

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

**A. (No. 2)**

*v.*

**International Federation of Red Cross  
and Red Crescent Societies**

**138th Session**

**Judgment No. 4834**

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr K. M. A. against the International Federation of Red Cross and Red Crescent Societies (“the Federation”) on 20 November 2021 and corrected on 22 January 2022, the Federation’s reply of 9 May 2022, the complainant’s rejoinder of 12 September 2022, the Federation’s surrejoinder of 16 December 2022, the complainant’s further submissions of 3 March 2023 and the letter dated 23 May 2023 by which the Federation informed the Tribunal that it had no additional comments to make on the complainant’s further submissions;

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-extension of his fixed-term appointment.

Facts relevant to this case may be found in Judgment 4833, also delivered in public this day, concerning the complainant’s first complaint.

The complainant joined the Federation in 2007 and held various positions between 2007 and 2017. On 1 April 2017, he started a new position as Regional Disaster Management Delegate in the “Disaster Crisis Prevention, Response & Recovery” (DCPRR) unit of the Federation’s Africa Regional Office based in Nairobi, Kenya, at grade D-2, on a six-month fixed-term contract. The complainant’s fixed-term appointment was renewed for an additional six months, from 1 October 2017 to 31 March 2018. It was then extended twice for a one-year period, from 1 April 2018 to 30 March 2019 and from 31 March 2019 to 31 March 2020.

By a letter dated 3 April 2020 entitled “Notice of non-extension / Extension of contract to give notice”, the Director, Human Resources Department (HRD), notified the complainant that “in line with the discussion [the complainant] had with [his] line manager [...] on 19 February 2020, [his] contract w[ould] not be extended due to lack of funding”. According to the letter, the complainant’s contract – which had expired on 31 March 2020 – would be extended until 30 September 2020 “in order to provide [him] with sufficient notice” but would not be extended beyond that date. The Director, HRD, concluded his letter stating that he “encourage[d] [the complainant] to apply for another suitable position in the Federation by consulting [the Federation’s website] or discussing with Human Resources”. The six-month extension of the complainant’s contract until 30 September 2020 was charged to COVID-19 funds.

On 4 May 2020, the complainant asked for an administrative review of the 3 April 2020 decision. On 3 July 2020, the complainant’s request for an administrative review was rejected.

On 5 August 2020, the Acting Regional Director for Africa informed the complainant that he would be repatriated to his home country a few days later. By email of 7 August 2020, the Director, HRD, ultimately allowed the complainant to remain in Nairobi until the end of his contract. On 30 September 2020, the complainant separated from the Federation.

On 2 October 2020, the complainant lodged an appeal to the Federation's Appeals Commission, directed against the 3 July 2020 decision.

On 24 June 2021, the Appeals Commission submitted its report to the Secretary General, in which it recommended to reject the complainant's appeal. The Commission determined that the non-extension of the complainant's contract "was not an abuse of discretion, as it fel[t] within the Federation's discretion to determine which activities and positions could be funded, consistent with resource constraints and the governing budgetary framework" and that the complainant "ha[d] not shown that the [non-extension of his contract] was a pretext to separate him for reasons other than lack of funding, including as a hidden disciplinary sanction". Specifically, upon reviewing documentary evidence, the Commission found that "no funding was available for the [...] position held by the [complainant] beyond 30 September 2020". It further noted that "there ha[d] been a particularly high demand on donors [...] in light of the COVID-19 pandemic, while at the same time donors [...] had less funding to provide due to their COVID-19 response efforts and domestic financial needs. This reality made it particularly challenging for the [Federation] to obtain funding to allocate to the [complainant]'s position". The Commission also observed that the Federation "upheld its duty of care and acted in good faith towards the [complainant]" with respect to the implementation of the decision not to extend his appointment "in connection with the modalities of his separation from service".

On 23 August 2021, the Secretary General informed the complainant that he had decided to follow the Appeals Commission's recommendation and to reject his appeal. That is the impugned decision in the complainant's second complaint.

In his second complaint, the complainant asks the Tribunal to set aside the impugned decision and the 3 April 2020 decision not to extend his contract beyond 30 September 2020. As material damages, he seeks reinstatement into his position and the payment of his salary with retroactive effect from 30 September 2020, or, alternatively, to be paid one year of salary. He further asks to be awarded 25,000 Swiss francs

in moral damages as well as 15,000 Swiss francs in legal costs. Finally, he requests the payment of interest as well as “[s]uch other redress that the Tribunal deems necessary, just and fair”.

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

### CONSIDERATIONS

1. The complainant challenges the impugned decision, dated 23 August 2021, in which the Secretary General endorsed the unanimous recommendation of the Appeals Commission to dismiss his internal appeal against the decision of 3 July 2020. This latter decision rejected the complainant’s request to review the decision of the 3 April 2020 not to renew or extend his (the complainant’s) last one-year fixed-term appointment, which had expired on 31 March 2020, beyond 30 September 2020 in order to provide him with the required period of notice. In its report, the Commission recommended that all the claims the complainant made in his internal appeal be rejected as it concluded that none of the allegations he made had been substantiated. The Commission also concluded that the decision not to renew the complainant’s contract was justified due to lack of funding; the decision was within the Federation’s discretion to determine which activities and positions could have been funded, consistent with resource constraints and the governing budgetary framework; the Federation’s handling of the decision was in line with its duty of care and of good faith towards the complainant; the complainant had not shown that the decision was a pretext to separate him from service for reasons other than lack of funding and it was not a hidden disciplinary sanction designed to punish him because he had been issued a final letter of warning on the basis of what he claims constituted an unfounded allegation of misconduct.

2. Regarding the non-renewal of fixed-term contracts, Staff Rule 11.5 and Staff Regulation 11.2.1 state that such contracts shall come to an end automatically on completion of the agreed period of service. Staff Rule 11.5 additionally states that the renewal of fixed-

term contracts shall be preceded by advance notice as prescribed in the Regulations established by the Secretary General. Staff Regulation 11.2.2 relevantly states that the end of a fixed-term contract at its normal term does not create a right for the employee to have his or her contract automatically renewed or extended. The Tribunal's case law states that notwithstanding a provision such as Staff Regulation 11.2.2 or a similar provision in a complainant's terms of appointment, the wide discretion an international organization enjoys in deciding whether or not to renew a fixed-term appointment is subject to only limited review as the Tribunal respects the organization's freedom to determine its own requirements and the career prospects of staff (see Judgment 4503, consideration 7). However, the discretion is not unfettered and the Tribunal will set aside such a decision taken without authority; in breach of a rule of form or of procedure; if the decision rested on an error of fact or of law; if some essential fact was overlooked; if there was abuse of authority, or if clearly mistaken conclusions were drawn from the evidence. The case law further states that the Tribunal's role in reviewing a decision not to renew a fixed-term contract for budgetary reasons is limited (see, for example, Judgment 3367, consideration 11).

3. Contending that the impugned decision is tainted with bias, abuse of authority and breaches of good faith, transparency and the Federation's duty of care towards him, the complainant advances the following grounds on which he challenges that decision:

- (1) The Federation failed to make reasonable efforts to find the complainant an alternative employment.
- (2) The Federation failed to provide objective reasons for the non-renewal, as the Disaster Crisis Prevention, Response & Recovery unit (DCPRR) was sufficiently funded.
- (3) The Appeals Commission violated the complainant's right to a hearing.
- (4) The Appeals Commission committed an error of fact or law, or reached a mistaken conclusion when it determined that the non-renewal decision was not an abuse of power and was consistent with the Federation's resources constraints.

- (5) The Federation breached its duty of care and obligations to act transparently and in good faith when it ordered the complainant to leave Nairobi, Kenya, in early August 2020 while he remained a staff member of the Federation until 30 September 2020.

4. Regarding the first ground (that the Federation failed to make reasonable efforts to find him alternative employment) the complainant relies on Staff Regulation 11.5.3, which relevantly states that once it is determined that a post will be abolished, Human Resources (HR) shall make its best efforts to identify alternative employment in the Federation for which the holder of the post may be suitable. The Federation shall also offer reasonable assistance to the employee to help him or her find employment opportunities outside the Federation. He also relies on the case law, in consideration 9 of Judgment 4097, in which the Tribunal addressed the question of an organization's obligations in relation to reassignment by particular reference to Judgment 4036, considerations 7 and 8, citing Judgment 3908. However, neither Staff Regulation 11.5.3 nor these judgments have any bearing on this case. They are concerned with the reassignment of staff members whose posts had been abolished, which is not the case in the present complaint. As the Federation points out, and the facts make clear, the complainant's position was never abolished but could no longer be funded, and, consequently his contract was not extended. Notably, the Tribunal has stated, in consideration 11 of Judgment 4231, for example, that ordinarily, in the absence of a specific provision to the contrary, an organization's duty to reassign a staff member arises when a post is abolished. As there is no specific provision to the contrary, the Federation had no obligation to reassign the complainant.

5. The complainant submits that, given he had served the Federation loyally for over 13 years in multiple duty stations, it had a duty to make reasonable efforts to find him alternative employment prior to his separation, but it failed to discharge that duty. He argues that the Federation applied no processes which were likely to result in his appointment to other positions and its selection process did not consider the fact that he faced the termination of his employment. He

insists that, instead, contrary to Staff Regulation 11.5.3, he was left alone to apply for positions through the normal selection procedure; that he was not reassigned to any position and did not receive any assistance from the Director, HR or the Regional Manager, HR. He explains that, at the time of his separation he had applied for seven positions in the Federation between November 2019 and 4 September 2020, some of which he was shortlisted and interviewed for. He states that he was successful in one of those applications and was offered employment which was later rescinded; he believes that no reasonable efforts had been made to reassign or assist him to be employed in another position because he had been issued with a disciplinary measure. The complainant complains, in particular, that the Appeals Commission did not identify any actions taken by the Federation to assist him to find alternative employment. However, the complainant's statement that at the time of his separation he had applied for seven positions, some of which he was shortlisted and interviewed for and was successful in one of those applications on the basis of which he was offered employment speaks for itself. Additionally, the record shows that the complainant applied for positions on the advice of the Director, HR. On the foregoing bases, the first ground, which includes the complainant's submissions that by not finding him alternative employment, the Federation was biased, abused its authority, acted without transparency, in bad faith or improper motive, is unfounded.

6. In challenging the impugned decision on the second ground, the complainant submits, citing the Tribunal's case law, that the reason the Federation gave for abolishing his position and not renewing his contract was not valid or objective but constituted a pretext to separate him from service because he had been issued with a disciplinary measure and that funding for his position could have been obtained from a variety of sources. It is however necessary to recall that the complainant's position was not abolished but that his contract was not renewed, allegedly, due to lack of funding.

7. Staff Regulation 11.2.4 relevantly states that an employee shall be notified of a decision not to renew or not to extend a fixed-term contract, together with the reasons for that decision. The complainant was informed, in the 3 April 2020 notice letter, that his contract would not be extended due to lack of funding for his position. The complainant refers to the Tribunal's case law which states that a decision not to renew a fixed-term contract must be based on objective and valid grounds and the staff member must be informed in a timely manner of the real reason for the decision. As a preliminary matter, the Tribunal notes that some of the examples he relies upon from the case law are in the context of the abolition of positions and the non-renewal of contracts on the basis of restructuring occasioned by budgetary constraints, however the non-renewal of the complainant's contract was not because of a restructuring exercise. His argument that the Federation did not show an objective basis for not renewing his position is to be seen in that light.

8. Importantly, the complainant refers to consideration 13 of Judgment 3586 in which the Tribunal considered that "[w]hether funds were known to have been available to fund the extension of the complainant [in that case]'s contract [was] a question of fact, which the [internal appeal body] had to determine" and that "[the internal appeal body] could not have simply relied on [the organization]'s assertion that grants were received for specified purposes that did not include funding for the complainant's post". It is apparent to the Tribunal that this is the exercise the Appeals Commission conducted in the internal appeal procedure at hand. The Commission assessed the relevant documents and facts it had gathered from the Federation and from the interviews it conducted, including with the complainant, it made a finding that "no funding was available for the [...] position held by the [complainant] beyond 30 September 2020".

9. In its report, which the Secretary General endorsed in the impugned decision, the Commission set out the parties' submissions on the issue and provided a detailed explanation of the Federation's budgetary framework and the budgetary constraints to which the complainant's position was subjected within the broader context of the



DCPRR unit of the Federation's Africa Regional Office. The Tribunal notes that in its report, the Commission correctly referred, among other things, to Judgment 3163, in which the Tribunal considered a contention that alleged lack of funding for the position of the complainant in that case was due to the diversion of funds for that position, and although funds could have been available, the organization chose for a dubious reason not to use them. In consideration 8, the Tribunal stated the following, and that reasoning can be applied to the present case:

"8. It is unnecessary to descend into greater detail about whether funds were or were not available to fund the complainant's position beyond the beginning of 2010. That is because this Tribunal has set its face against assessing the exercise of a discretionary power, such as the power not to renew a fixed-term contract, unless it is demonstrated that the competent body acted on some wrong principle, breached procedural rules, overlooked some material fact or reached a clearly wrong conclusion (see, for example, Judgments 1044, under 3, 1262, under 4, and 2975, under 15). The substance of the complainant's case on this issue is that other decisions could have been made which would have resulted in funding being available for the position. The error of fact identified in the complainant's submissions does not involve the identification of a material fact assumed by the decision-maker to exist, which did not exist. Rather, she identifies facts which would sustain a decision other than the decision actually made. To impugn the exercise of a discretionary decision-making power by reference to, and based on, the factual matrix in which the decision was made, a complainant must demonstrate something more than that other decisions might reasonably have been made on the known facts. It is necessary to establish that the exercise of the discretionary power miscarried because the decision-maker was led into error by proceeding on a misunderstanding about what the material facts were. As the complainant has failed to do so, this plea must be rejected."

The Commission's statement that the complainant had not shown that the decision not to renew his contract was a pretext to separate him for reasons other than lack of funding, including as a hidden disciplinary sanction, was open to it on its assessment. In the Tribunal's view, the Commission fairly considered the complainant's submissions on the issue raised in the second ground. The Tribunal discerns no reviewable error in the Commission's analysis and conclusion to the effect that the reason the Federation gave for the non-renewal of the complainant's contract was valid and objective and did not constitute

an abuse of authority, as the complainant submitted. By extension, the Secretary General did not err by endorsing its analysis and conclusion on this issue. The second ground is therefore unfounded.

10. It follows that the fourth ground in which the complainant contends that the Appeals Commission committed an error of fact or law, or reached a mistaken conclusion when it determined that the non-renewal decision was not an abuse of power and was consistent with the Federation's resources constraints, is also unfounded. Moreover, his submissions to the effect that the Appeals Commission's findings that a staff member must spend 10 per cent of their time directly implementing a particular project is at odds with the Federation's practice regarding his position and disputing its assertion that his six-month extension funded by COVID-19 funding was funded by sources that were at odds with the Federation's costing principles as it could have been funded by COVID-19 operations, seek to invite the Tribunal to substitute its assessment for that of the Appeals Commission concerning specific elements related to the internal financial operations of the Federation.

11. The issue the complainant raises in the fifth ground is moot because the Acting Regional Director for Africa's 5 August 2020 notification of his imminent departure within a few days, was retracted on 7 August 2020 by the Director, Human Resources Department (HRD)'s email that informed the complainant that he was allowed to remain in the duty station until 30 September 2020.

12. In the third ground, the complainant submits, in substance, that the Appeals Commission prevented him from attending the hearing of the witnesses it called to permit him to test the evidence, and, in any event, that he was not even provided with the statements of such witnesses. This, it did, on the basis that doing so is not foreseen by the Staff Rules and Regulations and had not been its practice.

13. The complainant argues in particular that the Appeals Commission did not disclose to him the statements made by the witnesses it called, including his first line supervisor, who was the Head

of DCPRR; the former Deputy Regional Director for Africa, and three other witnesses he (the complainant) had proposed and found that their evidence concerning the availability of funding the extension of his contract was speculative at best, but the Commission did not give him an opportunity to comment on their statements relying instead on confidential witness interviews to diminish his evidence. He also complains that the Commission dismissed the possibility that his position could have been funded in other ways and accepted the evidence of the Head of DCPRR and the former Deputy Regional Director for Africa, both of whom could not be considered as disinterested parties as they were giving evidence to support the decision not to renew his contract.

14. The Federation relies on Judgment 4408, where the Tribunal concluded, in consideration 4, that an interview conducted as an “investigative measure” to enable an appeal body to obtain general information not relating specifically to the situation of the complainant was not a hearing where the complainant was required to be present or where the content of the discussion had to be disclosed to him or her. The Federation argues that the complainant’s submissions are based upon what it refers to as his mischaracterization of the process the Appeals Commission conducted. In effect, the Federation’s central submission on this issue is that the interviews the Appeals Commission conducted were of a (general) technical nature and/or were about the Federation’s budgetary framework and thus, constituted “investigative measures”, as this expression is used in Judgment 4408.

15. The Tribunal notes that there are no records of the interviews in the file and that there is no evidence that the complainant was given access to the statements of the persons who were interviewed by the Appeals Commission. While the Appeals Commission’s report is almost silent about the content of those interviews, its statement that “[e]ach of [the witnesses] confirmed to the Panel that the [complainant] had approached them in trying to mobilize funds to support the extension of his contract [but that however], according to each of the interviewees, these discussions did not go beyond an exploratory and tentative stage” tends to demonstrate that the interviews were not about

the Federation's budgetary framework but about the specific situation of the complainant and the decision not to extend his contract. In these circumstances, the Tribunal considers that the complainant had a right, at least to have been apprised of the content of the interviews and to provide his comments if he so wished. Since this was not done, the complainant's right to be heard was violated. The third ground is therefore well founded and the impugned decision of 23 August 2021, which endorsed the Appeals Commission's report and recommendation will be set aside, without there being any need to examine the other pleas on this ground. However, the Tribunal will not remit the case to the Federation for the internal appeal to be reconsidered as it is satisfied that the reason provided for the non-renewal of the complainant's contract is supported by the evidence in the record. The complainant is however entitled to an award of moral damages for the procedural flaw in the internal appeal procedure. For this, which is an infringement of due process, he will be awarded 15,000 Swiss francs. He is also entitled to 10,000 Swiss francs in costs.

16. The complainant's claim to be awarded such other redress that the Tribunal deems necessary, just and fair, should be rejected as it is too vague to be receivable (see, for example, Judgment 4602, consideration 8).

#### DECISION

For the above reasons,

1. The impugned decision of 23 August 2021 is set aside.
2. The Federation shall pay the complainant 15,000 Swiss francs in moral damages for the procedural flaw in the internal appeal procedure.
3. It shall also pay him 10,000 Swiss francs in costs.
4. All other claims are dismissed.

In witness of this judgment, adopted on 9 May 2024, Mr Michael F. Moore, Vice-President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Rosanna De Nictolis, 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

HUGH A. RAWLINS

ROSANNA DE NICTOLIS

MIRKA DREGER