

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**A. B. (C.) (Nos. 1 and 2)**

**v.**

**OACPS**

**137th Session**

**Judgment No. 4757**

THE ADMINISTRATIVE TRIBUNAL,

Considering the first and second complaints filed by Mr C. A. B. on 15 June 2022 against the Organisation of African, Caribbean and Pacific States (OACPS) and corrected on 27 September, the OACPS's replies of 28 October 2022, the complainant's rejoinders of 23 December 2022 and the OACPS's surrejoinders of 2 February 2023;

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 non-renewal of his employment contract and the breach of a promise to employ him.

On 1 October 2014 the complainant joined the Organisation as an interpreter under a six-year fixed-term contract at grade P3. Although he was recruited as a national of the Republic of the Congo, the complainant also held Belgian nationality at the time of his recruitment. Because of the nationality that was taken into account on his appointment, he was not subject to the Belgian social security system. After the Organisation began a restructuring exercise in December 2019, the complainant received a letter from the Secretary-General, dated 25 June 2020, informing him that his appointment would not be

renewed when it came to an end on 31 December 2020. The complainant maintains that it was expressly stated that all members of staff on fixed-term contracts terminating in December 2020 would be reinstated in February 2021.

On 24 March 2021, having still not been offered a contract, the complainant asked the Administration to provide him with further information about his contractual situation. He received a reply that same day stating that he would need to wait for the reports on the restructuring of the Organisation to be approved before the Secretariat could take any decisions about permanent appointments.

By letter of 11 June 2021, the complainant challenged the failure to keep the promise to employ him and alleged that he had been discriminated against on the basis of his Belgian nationality. He claimed to be the only French-language interpreter not to have been reappointed and that this was because it was more expensive to employ a Belgian national covered by the Belgian social security system. By letter of 28 June 2021, the OACPS rejected all the complainant's claims.

On 19 August 2021 the complainant initiated proceedings before the French-speaking labour court in Brussels which, by a judgment delivered on 15 March 2022, declared that it had no jurisdiction to hear the claim and ordered the complainant to pay the costs of the procedure together with a procedural compensation of 1,200 euros. The complainant appealed against that decision and proceedings were still pending at the time when the present complaints were filed.

On 15 June 2022 the complainant filed two complaints before the Tribunal impugning, respectively, the decisions of 25 June 2020 and 28 June 2021.

The complainant asks the Tribunal to set aside the decisions of 25 June 2020 and 28 June 2021. He seeks damages of 123,183.71 euros for the material injury he considers he has suffered. He also claims compensation of 22,996.23 euros on the grounds that he was unable to receive unemployment benefit since the Organisation had not enrolled him in the Belgian social security system. He further claims 5,000 euros for the failure to enrol him in the Belgian social security system. The complainant also seeks damages of 56,854.02 euros for the injury

resulting from the discrimination he alleges he has suffered on the grounds of his nationality, as well as 25,000 euros in moral damages for having been deprived of an income. He further seeks the award of 7,500 euros in costs.

The OACPS asks the Tribunal to dismiss the complaints as irreceivable or, subsidiarily, as unfounded. It requests that the complainant be ordered to pay it the “provisional sum of one euro”, together with 7,500 euros by way of costs.

### CONSIDERATIONS

1. Apart from the setting aside of the OACPS’s decisions of 25 June 2020 and 28 June 2021, the complainant seeks, in each of his complaints, the payment of various sums intended to provide redress for the material and moral injury he alleges he has suffered as a result of the aforementioned decisions.

2. Given that the complaints essentially seek the same redress and are largely based on the same arguments, the Tribunal considers it appropriate that they be joined to form the subject of a single judgment.

3. Pursuant to Article VII, paragraph 1, of the Statute of the Tribunal, “[a] complaint shall not be receivable unless the decision impugned is a final decision and the person concerned has exhausted such other means of redress as are open to her or him under the applicable Staff Regulations”.

Consistent precedent has it that the issue of receivability of a complaint can be raised by the Tribunal of its own motion, even if it has not been raised by the Organisation, when irreceivability is clearly apparent from the evidence submitted (see Judgment 3648, consideration 5; see also, to the same effect, Judgments 3139, consideration 3, 2567, consideration 6, 1095, consideration 18, and 60, consideration 1).

The Tribunal notes that, in the present case, it is apparent from the evidence submitted that the impugned decision of 25 June 2020, of which the complainant was notified that same day, was not challenged in time under the means of internal redress available to OACPS staff pursuant to Article 22 of the Staff Regulations and Annex VIII thereto, even though the complainant, who was still a member of the Organisation's staff at the time, had access to them.

The first complaint, against the decision of 25 June 2020, is therefore irreceivable for failure to exhaust internal means of redress, as the arguments raised by the complainant in it cannot invalidate this finding.

4. Under Article VII, paragraph 2, of the Statute of the Tribunal, “[t]o be receivable, a complaint must [...] have been filed within ninety days after the complainant was notified of the decision impugned”.

The Tribunal notes that the impugned decision of 28 June 2021 rejected an internal complaint lodged by the complainant even though he had not been a member of the Organisation's staff since 31 December 2020 and therefore no longer had access to the means of internal redress (see Judgment 4582, consideration 4). Given that the complaint against that decision was dated 15 June 2022, it was not filed with the Tribunal within the period prescribed therefor.

The second complaint, against the decision of 28 June 2021, therefore appears to be irreceivable for failure to comply with time limits.

5. Nevertheless, the complainant seeks to circumvent this irreceivability by arguing that the limitation period for appealing to the Tribunal could not run in his case. He relies on three elements to give credence to his argument.

6. In the first place, he submits that the means of legal redress were not brought to his attention in a sufficiently explicit manner for him to be able to actually make use of them.

However, the Tribunal notes that there is no notification requirement under its Statute or under the Organisation's own rules in relation to means of legal redress.

7. In the second place, the complainant considers that, in the present case, it was all the more important to notify him of the means of legal redress given that there was some uncertainty about the correct legal means of challenging the impugned decisions. In this regard, he refers to precedent, including a judgment of the French-speaking labour court in Brussels of 12 September 2016 in which the court declared that it had jurisdiction to hear a similar claim, and to the approach taken by the Organisation in two previous cases before the Tribunal (which led to Judgments 3845 and 3984), and submits that the delay in filing his complaint before the Tribunal was the result of a legitimate belief that proceedings needed to be brought before the Belgian courts.

However, although there may have been some initial confusion on this point, this was clearly no longer the case by the time the impugned decisions of 25 June 2020 and 28 June 2021 were sent to the complainant. As he himself admits in his submissions, he could not at that time have been unaware of the aforementioned Judgments 3845 and 3984 in which the Tribunal confirmed that it was competent to hear "all disputes" arising between the Organisation and its staff.

8. In the third and last place, the complainant submits that, at the time he filed his complaint with the Tribunal, he was still awaiting the outcome of the promise the Organisation had made to reappoint him and this was the reason why he did not file the complaint sooner.

However, in view of the Tribunal's relevant case law (see, in particular, Judgments 4665, consideration 6, 4253, consideration 6, 3619, considerations 14 and 15, and 3148, consideration 7) and the evidence on file, there is nothing to indicate that, in the present case, a formal promise was made to the complainant by the Organisation to reappoint him at a later date.

9. In the light of all the foregoing, it must be considered that the complaints are irreceivable in their entirety.

It follows that there is, in any event, no need to grant the complainant's request for documents, which concerns the merits of the case.

10. On the basis of Article 7B of the Rules of the Tribunal and Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (GDPR), the Organisation requests that "all names of individuals (and all personal data) are anonymised when any decisions made in this case (judgments [and] orders) are published".

However, pursuant to paragraph 1 of Article 7B of the Rules of the Tribunal, only a complainant or intervener may request anonymity, since they are the only parties whose names are referred to in the Tribunal's judgments.

In addition, in view of its special nature and its specific Statute, the Tribunal is not, in any event, bound by the provisions of EU law, such as those of the GDPR (see Judgments 4493, consideration 10, 4167, consideration 7, and 3867, consideration 2).

As a consequence, it is not appropriate to grant the request made by the Organisation, given that this judgment has not led to the disclosure of the identity of any third parties or of any personal data relating to them.

11. Lastly, the Tribunal considers that, although the complaints are irreceivable, they are not vexatious. It follows that the Organisation's counterclaim for the complainant to be ordered to pay it the "provisional sum of one euro" together with 7,500 euros in costs must be dismissed.

DECISION

For the above reasons,

The complaints are dismissed, as is the OACPS's counterclaim.

In witness of this judgment, adopted on 31 October 2023, Mr Patrick Frydman, President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Mirka Dreger, Registrar.

Delivered on 31 January 2024 by video recording posted on the Tribunal's Internet page.

*(Signed)*

PATRICK FRYDMAN    JACQUES JAUMOTTE    CLÉMENT GASCON

MIRKA DREGER