Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

C. F. N.

v.

IAEA

138th Session **Judgment No. 4827**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr H. C. F. N. against the International Atomic Energy Agency (IAEA) on 1 November 2020, the IAEA's reply of 14 December 2020, the complainant's rejoinder of 5 January 2021 and the IAEA's surrejoinder of 7 April 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 pay him a repatriation grant upon his separation from service.

The complainant joined the IAEA on 27 April 2015, on a Monthly Short-Term (MST) contract. On 1 November 2015, he was appointed as Legal Officer, at the P-3 level, on a Temporary Assistance contract, which was converted into a Fixed-Term contract on 1 January 2017.

In February 2020, the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) reached out to the IAEA, expressing its wish to recruit the complainant. By two emails of 25 February 2020 and 3 April 2020, the IAEA shared with UNRWA,

copying the complainant, the complainant's administrative details, including details on "Service Credits towards Repatriation Grant".

On 17 March 2020, the complainant asked the helpdesk of the Division of Human Resources (MTHR) "when (day/month/year) [he would] reach 5 years of continuous service at the Agency for the purposes of, inter alia, the provisions on repatriation grant". On 18 March 2020, the MTHR helpdesk responded the following: "Your employment with the Agency began on 2015-04-27. You will reach 5 years of continu[ous] service on 2020-04-26, given that you had not taken special leave in between, such as special leave without pay, paternity leave."

On 11 May 2020, the complainant resigned from the IAEA, effective 23 May 2020, to start a new position with UNRWA.

On 19 May 2020, MTHR informed the complainant that he was not entitled to receive a repatriation grant. On the same day, the complainant asked the IAEA to reconsider its decision. On 22 May 2020, the Unit Head, Human Resources (HR) Service Centre, MTHR, wrote to the complainant that, based on Staff Rule 3.03.1(H)(3) of the IAEA's Staff Regulations and Rules and Rule 6.01.01 of the IAEA's Special Staff Rules for Short-Term Staff Members, the period during which the complainant worked for the Agency on a Short-Term contract would not count as qualifying service for the purpose of calculating his eligibility to a repatriation grant, however the IAEA "could potentially still work out a transfer agreement". On 25 May 2020, the complainant replied that he had started his new position with UNRWA on 24 May 2020 and thus rejected the IAEA's offer for a transfer.

By email of 10 August 2020, the Unit Head, HR Service Centre, MTHR, rejected the complainant's 19 May 2020 request for reconsideration on the basis that the complainant did not accrue the required five-year continuous service to become eligible for a repatriation grant. In her email, the Unit Head, HR Service Centre, MTHR, stated that Staff Rule 6.01.1(B)(5), Staff Rule 3.03.1(A) and Staff Rule 3.03.1(I) of the Staff Regulations and Rules "confirm that the Staff Rule 3.03.1(I) places a condition on Staff Rule 6.01.1(B)(5) whereby the qualifying service i.e., five years of continuous service away from the home

country is calculated as of the effective date of the appointment under which the repatriation grant entitlement is payable. Accordingly, the time [the complainant] served under short-term staff appointments does not qualify [him] for the receipt of the Repatriation Grant under Staff Rule 6.01.1(B)(5).” That is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision and to order the IAEA to grant him a repatriation grant in the amount of eight weeks’ salary as per Section 1, Annex II, of the Staff Rules and Regulations. He asks to be awarded moral damages in the amount of 20,000 euros and such other relief as the Tribunal deems appropriate. He also seeks the payment of costs in the amount of 2,500 euros. In his rejoinder, the complainant claims that the IAEA disclosed a privileged document in its reply of 14 December 2020 and requests the payment of 10,000 euros due to the alleged breach of confidentiality.

The IAEA asks the Tribunal to dismiss the complaint in its entirety.

CONSIDERATIONS

1. The complainant began his employment with the IAEA on 27 April 2015 under a Monthly Short-Term (MST) contract, which was converted without interruption into a Temporary Assistance contract on 1 November 2015, and then into a Fixed-Term contract from 1 January 2017 until his resignation with effect from 23 May 2020. On 19 May 2020, the complainant was informed by the Division of Human Resources (MTHR) that he was not entitled to receive a repatriation grant. By email of 10 August 2020, the Unit Head, Human Resources (HR) Service Centre, MTHR, rejected the complainant’s request for reconsideration of the decision of 19 May 2020 on the grounds that he had not completed the required five years of continuous service to be eligible for a repatriation grant. In her email, she explained that the time that the complainant had served under a short-term appointment did not qualify him to receive a repatriation grant under Staff Rule 6.01.1(B)(5), since Staff Rule 3.03.1(I) placed a condition on Staff Rule 6.01.1(B)(5). This is the impugned decision.

2. In his pleas before the Tribunal, the complainant essentially advances two arguments. First, the IAEA erred in finding that the complainant did not meet the criteria for a repatriation grant set forth in Staff Rule 6.01.1(B). The complainant contends that he had completed "five years of continuous service away from the home country" according to Staff Rule 6.01.1(B)(5), which does not differentiate between different types of appointment; there is no express link between Staff Rule 6.01.1(B)(5) and Staff Rule 3.03.1(I); the ambiguous texts of Staff Rule 3.03.1(I) shall be interpreted in favour of the staff member; and a parallel could be drawn between the criteria for payment of a settling-in-grant under Staff Rule 9.03.1(B)(1) and the payment of a repatriation grant. Second, the IAEA breached the principle of *patere legem* by failing to ensure transparency, accuracy and accountability of information and by providing the complainant with a misinterpretation of the relevant Staff Rules and a number of unsubstantiated arguments. Specifically, the complainant was informed by the MTHR helpdesk on 18 March 2020 that he had reached five years of continuous service for the purposes of the repatriation grant, which created a legitimate expectation for him and constituted a promise. The IAEA's failure to correct the wrong information in a timely manner and to provide clarification three days before the complainant's separation from the IAEA was a breach of good faith and transparency.

3. As regards the complainant's first argument, the IAEA submits that the impugned decision is consistent with Staff Rule 3.03.1(I) and Staff Rule 6.01.1(B) on the grounds that Staff Rule 3.03.1(I) covers all entitlements except for step increments and is therefore applicable to the complainant's contractual situation resulting from a conversion of appointments; a plain reading of the relevant provisions and texts does not require any interpretation; and the criteria for the settling-in-grant are irrelevant to the present case. As regards the complainant's second argument, the IAEA contends that the MTHR helpdesk did not mention any undertaking or agreement regarding the repatriation grant. The IAEA submits that the complainant was informed prior to the MTHR helpdesk communication that the service credit towards a repatriation grant did not coincide with the date of his entry on duty at the IAEA,

although there was a typographical error in the administrative details provided by the IAEA to the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), namely the year "2016" instead of "2015". The IAEA further argues that it acted in good faith, as it processed the complainant's resignation ten working days before the termination date, whereas the complainant initially had a three-month notice period that the IAEA agreed to shorten. The IAEA contends that MTHR informed the complainant of the starting date for the service credit towards a repatriation grant seven days after his resignation and before his resignation became effective.

4. The relevant provisions of the IAEA's Staff Regulations and Rules pertaining to the present dispute read as follows:

"**Rule 3.03.1 – Types of appointment**

(A) Staff members of the Agency shall serve under one of the following types of appointment:

(i) Fixed-term appointment;

(ii) Temporary-assistance appointment; or

(iii) Short-term appointment.

[...]

(H) [...]

(3) Staff members holding short-term appointments are subject to the Special Staff Rules for Short-Term Staff Members set forth in [Administrative Manual, Part II, Section 12 (AM.II/12)].

[...]

Conversion of appointments

(I) If an appointment listed in paragraph (A) above is converted into, or followed without interruption by, another type of appointment listed in paragraph (A) above, all entitlements due under the new type of appointment shall be calculated as of the effective date of the new appointment, except when determining step increments, for which preceding periods of continuous service under one or more temporary-assistance or short-term appointments shall be taken into account.

[...]

Rule 6.01.1 – Repatriation grant

(A) For the purposes of payment of repatriation grant under Staff Regulation 6.01 and Annex II to the Staff Regulations, 'obliged to repatriate' shall mean an obligation to return a staff member, upon separation, at the expense of the Agency to a place outside the country of his/her duty station.

(B) A staff member shall be eligible for payment of the repatriation grant if, at the date of separation, the following conditions are met:

(1) he/she is internationally recruited;

(2) he/she is actually relocating;

(3) he/she resides outside his/her country of home leave while serving at the duty station;

(4) he/she does not have permanent residence status in the country of the duty station; and

(5) he/she has completed five years of continuous service away from the home country.

[...]"

In AM.II/12, entitled "Special Staff Rules for Short-Term Staff Members", Staff Rule 6.01.01, which is under the heading "REPATRIATION GRANT', provided that "[s]hort-term staff members shall not be eligible for a repatriation grant".

5. The Tribunal recalls that the principles of statutory interpretation are well established in the case law. The primary rule is that words are to be given their obvious and ordinary meaning (see, for example, Judgments 4681, consideration 5, 4477, consideration 4, 4145, consideration 4, 3310, consideration 7, and 2276, consideration 4). Moreover, as the Tribunal stated in Judgment 3734, consideration 4, "[i]t is the obvious and ordinary meaning of the words in the provision that must be discerned and not just a phrase taken in isolation".

6. The Tribunal finds that the IAEA correctly concluded that the complainant is not eligible for the repatriation grant in accordance with the applicable provisions in its Staff Regulations and Rules. It is true that Staff Rule 6.01.1(B)(5) provides only that "he/she has completed five years of continuous service away from the home country", without mention of the status of conversion of appointments. It is noteworthy, however, that Staff Rule 3.03.1, in particular Staff Rules 3.03.1(H)(3)

and 3.03.1(I), provides the framework for understanding how different types of appointments and conversions between those appointments affect entitlements. Staff Rule 6.01.01 of AM.II/12, "Special Staff Rules for Short-Term Staff Members", referred to in Staff Rule 3.03.1(H)(3), explicitly states that short-term staff members are not eligible for a repatriation grant, thus making a clear distinction between different types of appointments. Meanwhile, there is a clause specifically addressing the conversion of appointments in Staff Rule 3.03.1(I), which provides that all entitlements under the new appointment shall be calculated from its effective date, with the sole exception of the determination of step increments, where service under temporary assistance contracts or short-term appointments shall be counted. Staff Rule 3.03.1(I) provides no other exception. It follows from the obvious and ordinary meaning of this rule that, while the specific entitlement to step increments may take into account the entire period of continuous service, including service time under short-term appointments, all other types of entitlements, including a repatriation grant, must be subject to the strict rule that the period runs from the effective date of the new appointment upon conversion. Given the plain language of the above provisions of Staff Rules 3.03.1(H)(3), 3.03.1(I), 6.01.1(B)(5) as well as Staff Rule 6.01.01 of AM.II/12 and their interrelationship, the phrase "five years of continuous service" as set forth in Staff Rule 6.01.1(B)(5) cannot be read in isolation. It must be interpreted as a period of service that satisfies the requirements contained in Staff Rule 3.03.1(I) and Staff Rule 6.01.01 of AM.II/12. Accordingly, in calculating the "five years of continuous service" for purposes of determining a staff member's eligibility to receive a repatriation grant under Staff Rule 6.01.1(B)(5), the period of service under a Short-Term appointment shall not be counted. The Tribunal further finds that the above provisions are unambiguous and that the complainant's reliance on the principle established in Judgments 3701, 2276 and 1755 that texts which are ambiguous are to be construed in favour of the staff member is therefore misplaced.

The Tribunal also considers that, in interpreting the provisions regarding the repatriation grant, the criteria for the settling-in-grant under Staff Rule 9.03.1(B)(1) are irrelevant to the present case.

The complainant's first argument that he fulfils the criteria for the repatriation grant set forth in Staff Rule 6.01.1(B) is unfounded.

7. With respect to the complainant's second argument, the Tribunal notes that the MTHR helpdesk's response to the complainant's inquiry on 17 March 2020, as to "when (day/month/year) [he would] reach 5 years of continuous service at the Agency for the purposes of, inter alia, the provisions on repatriation grant" was as follows:

> "Your employment with the Agency began on 2015-04-27. You will reach 5 years of continu[ous] service on 2020-04-26, given that you had not taken special leave in between, such as special leave without pay, paternity leave."

8. The Tribunal stated, in consideration 9 of Judgment 4527, that not every statement made by or on behalf of an organisation that is capable of being characterised as a promise gives rise to a legal obligation on the part of the organisation to honour the promise. From the question of what constitutes an actionable breach of promise, the following emerges from that discussion:

> "The various elements of a promise and surrounding circumstances that give rise to a legal liability to honour the promise, are fourfold. The first element is that there must be a promise to act or not act, or to allow. The second element is that the promise must come from someone who is competent or deemed competent to make it. The third element is that the breach of the promise would cause injury to the person who relies on it. The fourth is that the position in law should not have altered between the date of the promise and the date on which fulfilment is due. The third element has two sub-elements. One is that the promisee has relied on the promise and the second is that this reliance has caused injury to the promisee in the event of non-fulfilment of the promise." (See Judgment 4527, consideration 10, citing Judgments 3204, consideration 9, 3148, consideration 7, 3005, consideration 12, 2158, consideration 5, 2112, consideration 7, and 1278, consideration 12.)

9. In the present case, the MTHR helpdesk's response did not satisfy the first element, namely, a substantive promise to act or not to act, or to allow. It is true that the complainant specifically inquired with the MTHR helpdesk about when he would reach five years of continuous service, citing the relevance to the provisions on repatriation grants, and the helpdesk's response was directly in connection to this

inquiry about the repatriation grant. However, the MTHR helpdesk's response was merely a statement with the aim to clarify the calculation of the period, containing no substantive promise to act or not to act, or to allow. Furthermore, the evidence shows that the MTHR helpdesk's response contained a clerical error which was already known to the complainant, invalidating any alleged reliance by the complainant on the helpdesk's clarification. Prior to this communication, the complainant had been furnished with a copy of his administrative details on 25 February 2020, signed by the Section Head, HR Service Section, showing that the complainant's service credit towards a repatriation grant did not coincide with the date of his entry on duty at the IAEA. Despite a typographical error regarding the starting date "2016-11-01" instead of "2015-11-01" in the details, the complainant did not request a corrected version, at that point in time, nor did he indicate that the discrepancy would impact his decision to resign. The clerical error contained in the MTHR helpdesk's response, coupled with the typographical one in the administrative details, was subsequently corrected on 19 May 2020 and then on 10 August 2020, so there are no grounds for the complainant to claim rights from his communication with the MTHR helpdesk (see Judgments 4777, consideration 11, and 3693, consideration 18). Additionally, the communications of 25 February 2020 and 10 August 2020 show that the Section Head, HR Service Section, was the competent authority in this matter, and that it was not the MTHR helpdesk. Accordingly, the second element quoted in consideration 8 was not fulfilled either.

10. There is no persuasive evidence that the IAEA breached its duty of good faith and transparency towards the complainant, given that the complainant resigned on 11 May 2020, ten working days before his termination date, while the IAEA agreed to shorten the complainant's three-month notice period, and the MTHR clarified the starting date of the service credit for the repatriation grant on 19 May 2020, eight days after the complainant's resignation and before his resignation became effective.

The complainant's second argument is unfounded.

11. The complainant's claim for moral damages is dismissed since he has not proven the unlawfulness of the IAEA's act (see, for example, Judgments 4157, consideration 7, 4156, consideration 5, 3778, consideration 4, and 2471, consideration 5). The complainant's new claim in the rejoinder for breach of confidentiality is also dismissed, as a complainant may not enter new claims not contained in the original complaint (see, for example, Judgment 4396, consideration 7).

12. In the foregoing premises, the complaint will be dismissed in its entirety.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 25 April 2024, Mr Michael F. Moore, Vice-President of the Tribunal, Ms Rosanna De Nictolis, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, Mirka Dreger, Registrar.

Delivered on 8 July 2024 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

ROSANNA DE NICTOLIS

HONGYU SHEN

MIRKA DREGER