

COMPLAINTS BOARD OF THE EUROPEAN SCHOOLS

Reasoned Order of 4 April 2024

In the case registered with the Registry of the Complaints Board under No **23/37**, concerning a direct contentious appeal questioning the disparity of the working conditions in the European Union and within the European Schools system, lodged on 02 July 2023 by [REDACTED] acting as "*Locally Recruited Secondary Teacher Representative* - [REDACTED]

Mr Paul RIETJENS, judge rapporteur designated by the Chairman of the Complaints Board, to rule by means of a reasoned order under the conditions laid down in Article 32 of the Rules of Procedure, according to which: "*Where the Complaints Board is manifestly lacking in jurisdiction to hear a complaint or where a complaint is manifestly inadmissible or manifestly unfounded in law, a ruling may be given, without continuing the proceedings, by way of a reasoned order made by the Chairman or the rapporteur designated by him*",

assisted by Ms Nathalie Peigneur, registrar, and Mr Thomas van de Werve d'Immerseel, legal assistant,

issued the reasoned order on 4 April 2024, the grounds for and operative part of which appear below,

Main facts of the case and arguments of the appeal

1.

On 02 July 2023, [REDACTED] acting as "*Locally Recruited Secondary Teacher Representative*" - [REDACTED] on behalf of 61 Locally Recruited Teachers (hereinafter LRT), including himself, submitted a direct contentious appeal questioning the disparity of the working conditions in the European Union and within the European Schools system.

2.

The applicant first presents the historical role of the LRT within the European Schools system (they complete the teaching staff when the posts cannot be offered to seconded teachers), and underlines the fact that the LRT now represent more than 50% of the teaching staff (only 25 % in the past) and that many of them now have full-time contracts (instead of part-time contracts in the past), fulfilling identical teaching positions as the seconded teachers.

According to the applicant, despite this evolution, the LRT contracts and working conditions have not been significantly adapted: many LRT contracts fail to meet the minimum standards outlined in Directive (EU) 2019/1152, based on the European Pillar of Social Rights. This Directive has been adopted by all the EU Member States, under the control of the EU Commission, but not within the ES system because the Board of Governors has failed to adapt and review the LRT working conditions. There is a growing gap between the European directives on working conditions and the working conditions offered to the LRT, leading to "*unequal and precarious working conditions for a significant proportion of ES staff*".

3.

The applicant also exposes that the Board of Governors is committed to reducing the number of LRT to 35% by the end of the school year 2024/2025 and *"to replace approximately 15% of the teaching workforce of the ES, equivalent to 30% of the LRT"*.

He argues that an LRT could easily lose his/her full-time teaching post in order to be replaced by a seconded teacher, because of the weakness of the LRT working conditions and because of the disparity of the working conditions in the European Union and within the European Schools system.

He concludes that the LRT are less protected than other workers in the European Union because the Board of Governors has failed, over the years, to reflect the minimum standards of the European employment laws by updating the working conditions and the Service Regulations for the LRT.

4.

In conclusion, the applicant requests that the Complaints Board instruct the Board of Governors to:

- review the LRT working conditions and update their contracts in line with the current European labour laws;
- freeze the reduction process of LRT within the system until they have updated their Service Regulations;
- compensate the LRT who have suffered from the negative consequences of the disparity between the European Schools rules and the EU employment laws and principles (i.e. losing their employment or substantial work hours, lack of opportunities for progression in the system etc.).

Assessment of the designated judge rapporteur

5.

This appeal is inadmissible under the provisions of Article 32 of the Rules of Procedure for the Complaints Board mentioned above, for different reasons.

6.

Concerning the admissibility *ratione personae* and the capacity of [REDACTED] to represent the 60 other LRT of the [REDACTED]

This appeal was lodged on 02 July 2023 by [REDACTED] acting as "*Locally Recruited Secondary Teacher Representative*" - [REDACTED] and acting on behalf of 61 LRT, including himself.

On 21 September 2023, he wrote to the Registry: "*I have found employment outside of the traditional ES system*" and asked for any email communication related to the case to be sent to his private email.

The Registry asked him twice to indicate the name of the new LRT [REDACTED] representative or the name of the lawyer who will continue the proceedings on their behalf.

[REDACTED] insisted to remain the point of contact for the proceedings arguing that he initiated the proceedings as LRT's representative, that no one else would have the mandate or competence to take the case forward and that he was prevented from carrying out his mandate in good time by lack of information and consultation from the Direction.

Article 12 of the Rules of procedure of the Complaints Board states that: *"Individuals or groups of individuals may submit applications, acting either for themselves or through a lawyer"*.

Article 14 states that *"Where an application is submitted by a group of individuals, it shall be signed by the person or persons authorised to represent the group"*.

And Article 15 states that *"All applications lodged with the registrar of the Complaints Board must contain: a) the name and address of the applicant and, where applicable, the name and address of his representative; (...)"*.

It follows from these provisions that when a group - in this case the Locally Recruited Teachers (LRT) of the secondary cycle at the School [REDACTED] who have not formed an association - makes use of the possibility of submitting a single application whereby one member of the group is tasked with representing them, the representative must be one of the group, and if this individual loses this status during the proceedings, a new representative must be designated for the group.

However, the file documents show that [REDACTED] is no longer entitled to act on behalf of the LRT [REDACTED] he is no longer the LRT [REDACTED] representative, he has left the ES system, and he is not a lawyer with an *ad litem* mandate.

Furthermore, in response to the request sent to him by the registry of the Complaints Board, [REDACTED] indicated that there was no other representative. As he is unable to justify his role in representing the teachers whose names are stated in the appendix to the application, without any other

information making it possible to contact them or confirm their consent to undertake these proceedings, the application as presented on behalf of these teachers is clearly inadmissible.

8.

Concerning [REDACTED]'s interest in taking legal action,

It is settled case law that for an appeal to be admissible, the applicant must prove a personal, innate and current interest in taking legal action.

This means that there can be no recourse to an appeal for the sole purpose of the defence of legality. The applicant must demonstrate the existence of a clearly defined act which is prejudicial to him/her.

The Complaints Board has also stated, on several occasions, its position on this matter, thereby echoing the general qualification of the Court of Justice of the European Union concerning the concept of an act adversely affecting persons in civil service disputes. According to this qualification, only those measures giving rise to mandatory legal effects which affect, both directly and immediately, the interests of the applicant by significantly modifying the legal situation of the applicant and by framing a final and definitive position of the administration with regard to the applicant's personal situation (see, among others, the decision of the Complaints Board 16/58, and in particular point 17 and the references to European case law that it contains) may be deemed "*act adversely affecting persons*", which may be subject to an annulment appeal.

In this case, however, the documents in the file demonstrate that [REDACTED] does not indicate any tangible administrative act or any specific measure which has generated any legal effects pertaining to him as described above.

He does not, therefore, prove any interest entitling him personally to take legal action within the framework of the current appeal.

9.

Concerning the disputed act and the form of order sought by the applicant,

Article 51, 1 and 2 of the Service Regulations for the Locally Recruited Teachers in the European Schools states that:

"1. The Complaints Board shall have sole jurisdiction in any dispute between the School and locally recruited teachers regarding the legality of an act implementing these Service Regulations adversely affecting them.

2. Without prejudice to the particular provisions of Chapter VIII of these Service Regulations, a contentious appeal to the Complaints Board shall lie with it only:
- if an administrative appeal within the meaning of Article 50 of these Regulations has been lodged with the Secretary beforehand
and
- if an express or implied decision rejecting the said administrative appeal has been taken".

(emphasis added)

10.

According to Article 15 of the Rules of procedure of the Complaints Board:

"All applications lodged with the registrar of the Complaints Board must contain:

(...)

*b) a **description** of the disputed act"*

(...)

d) the form of order sought by the applicant.

(...)"

*The appeal must also be accompanied, unless evidence of the impossibility of doing so is duly provided, by **the copy of the disputed decision or**, if it is an*

*implicit decision, of the document proving **evidence of the lodging of a preliminary administrative appeal.***"

(emphasis added)

11.

However, in light of the documents in the file, it is not clearly identified which "*act adversely affecting persons concerning the current status [of the LRTs]*" is subject to dispute, regarding the legality of such an act, between the School and the applicant and/or the group of teachers that he claims to represent.

Nor is the application accompanied by a copy of the contested decision or by the document proving that an administrative appeal has previously been filed and that the latter has been implicitly or explicitly rejected (see also point 16 below).

The applicant merely indicates, in very general terms, what he perceives as a failure in the working conditions of the teachers in that their contracts are deemed not to meet the minimum standards stipulated by an EU Directive dated 20 June 2019, itself based on the principles contained in the "*European Pillar of Social Rights*" (2017). To illustrate his statement, the applicant refers to the principles indicated in a financial commitment ("*Cost Sharing Agreement*"), adopted by the Board of Governors in 2019 and noted in its "Annual Activity Report 2022", which states that "*the members of the Board of Governors commit to reaching the ratio of 65% of seconded teachers and 35% of locally recruited teachers over the period September 2020 - September 2025 (...)*" (cf. principle 6, page 41 of said report). Furthermore, according to the applicant, the implementation of this policy of reducing the proportion of locally recruited teachers in the European Schools system can only be made possible by the weak nature of their contracts.

However, the applicant does not provide any proof of the existence of tangible cases in which the locally recruited teachers at [REDACTED] occupying *long-term, full-time posts* have lost teaching hours and/or have been replaced by seconded members of staff due to the implementation of the aforementioned policy, therefore causing them to contest the individual prejudicial decisions by filing administrative appeals with the Secretary-General, which have been rejected.

Moreover, it is clear that in the conclusion to his direct contentious appeal, the applicant merely requests that the Complaints Board instructs the Board of Governors *"to review the LRT working conditions and update their contracts, to freeze the reduction process of LRT until that review is complete and to compensate those who suffered from the negative consequences of the weakness of their contracts"*.

12.

In light of these conclusions made by the applicant, it is important to recall the powers of the Complaints Board.

Pursuant to the terms of Article 27.2 of the Convention defining the Statute of the European Schools, confirmed by the settled case law of the Complaints Board, the latter shall have sole jurisdiction in the first and final instance in any dispute regarding *"the legality of any act based on the Convention or rules made under it, adversely affecting such persons"*.

As a judicial body, the Complaints Board therefore has the power to cancel an individual act adversely affecting persons.

It is neither intended, nor has the jurisdiction, to play the role of mediator, to issue injunctions to the bodies of the European Schools or to question the

Board of Governors (see, in this regard, its decision 20/69).

Furthermore, it does not lie within its purview to rule on an abstract dispute between a school and its members of staff concerning any question of a general nature.

13.

It follows from these considerations that the present appeal can only be rejected, whether its purpose is read as a request to instruct the Board of Governors or as a request to cancel certain provisions of the Service Regulations for the LRT currently in force (cf. document 2016-05-D-11-fr-12, approved by the Board of Governors by written procedure 2016/12).

14.

It should furthermore be recalled that the Complaints Board has, in the past, already declared an appeal inadmissible in which the applicants requested, individually, the cancellation of the new Service Regulations for the LRT. On this matter, the Complaints Board stipulated that: *"It is a collection of general provisions which do not state a position on the individual situations of the latter which, at all events, are admissible to cite the illegality of such or such provision through an appeal against the decisions concerning them personally."* (in this respect, see its decision 16/58).

15.

In the present case, if the Director of [REDACTED] School had taken the decision to reduce the teaching hours or not to renew the contract of one or other of the 61 LRT teachers, this prejudicial individual decision could be contested in accordance with the appeals procedures stipulated in Articles 50 and 51 of the

Service Regulations for the LRT, if necessary raising an objection of illegality of the regulatory provisions on the basis of which the individual decision was taken.

As the right to an effective appeal and effective legal protection are thus guaranteed, there are no grounds in this case to admit the present appeal in that it would be directed against general provisions, such as those of the Service Regulations for the LRT, and in particular those relating to recruitment and the conclusion of contracts (Chapter II), to the duration of employment (Chapter III) and to the working conditions (Chapter V).

16.

Concerning the absence of a previous administrative appeal,

Finally, it should be recalled that the statutory mandate of the Complaints Board can, in principle, only be exercised in the conditions and in line with the terms determined by the legislation to which they refer.

Be it through the application of the provisions of the General Rules of the European Schools (Articles 66 and 67) or through the application of the Service Regulations for the LRT (Articles 50 and 51), any contentious appeal before the Complaints Board must first be preceded by an administrative appeal.

In this case, the present contentious appeal was not preceded by an administrative appeal.

17.

In conclusion, for all the reasons pointed out above, the current appeal can

only be dismissed as inadmissible.

ON THESE GROUNDS, the designated judge rapporteur

D E C I D E S

Article 1: The appeal of [REDACTED] either acting as "*Locally Recruited Secondary Teacher Representative*" - [REDACTED] or acting on his own behalf, registered under No **23/37**, is dismissed.

Article 2: This reasoned order shall be notified in accordance with the conditions under Articles 26 and 28 of the Rules of Procedure.

P. Rietjens

Brussels, on 4 April 2024

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On behalf of the Registry,
Nathalie Peigneur

Under Article 40a of the Rules of Procedure, this order "*may exceptionally be referred to a section composed of three members at the express request of a party based on a particularly serious ground and made within one month after notification of the decision given.*"