

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

D.
v.
FAO

137th Session

Judgment No. 4811

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms C. C. A. D., as successor of the late Mr P. S. K., against the Food and Agriculture Organization of the United Nations (FAO) on 13 June 2023 and corrected on 11 July 2023;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal and Article 7 of its Rules;

Having examined the written submissions;

CONSIDERATIONS

1. The complainant is the widow and successor of Mr P. S. K., a former consultant for the FAO, who died on 8 December 2019 while on official travel to Douala (Cameroon) on the Organization's behalf.

2. In her complaint, she impugns the Director-General's decision of 13 March 2023 dismissing as irreceivable and unfounded her internal appeal against the decision of 9 February 2021 – taken further to a recommendation issued by the Advisory Committee on Compensation Claims – informing her that the incident leading to her husband's death had not been recognised as attributable to the performance of official duties and that she therefore was not entitled to

claim compensation pursuant to Section 342 of the FAO Manual on compensation for death, injury or illness.

In the impugned decision, the Director-General entirely endorsed the unanimous recommendation, issued by the Appeals Committee on 16 November 2022, to dismiss the complainant's appeal in its entirety as irreceivable *ratione temporis*.

3. FAO Staff Rule 303.1.311 entitles staff members to refer to the Director-General an administrative decision that adversely affects them. Under Staff Rule 303.1.314, staff members who do not serve at Headquarters have 60 days from the date of receipt of the Director-General's reply to lodge an appeal with the Appeals Committee. That time limit also applies to any person to whom a staff member's rights have devolved on her or his death.

4. In the present case, the Tribunal notes firstly that Mr K.'s consultancy contract expressly provided that the provisions of Section 331 of the FAO Manual on internal appeals – which in turn referred to the provisions mentioned in consideration 3, above – applied to any dispute that might arise. It follows that the complainant, as the successor of the staff member concerned, was bound to follow the appeals procedure laid down in these provisions and, in particular, to comply with the prescribed time limits.

5. The Tribunal further notes that on 23 March 2021 the complainant lodged an appeal against the aforementioned decision of 9 February 2021 with the Director-General, in accordance with Staff Rule 303.1.311. By letter of 21 May 2021, the Deputy Director-General dismissed her appeal but stated that she had a time limit of 60 days to lodge an appeal with the Appeals Committee. The complainant did not do so until 23 July 2021, three days after the time limit had expired, and therefore did not comply with the requirements of Staff Rule 303.1.314.

6. In its report of 16 November 2022, the Appeals Committee sought to ascertain whether the late lodging of the appeal owed to “reasons beyond the [complainant’s] control” within the meaning of Staff Rule 331.3.31 such as to justify an exception to the requirement for time limits to be met. However, it observed that the complainant had been informed unambiguously, and on several occasions, of the internal appeals procedure and so the “lack of information” that she alleged had not been established. The Committee found that there were no circumstances warranting a waiver of the aforementioned rule and that therefore the internal appeal was irreceivable because it was time-barred.

7. The Tribunal entirely agrees with the findings and recommendation of the Appeals Committee, which the Director-General followed in the impugned decision, and recalls that time limits are an objective matter of fact and strict adherence to them is necessary to ensure the stability of the parties’ legal relations (see, for example, Judgments 4673, consideration 13, 4374, consideration 8, 4184, consideration 4, and the case law cited therein).

According to the Tribunal’s firm precedent based on the provisions of Article VII, paragraph 1, of its Statute, the fact that an appeal lodged by a complainant was out of time renders her or his complaint irreceivable for failure to exhaust the internal means of redress, which cannot be deemed to have been exhausted unless recourse has been had to them in compliance with the formal requirements and within the prescribed time limit (see Judgments 4655, consideration 20, 4160, consideration 13, and 4159, consideration 11, as well as, for example, Judgments 2888, consideration 9, 2326, consideration 6, and 2010, consideration 8). As the complainant’s appeal of 23 July 2021 was lodged late, the present complaint is clearly irreceivable.

8. It follows from the foregoing that the complaint must be summarily dismissed in accordance with the procedure provided for in Article 7 of the Rules of the Tribunal.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 17 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