

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

S.

v.

**Global Fund to Fight AIDS, Tuberculosis
and Malaria**

138th Session

Judgment No. 4912

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr J.-D. S. against the Global Fund to Fight AIDS, Tuberculosis and Malaria (“the Global Fund”) on 12 January 2024;

Considering the documents produced by the Global Fund on 9 February 2024 at the request of the President of the Tribunal under Article 7, paragraph 2, of the Tribunal’s Rules;

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 worked for the Global Fund at various times between April 2015 and June 2017. In February 2019, he was hired again to work as a consultant in the Office of the Inspector General (OIG) under an “Indefinite Quantity Contract” concluded between the organisation and a recruitment agency based in Switzerland. The services he provided were the subject of purchase orders submitted by the Global Fund to the recruitment agency. Pursuant to the terms of the “Indefinite Quantity Contract”, disputes between the parties were to be resolved by arbitration. The complainant obtained several extensions of

his assignment contract with the recruitment agency and his employment eventually ended on 8 November 2019.

2. On the complaint form, the complainant indicates that he is impugning an express final decision of 30 (*recte* 20) October 2023 from the Chair and Vice-Chair of the Ethics and Governance Committee rejecting allegations of impropriety, retaliation and conflict of interest which he had raised pertaining to events that purportedly took place in 2019, that is to say while he was working as a consultant under the contract concluded between the Global Fund and the aforementioned recruitment agency.

The complainant requests the Tribunal to set aside the “Global Fund’s decision to not renew [his] fixed-term contract”, to instruct the organisation to reinstate him in his job and to reimburse him the salaries and the unemployment insurance benefits that he would have received “had OIG honored its commitment”, to annul the decisions rejecting his allegations of impropriety, retaliation and conflict of interest and to award him moral and exemplary damages.

3. The Tribunal notes that it is clear enough from the complainant’s pleas and claims that he is in fact challenging the non-renewal of his contract rather than the decision of 20 October 2023. However, at the material time, there was no contractual relationship between him and the Global Fund. Therefore, there is, in any event, no basis on which he can be considered as an “official” of the defendant organisation for the purposes of Article II, paragraph 5, of the Tribunal’s Statute, according to which “[t]he Tribunal shall [...] be competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials”.

Had there been an agreement between the complainant and the Global Fund for the provision of his services as a consultant, the organisation could, in theory, have stipulated that the Tribunal was competent to hear disputes arising out of that agreement (see, for example, Judgment 4652, consideration 21), but that is not the case here.

4. It follows from the foregoing that the complaint must be summarily dismissed, in accordance with the procedure set out in Article 7 of the Rules of the Tribunal, as being clearly outside the Tribunal's competence.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 24 May 2024, 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 8 July 2024 by video recording posted on the Tribunal's Internet page.

PATRICK FRYDMAN

JACQUES JAUMOTTE

CLÉMENT GASCON

MIRKA DREGER