

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

A.
v.
OACPS

135th Session

Judgment No. 4582

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms A. A. on 5 October 2020 against the Organisation of African, Caribbean and Pacific States (OACPS), the OACPS's reply of 8 December 2020, the complainant's rejoinder of 2 February 2021 and the OACPS's surrejoinder of 19 April 2021;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions:

Considering that the facts of the case may be summed up as follows:

The complainant seeks the reclassification of her employment contracts. She also claims that she was the victim of harassment and seeks compensation for the injury she alleges to have suffered.

Having spent five years working as a consultant for an external entity at the Secretariat of the OACPS, the complainant, a Belgian resident and dual national of France and Burkina Faso, was recruited locally on a temporary basis to work for the Secretariat in the role of "Expert, Cultural Affairs" at grade P3, step 4, from 1 January 2018 until 30 June 2018. Her contract specified that the employment relationship was governed by the Belgian Law of 3 July 1978 on employment contracts. The complainant was re-employed between 1 September 2018 and 28 February 2019 and between 1 March and 31 May 2019 on

the same terms as those of her initial contract. In May 2019, having been informed that her employment with the OACPS would come to a definite end on 31 May 2019, she challenged the failure to select her following a competitive process for the post of “Expert, Cultural Affairs, Migration, Urbanisation and Demography” at grade P4, and requested a “responsibility allowance” for taking on additional tasks on an interim basis. By letter of 29 May 2019, the complainant was informed that her request for an allowance had been granted. As a consequence, the post that she held at grade P3, step 4 was retroactively reclassified to grade P3, step 9 and she received an additional salary payment of 20,847.84 euros when her contract ended on 31 May 2019.

On 19 September 2019 the complainant initiated proceedings against the OACPS before the French-speaking labour court in Brussels. She sought, inter alia, the reclassification of her employment contracts as contracts of indefinite duration under the “OACPS regime”. She also alleged that she had been the victim of moral and sexual harassment, of physical violence and various acts of discrimination due to the nature of her contracts. In its judgment of 15 April 2020, the labour court declared that it did not have jurisdiction to hear the complainant’s claims and ordered her to pay the costs of the Secretariat-General of the OACPS by way of procedural compensation. In a further judgment of the labour court delivered on 1 September 2020, that compensation was set at 1,200 euros.

By letter of 12 June 2020, the complainant lodged with the Secretary-General an internal complaint in which she alleged that she had been the victim of discrimination due to the nature of her contracts and in the context of a recruitment procedure. She also stated that, on three occasions in 2018, she had been sexually assaulted by the former Secretary-General, whose appointment had expired at the end of February 2020. On 19 June 2020, counsel for the OACPS informed the complainant that, due to the unfounded allegations that she had made against the former Secretary-General and to her conduct which was liable to harm the reputation of the OACPS, criminal proceedings had been initiated against her. It was also pointed out to her that she was not a member of staff, that her internal complaint did not refer to any

administrative decision taken by the Secretary-General and that it did not contain any arguments. By letter of 16 July 2020, the complainant, relying on Article 22 of the Staff Regulations and Annex VIII to those regulations, sent her letter of 12 June 2020 to the Chairman of the Committee of Ambassadors.

On 5 October 2020, in the absence of any response from the Organisation, the complainant filed the present complaint with the Tribunal pursuant to Article VII, paragraph 3, of the Statute of the Tribunal, impugning what she considered to be an implied rejection decision.

The complainant asks the Tribunal to award her the sum of 601,260 euros by way of damages for the injury caused by the failure to reclassify her contract of employment as a contract under the OACPS regime and the consequences thereof. She also claims 60,126 euros in compensation for the material damage caused by the discrimination which she alleges to have suffered and 120,000 euros for moral injury, as well as 10,000 euros for failing to protect her against the alleged harassment. Furthermore, the complainant seeks an award of 10,000 euros in costs and asks the Tribunal to declare the judgment provisionally enforceable “notwithstanding any appeal and without guarantee or delimitation of the claim”.

In her rejoinder, the complainant also asks the Tribunal to order the OACPS to pay her the sum of 4,000 euros for perversion of its right of reply.

The OACPS asks the Tribunal to declare that the law applicable to the matter in question is Belgian law. It seeks, primarily, the dismissal of the complaint on grounds of irreceivability and, subsidiarily, asks the Tribunal to declare that it lacks jurisdiction *ratione materiae* to rule on matters, in particular fiscal matters, relating to the complainant’s contracts and her previous status with the Organisation. In addition, the OACPS asks the Tribunal to order the complainant to pay the sum of 100,000 euros in damages *ex aequo et bono*, consisting of 40,000 euros for lawyer’s and bailiff’s costs and 60,000 euros in respect of the harm done to its reputation. It also asks the Tribunal to order the complainant to pay a penalty of 50,000 euros per day and “on every occasion, following the judgment, that she makes allegations to third parties

suggesting that she was harassed, abused or discriminated against by/at the OACPS”. It requests that the complainant be ordered to pay the costs of the proceedings, including procedural compensation of 10,000 euros on the grounds that the complaint was, *prima facie*, filed in bad faith.

In the alternative, in the event that the Tribunal determines that the legal regime applicable to the complainant’s employment contracts is that of the OACPS, the Organisation points out that the complainant will be liable to tax under the “OACPS regime” for the period in question and reserves the right to deduct amounts equivalent to the benefits that the complainant received under the Belgian regime together with the sum of 20,847.84 euros paid to the complainant when her final contract ended.

CONSIDERATIONS

1. The complainant asked for an oral hearing to be held but, in view of the large quantity of submissions and evidence produced by the parties, the Tribunal considers itself to have sufficient written information to be able to rule on the matter. It is therefore unnecessary to grant this request.

2. The Organisation challenges the Tribunal’s competence to hear the complaint. However, the Tribunal recalls that, under Article II, paragraph 6(a), of its Statute, the Tribunal is open to any official, “even if her or his employment has ceased”. The challenge to the Tribunal’s competence will therefore be dismissed.

3. The complainant impugns what she asserts to be an implied rejection decision which arose pursuant to Article VII, paragraph 3, of the Statute of the Tribunal sixty days after she submitted her appeal to the Chairman of the Committee of Ambassadors by means of a letter of 16 July 2020.

However, the Tribunal notes that the complainant had made an internal complaint to the Secretary-General on 12 June 2020, to which she received a response from the Organisation on 19 June 2020, followed by a letter which can be regarded as a rejection decision.

According to 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.”

It follows from the above that, in the present case, a decision on the complainant’s internal complaint was taken by the administration of the Organisation within the 60-day period laid down by that provision, calculated from the date that the internal complaint was lodged. Therefore, no implied decision arose at the end of that period, and the fact that the complainant had appealed to the Chairman of the Committee of Ambassadors against the rejection, to which she refers, of that complaint has no bearing on this conclusion.

4. The decision of 19 June 2020 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 official of the OACPS, 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 notes that, in the present case, the complaint was filed with the Tribunal on 5 October 2020, after the expiry of the prescribed 90-day time period which began to run from notification of the decision of 19 June 2020.

Therefore, the complaint must be rejected as time-barred and hence irreceivable, without there being any need to examine the other objections to receivability raised by the Organisation or to rule on the Organisation's request for certain items of evidence submitted by the complainant to be disregarded.

5. In the circumstances of the case, the Tribunal can find no reason to allow the various counterclaims made by the OACPS.

DECISION

For the above reasons,

The complaint, and the counterclaims made by the OACPS, are dismissed.

In witness of this judgment, adopted on 17 November 2022, Mr Patrick Frydman, Vice-President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 1 February 2023 by video recording posted on the Tribunal's Internet page.

(Signed)

PATRICK FRYDMAN JACQUES JAUMOTTE CLÉMENT GASCON

DRAŽEN PETROVIĆ