

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**S.**  
**v.**  
**OACPS**

**137th Session**

**Judgment No. 4759**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr A. S. on 17 August 2021 against the Organisation of African, Caribbean and Pacific States (OACPS) and corrected on 24 September 2021, the OACPS's reply of 17 November 2021, the complainant's rejoinder of 17 December 2021 and the OACPS's surrejoinder of 19 January 2022;

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.

On 22 August 2005 the complainant, a Senegalese national, joined the Organisation as Chief of Protocol and Public Relations at grade P4. He was entirely subject to the OACPS's Staff Regulations and to the Organisation's other rules. The complainant was recruited under a fixed-term contract which expired on 31 December 2007. This contract was extended on three occasions, first until 31 December 2008, then until 31 December 2013 and finally until 31 December 2020. During that time, the complainant also acquired Belgian nationality. By a letter of 25 June 2020 from the Secretary-General, he was informed, as were

various other members of staff, that, as a result of a restructuring exercise within the Organisation, his contract would not be renewed when it expired on 31 December 2020. By a letter dated 3 July 2020, the President of the Staff Association expressed his concern about the letters received by 52 members of staff employed under the OACPS regime, and by 13 other members of staff whose contracts were governed by Belgian law, terminating their employment. He also expressed his surprise that these decisions had been taken before the new organisational structure had been adopted by the Council of Ministers and asked the Secretary-General to allow more time for an “orderly consultative” restructuring. The complainant’s appointment thus came to an end on 31 December 2020, at which point he received the sum of 206,083.86 euros as a termination payment.

On 13 January 2021 a memorandum was sent to former staff members of the OACPS Secretariat further to a meeting that had been convened in December 2020 between the executive management and staff members concerning the termination of certain employment contracts and the possibility of some key staff being offered new short-term contracts. In addition, the memorandum stated that all those being offered new contracts had been informed and that the services of staff who had not been so informed were no longer required. The complainant fell into the second category.

In a letter of 21 March 2021 to the Secretary-General, the complainant challenged the fact that he had not been offered a new contract of employment and also disputed the way in which the restructuring of the Secretariat and the revision of the Staff Regulations was being handled. By letter of 21 April 2021, the Organisation replied that it had ended the employment relationship in accordance with the applicable law and offered to assist the complainant in finding a new job if he was able to come up with a financial solution, for example an investor or grantmaker. By a letter of 17 May 2021 to the Chairman of the Committee of Ambassadors, the complainant contested the decision not to renew his contract. In the absence of any reply, he filed a complaint with the Tribunal on 17 August 2021 impugning an implied decision to reject his internal complaint of 17 May 2021.

The complainant asks the Tribunal to declare his appeal receivable and well founded. He seeks 849,064 euros in damages for the material injury which he considers he has suffered. The complainant also seeks compensation of 200,000 euros for the injury resulting from the discrimination of which he alleges he was the victim, based on his nationality. He claims 50,000 euros for the injury which he alleges he has suffered as a result of the affront to his honour and 100,000 euros in moral damages. In addition, he seeks costs in the amount of 10,000 euros, “including procedural compensation”, and asks the Tribunal to “declare the judgment provisionally enforceable notwithstanding any appeal and without guarantee or delimitation of the claim”.

The OACPS asks the Tribunal to declare that Belgian law is not applicable in this case. It seeks, primarily, the dismissal of the complaint on grounds of irreceivability or lack of jurisdiction on the part of the Tribunal and, subsidiarily, dismissal of the complaint as unfounded. More subsidiarily, it asks the Tribunal to offset any amounts that it may be ordered to pay to the complainant against the sum already paid to him in settlement of his end-of-contract entitlement, that is 206,083.86 euros. Lastly, the OACPS asks that the complainant be ordered to pay the costs of the proceedings, including a procedural compensation of 10,000 euros.

### CONSIDERATIONS

1. Apart from the setting aside of the implied decision rejecting his internal complaint of 17 May 2021, the complainant seeks the payment of various sums to compensate him for the material and moral injury that he alleges he has suffered as a result of both the express decision of 21 April 2021 not to renew his fixed-term contract of appointment and the lack of response to the internal complaint which he lodged on 17 May 2021 with the Chairman of the Committee of Ambassadors.

2. The Organisation considers that the complaint should be dismissed for lack of jurisdiction on the part of the Tribunal or on grounds of irreceivability. In the first place, at the time when the complainant lodged his internal complaint with the Chairman of the Committee of Ambassadors, he had not been a member of the OACPS's staff since 31 December 2020, which means that it was no longer open to him to lodge an internal complaint. In the second place, under Annex VII to the Staff Regulations, a complaint may only be filed before the Tribunal by a member of the Organisation's staff, which the complainant was not when he contested the decision of 21 April 2021 not to offer him a new employment contract. In the third place, to the extent that the complaint should be regarded as impugning the decision taken on 25 June 2020 not to renew the complainant's contract, it should also be considered irreceivable since it challenged a decision which had not been contested internally within the time limit provided therefor. On the one hand, Article 2 of Annex VIII to the Staff Regulations provides that "any complaint by a member of staff shall be made in writing within seven (7) calendar days of the event giving rise to the filing of the complaint", while, on the other hand, Article 3 provides that, if a satisfactory response is not received from the Secretary-General within thirty calendar days, "the member of staff may file his/her complaint with the Chairman of the Committee of Ambassadors". The complainant has failed to show that he complied with these two provisions.

On the contrary, the complainant denies that his complaint should be rejected for lack of jurisdiction on the part of the Tribunal or on grounds of irreceivability. He submits that he is a former member of the OACPS's staff who brought proceedings before the Tribunal for breach of his contract of appointment, having exhausted internal means of redress in relation to the Organisation's decision of 21 April 2021 that refused to acknowledge the discrimination he had suffered as a result of the non-renewal of his contract. Furthermore, his complaint was duly filed within ninety days following the exhaustion of the internal means of redress provided for in Article 22 of the Staff Regulations and in Annex VIII thereto. Although he did not lodge an internal complaint with the Secretary-General of the Organisation until 21 March 2021,

that was because a promise had been made to him, while he was still a member of the Organisation's staff, that a new contract would be offered to him in early 2021. He also notes that the Organisation did not object to the receivability of his internal complaints at the time.

3. The Organisation challenges the Tribunal's jurisdiction to hear the complaint on the grounds that the complainant is no longer a member of the OACPS's staff. However, the Tribunal recalls that, pursuant to Article II, paragraph 6(a), of its Statute, access to the Tribunal is open to any official "even if her or his employment has ceased". This challenge to the Tribunal's jurisdiction will therefore be dismissed.

4. As for the receivability of the complaint, the Tribunal notes that the parties' arguments must be examined on the basis of the Staff Regulations that were applicable at the time the complainant was informed that his employment contract would not be renewed, on 25 June 2020, that is the Staff Regulations adopted on 2 December 2011.

Pursuant to Article 22 of the Staff Regulations, "[a]ny member of staff may make a request to, or lodge a complaint with, the Secretary General concerning his/her personal situation within the Secretariat in accordance with the Internal Grievance Mechanism provided for in Annex VIII of these Staff Regulations" and "[t]he Secretary General may seek the advice of the Grievance Committee as he/she may deem necessary and shall give his/her reasoned decision in accordance with Annex VIII of these Staff Regulations".

Annex VIII to the Staff Regulations, entitled "Internal Grievance Mechanism", provides, *inter alia*, as follows:

- “2. Unless there are other special circumstances, any complaint by a member of staff shall be made in writing within seven (7) calendar days of the event giving rise to the filing of the complaint.
3. In the case where the complaint is about the Secretary General, the member of staff shall first submit his/her complaint to the Secretary General, in writing stating his/her complaint. If a satisfactory response is not received from the Secretary General within thirty calendar days the member of staff may file his/her complaint with the Chairman of the Committee of Ambassadors.”

In the light of these provisions, the Tribunal must note the following.

5. Inasmuch as the complainant sought, in his letter of 21 March 2021, to challenge the decision taken on 25 June 2020 not to renew his employment contract, Article VII, paragraph 1, of the Statute of the Tribunal must be applied and the complaint be declared irreceivable in this regard since the complainant did not exhaust “such other means of redress” as were open to him under the OACPS’s Staff Regulations, within the time limits laid down and in the required form (see, to that effect, Judgments 4634, consideration 2, 3749, consideration 2, and 3296, consideration 10). Although the complainant asserts that he lodged an internal complaint in due time, he provides no evidence of this, and the letter sent to the Secretary-General by the Staff Association on 3 July 2020 cannot be regarded as a complaint within the meaning of the Staff Regulations. Similarly, in view of its relevant case law (see, in particular, Judgments 4253, consideration 6, 3619, considerations 14 and 15, and 3148, consideration 7) and the evidence on file, the Tribunal considers that 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. It follows that the complainant cannot rely on the existence of such a promise to justify his inaction in this regard.

6. Inasmuch as the complainant seeks, in his complaint, to impugn an implied decision not to offer him a new contract at the beginning of 2021, a decision of which he claims to have been unaware until 21 March 2021 despite the express announcement on 13 January 2021 that no new employment contracts would be offered to former members of staff other than those already offered to certain former members, of which the complainant was not one, his complaint must be declared irreceivable as it was filed out of time. The complainant submits that, when he became aware of the implied decision not to offer him a new contract, he lodged an internal complaint on 21 March 2021, which was rejected by letter of 21 April 2021.

The complainant impugns what he asserts to be an implied rejection decision which arose, pursuant to Article VII, paragraph 3, of the Statute of the Tribunal, sixty days from 17 May 2021, the date on which he appealed to the Chairman of the Committee of Ambassadors against the decision of 21 April 2021.

Under Article VII, paragraph 3, of the Statute of the Tribunal:

“Where 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. The period of ninety days provided for by the last preceding paragraph shall run from the expiration of the sixty days allowed for the taking of the decision by the Administration.”

The Tribunal notes that the request submitted by the complainant to the Organisation on 21 March 2021 constituted a claim within the meaning of the aforementioned provisions of Article VII of the Statute of the Tribunal, and that, as already stated, it was responded to on 21 April 2021. Therefore, a decision on the claim was indeed taken within the 60-day period provided for in those provisions, calculated from the date on which the claim was lodged. Therefore, no implied decision arose at the end of that period, and the fact that the complainant had lodged an appeal – itself irreceivable – with the Chairman of the Committee of Ambassadors against the rejection of that claim, to which he refers, has no bearing on this conclusion (see, to that effect, Judgment 4582, consideration 3).

7. The decision of 21 April 2021 was a final decision within the meaning of Article VII, paragraph 1, of the Statute of the Tribunal, given that the complainant, as a former member of the OACPS’s staff, did not have access, under the applicable rules of the Organisation, to the means of internal redress available to its staff.

According to 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 observes that, in the present case, the complaint was filed with the Tribunal on 17 August 2021, after the expiry of the prescribed 90-day time period which began to run from the notification of the decision of 21 April 2021.

Therefore, the claim for the decision of 21 April 2021 to be set aside must be rejected as time-barred (see, to that effect, Judgment 4582, consideration 4).

8. Lastly, inasmuch as the complainant seeks to challenge the restructuring exercise at the OACPS Secretariat and the revision of the Staff Regulations, it must be noted that the complaint is also irreceivable in this regard. It is settled case law that a general decision that requires individual implementation cannot be impugned, save in highly specific situations, and its lawfulness may only be challenged in the context of a challenge to the individual decisions that are taken on its basis (see, for example, Judgments 4734, consideration 4, 4572, consideration 3, 4278, consideration 2, 3736, consideration 3, and 3628, consideration 4). The Tribunal observes that this is not the approach taken by the complainant in the present case.

9. In the light of all the foregoing, the Tribunal considers that the complaint is irreceivable in its entirety.

It follows that there is, in any event, no need to grant the complainant's request for documents or the Organisation's request for certain evidence to be discounted, both of which concern 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, as there is no reason to regard the complaint as vexatious, it is also not appropriate to grant the Organisation's counterclaim for costs.

#### DECISION

For the above reasons,

The complaint is dismissed, as is the OACPS's counterclaim.

In witness of this judgment, adopted on 13 November 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