

Appeal 23/25

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. **23/25**, concerning an appeal pertaining to "*recruitment procedure irregularities*", lodged on 23 June 2023 by [REDACTED] acting as [REDACTED]

Ms Brigitte Phémolant, Chairman of the second section and 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 23 June 2023, [REDACTED] acting as "*Locally Recruited Secondary Teacher Representative*" - [REDACTED] on behalf of 61 Locally Recruited Teachers (hereinafter LRT) - including himself -, has submitted a direct contentious appeal before the Complaints Board.

He argues that two seconded teachers have been illegally recruited (hereinafter "*hors cadre*") at the European School of [REDACTED] (hereinafter ES [REDACTED] or the School) for the 2023-2024 school year.

He submits, in essence, that the legal or regulatory framework for the recruitment of seconded staff (Article 12, 4a. of the Convention defining the statute of the European Schools and Article 4 of the Regulations for Members of the Seconded Staff of the European Schools) has not been followed.

Namely, the two posts were not identified as a requirement and requested by the School, neither approved by the Administrative Board of the School, neither approved by the Board of Governors. The recruitment process by the Member States is then invalid because they recruited for a post that did not exist. The offer of work should therefore be withdrawn for both candidates.

He adds that no information was given in due time to the staff representatives about these additional posts, despite their impact on the teaching staff, especially the risk for the locally recruited staff to lose substantial teaching hours.

Assessment of the designated judge rapporteur

2.

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

3.

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

This appeal was lodged on 23 June 2023 by [REDACTED] acting as "*Locally Recruited Secondary Teacher Representative*" - [REDACTED] and acting on behalf of 61 Locally Recruited Teachers, including himself.

On 21 September 2023, he wrote to the Registry: "*I have found employment outside of the traditional ES system*" and was asking to send any email communication related to the case 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.

4.

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 of [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 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.

5.

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

All applicants must have a personal, innate and current interest in taking legal action.

If it were to emerge that two seconded teachers recruited "*hors cadre*" did indeed take up their duties at the [REDACTED] School in September 2023, the applicant would – for the present application to be admissible – need to prove an interest in contesting these recruitments, due to the negative consequences of these recruitments for his personal situation.

In the present case, [REDACTED] provides no information concerning the direct consequences that the recruitment decisions, for which we are unaware of both the name of the teacher recruited and his/her speciality, are supposed to have had on the applicant's personal situation. In particular, he only indicates potential losses of teaching hours, without demonstrating that he would have been directly affected by these losses due to the recruitments.

He does not, therefore, prove any interest entitling him personally to take legal action against the recruitment decisions that he presents.

6.

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

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".

7.

Under the title "Conclusion" of the appeal, it is stated that *"The offer of work should therefore be withdrawn for both candidates"*.

In light of this statement, the purpose of the present appeal is to obtain the cancellation of the appointment "*hors cadre*" of two seconded teachers.

However, despite repeated requests sent by the registry of the Complaints Board, [REDACTED] has not provided the contested decision or even specified which authority within the European Schools is supposed to have taken said decision, nor has he indicated the either names of the teachers recruited or their speciality.

Without any precise information concerning the decision being contested, the present appeal is also manifestly inadmissible on these grounds.

8.

Finally, [REDACTED] has also indicated in his emails with the Registry that he was *"raising a complaint that there is no regulatory framework"* and that he feels *"(...) important that the Complaints Board offers a legal opinion on the case (...)".*

The applicant wants the Complaints Board to make a decision in an abstract manner and by means of a general provision concerning the legality of the procedures and conditions for recruiting seconded teachers.

9.

However, in accordance with Article 27.2 of the Convention defining the statute of the European Schools and in its role as a jurisdictional body, the Complaints Board is a judicial authority with the power to cancel individual decisions which are prejudicial to the persons covered by the Convention and the regulatory texts adopted pursuant to this Convention.

The Complaints Board therefore has the power to cancel an individual prejudicial act.

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.

10.

In the present case, if the Director of the European School of [REDACTED] had taken the decision to reduce the teaching hours or not to renew the contract of one or other of the 61 LRT, 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 Locally recruited teachers in the European Schools, if necessary raising a plea of illegality of the regulatory provisions on the basis of which the individual decision was taken.

As the right to an effective remedy and effective judicial protection is thus guaranteed, there is no reason in this case to grant the admissibility of the present appeal, in that it would be directed against the general measures of the policy of recruiting Seconded staff in the European Schools.

11.

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 Locally recruited teachers in the European Schools (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.

12.

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] either acting on his own behalf, registered under No **23/25**, 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.

B. Phémolant

Brussels, on 4 April 2024

Original version: EN

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."