

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

T. (No. 5)

v.

IOM

135th Session

Judgment No. 4647

THE ADMINISTRATIVE TRIBUNAL,

Considering the fifth complaint filed by Ms C. T. against the International Organization for Migration (IOM) on 14 April 2022;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal and Article 7 of its Rules;

Having examined the written submissions of the complainant;

CONSIDERATIONS

1. The complainant, who is represented by counsel, has filed a complaint directly with the Tribunal, impugning what she considers to be the implied rejection of an appeal that she lodged with the Joint Administrative Review Board (JARB) on 3 November 2021 concerning decisions notified to her by the Director of the Human Resources Management Division (HRMD) in letters of 22 June and 5 July 2021.

2. The complainant contends that her complaint is receivable under Article VII, paragraph 3, of the Statute of the Tribunal, which provides that “[w]here the Administration fails to take a decision upon any claim of an official within sixty days from the notification of the claim to it, the person concerned may have recourse to the Tribunal and

her or his complaint shall be receivable in the same manner as a complaint against a final decision. [...]”.

3. At this stage of the internal procedure, however, the provisions of Article VII, paragraph 3, were in any case inapplicable (see, for example, Judgment 4271, consideration 3, and the case law cited therein). It is clearly established in the case law that where the Administration takes any action to deal with a claim, this step in itself constitutes a decision upon the claim within the meaning of Article VII, paragraph 3, of the Statute, which forestalls an implied rejection that could be referred to the Tribunal. In particular, when an organisation forwards a claim before the expiry of the prescribed period of sixty days to the competent authority, this step in itself constitutes a decision upon the claim within the meaning of this provision.

4. Shortly after the appeal was lodged, the Director of HRMD informed the complainant that there were some difficulties in identifying available JARB members, which meant that it might not be possible to inform her of the proposed composition of the JARB within the timeframe set out in Instruction IN/217, but that he expected to be able to do so within the next three weeks. In the event, on 28 December 2021 the complainant was notified of the composition of the JARB proposed by the Administration. This was refused by the complainant’s counsel, who argued that the complainant had been notified of the proposed composition of the JARB after the expiry of the 15-day time limit set by the applicable rules, and that the Administration had no authority to propose the composition of the JARB, since this was the prerogative of the Director of HRMD. But when the Director of HRMD himself, by letter of 31 December 2021, proposed a new composition of the JARB, the complainant’s counsel rejected this as well, arguing amongst other things that the Director of HRMD had a conflict of interest.

5. The complainant’s counsel is obviously confused about the process. The Director of HRMD simply applied the rules and proposed the JARB members. By contesting the whole process, the complainant’s

counsel effectively prevented the JARB from examining the appeal, although the Administration had shown its willingness to nominate members of the JARB who would examine the appeal. The complainant did not point to any personal conflict of interest on the part of the proposed JARB members.

6. It is true that, notwithstanding the provisions of Article VII, paragraph 1, of the Statute, if the competent authority is not able to determine an internal appeal within a reasonable time, depending on the circumstances, an official may file a complaint directly with the Tribunal, but this applies only where the official has done her or his utmost, to no avail, to accelerate the internal procedure and consequentially establishes that the appeal process is paralysed (see, for example, Judgment 3558, consideration 9, and the case law cited therein). In the present case, the complainant's counsel did exactly the opposite – he effectively stalled the process. This process should be continued and any steps in the process may be challenged before the Tribunal only in the context of a complaint impugning the decision to be taken at the end of the internal appeal procedure (see, for example, Judgment 4570, consideration 3, and the case law cited therein).

7. Since the complainant has not exhausted the internal remedies available to her, as required by Article VII, paragraph 1, of the Statute of the Tribunal, her complaint is clearly irreceivable and must be summarily dismissed in accordance with the procedure set out in Article 7 of the Rules of the Tribunal.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 11 November 2022, Mr Michael F. Moore, President of the Tribunal, Mr Patrick Frydman, Vice-President of the Tribunal, 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

PATRICK FRYDMAN

HONGYU SHEN

DRAŽEN PETROVIĆ