amount of compensation awarded, since that amount was not broken down between the various injuries for which compensation was awarded.

However, the Tribunal considers that it is permissible for an international organisation to decide to award a lump sum in compensation for all injuries suffered by a member of its staff.

This plea will therefore be dismissed.

9. It follows from all the foregoing that the complaint must be dismissed in its entirety.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 14 November 2022, Mr Patrick Frydman, Vice-President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Dražen Petrović, Registrar.

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

(Signed)

PATRICK FRYDMAN JACQUES JAUMOTTE CLÉMENT GASCON

DRAŽEN PETROVIĆ