Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

B.-W. (No. 3)

v.

ILO

120th Session **Judgment No. 3543**

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Mrs B. B.-W. against the International Labour Organization (ILO) on 13 March 2013 and corrected on 3 April, the ILO's reply of 25 June and the complainant's letter of 4 August 2013 informing the Registrar of the Tribunal that she did not wish to file a rejoinder;

Considering Article II, paragraph 1, of the Statute of the Tribunal;

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

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

The complainant is challenging the rejection of her candidature for a post at grade P.4.

The complainant's career and facts relevant to this dispute are set forth in Judgment 3032, delivered on 6 July 2011. In that judgment, having found that by not adhering to the chronological order established for the competition process, i.e. an assessment by the Assessment Centre before the technical evaluation, the ILO had breached its own rules, the Tribunal decided to set aside the decisions of 26 May 2009 dismissing the grievances filed by the complainant and one of her colleagues challenging the results of a competition advertised on 7 February 2008 to fill a post of senior translator/reviser

at grade P.4 in the French Unit of the Official Documentation Branch. The Tribunal also set aside the decisions resulting from the disputed competition and ordered the competition process to be resumed from the point at which the flaw occurred.

In execution of that judgment, the two applicants selected at the end of the cancelled competition were informed that their appointment had been annulled but that they would be maintained in post pending the results of the new selection process. On 24 November 2011 applicants shortlisted during the initial competition were invited to express their interest in the post advertised in the vacancy notice published on 7 February 2008. The complainant put herself forward as a candidate, but the internal applicant who had initially been selected chose not to re-apply.

The written examination of the technical evaluation was held on 9 January 2012, followed by the oral examination on 16 January 2012. In its report dated 1 February 2012, the Selection Board recommended that the external applicant who had been selected at the end of the initial competition be confirmed in the post to which she had been appointed. With regard to the second post to which the internal applicant who had not re-applied had been appointed, it recommended that the competition should be declared unsuccessful.

On 20 March 2012 the complainant was informed that her candidature had been unsuccessful. In accordance with paragraph 13 of Annex I to the Staff Regulations, dealing with the recruitment procedure, she requested an interview with the responsible chief "in order to obtain feedback on the technical evaluation". During this interview, which took place on 27 March 2012, the complainant learned that she had achieved a score of 4.25 out of 7 in the written examination and 4 out of 5 in the oral examination; that the oral score counted for 20 per cent and the written score for 80 per cent; and that she would have needed a score of at least 4.75 in the written examination to be recommended. She was also informed that, as the competition had been resumed at the technical evaluation stage, there had been no need to rank the candidates since "only one candidate had met the 'requisite criteria established by the Board'". Hence, only the

external applicant selected at the end of the first competition had been successful, and the internal candidate who had not wished to take part in the resumed competition had been retained on an ad interim basis in the second post, which remained vacant.

The complainant's grievance, which she filed after having requested and received a written response, was rejected by the Director-General, as recommended by the Joint Advisory Appeals Board (JAAB), by a letter dated 13 December 2012, which constitutes the impugned decision.

The complainant asks the Tribunal to annul that decision, the decisions resulting from the competition and the "appointment" of the internal applicant, to order that the competition be resumed, to award her compensation for the injury allegedly suffered, and to order the ILO to pay her the sum of 6,000 euros in costs.

The ILO submits that the complaint and the complainant's claims should be dismissed as irreceivable in part – some of her claims having, in its view, become moot – and unfounded in their entirety.

CONSIDERATIONS

1. The complainant impugns before the Tribunal the decision of the Director-General dated 13 December 2012 dismissing her grievance challenging the results of a competition held to fill a post of senior translator/reviser at grade P.4.

2. The complainant's first plea alleges a procedural flaw arising from the fact that, in execution of Judgment 3032, the competition process should have been resumed at the Assessment Centre phase, but the Organization omitted this stage and resumed the competition at the technical evaluation phase.

3. However, on examination of the evidence in the file, the Tribunal notes that the external candidates – the only applicants obliged to undergo the Assessment Centre stage – had already fulfilled that requirement as part of the first competition, as stated by the JAAB

in its report dated 18 October 2012, which the Tribunal has no reason to query. It therefore considers that it was unnecessary to require these applicants to go through the Assessment Centre again when the cancelled competition was resumed, since they had already passed this stage successfully.

As the defendant submits, the resumption of the competition at the technical evaluation phase allowed the chronological order prescribed for the process to be formally re-established.

This plea therefore fails.

4. The complainant further contends that the competition process was tainted by the failure of the responsible chief to carry out the technical evaluation. She submits that, according to the rules governing the competition process, it is the responsible chief who must carry out a technical evaluation of applicants who are eligible to undergo that test. However, in this case, according to her, "the competences granted to the responsible chief were delegated and dispersed". She complains that the technical evaluation was carried out by means of a written examination assessed by two examiners and an oral examination performed by an ad hoc collegial body.

5. At the material time, paragraph 11 of Annex I to the Staff Regulations read as follows:

> "The responsible chief will undertake and ensure rigorous technical evaluation of all candidates who have successfully completed the Assessment Centre's process, and will prepare a report."

6. These provisions do not formally prohibit the responsible chief from calling on experts to conduct the technical evaluation. Furthermore, in Judgment 3182, under 6, the Tribunal stated with regard to the ILO's recruitment procedure that the Staff Regulations established a mechanism allowing candidates to be assessed in an independent manner with technical rigour and expertise and that technical panels offered precisely the safeguards of complete transparency and impartiality and provided the foundation for objective assessment (see also Judgment 2083, under 9 and 10).

The responsible chief cannot therefore be criticised in this case for calling on experts and officials to carry out the technical evaluation transparently and with complete impartiality.

This plea is therefore unfounded.

7. The complainant contends that the lack of guidelines defining the conditions of the technical evaluation constituted a procedural flaw. She submits that paragraph 5.1 of the Collective Agreement on a Procedure for Recruitment and Selection of 6 October 2000 provides that guidelines on the technical evaluation should have been drawn up by 31 December 2000 by the Staff Union and the Administration but, to her knowledge, such guidelines were never drawn up or published. In her view, "[t]he lack of such guidelines deprives officials of information that would substantially enhance the transparency and fairness of competition processes and hence denies them a safeguard specifically granted by the rules".

In support of this argument, the complainant quotes Judgment 2868, under 36, which reads as follows:

> "Although the Guidelines do not have the force of formally adopted regulations or rules, they are intended to foster a transparent selection procedure in which candidates are fairly evaluated against selection criteria. […]"

8. However, the Tribunal has already stated in Judgment 2648, under 8, that even if the guidelines provided for by the Collective Agreement are not adopted, their absence cannot prevent the Administration from carrying out the objective technical evaluations incumbent upon the authority responsible for selecting candidates in a competition.

Hence, this plea is likewise unfounded.

9. The complainant alleges that the process was tainted by the competition bodies' failure to remain within their remit. She submits that the procedure followed during the competition breached the rules on the division of roles between the Assessment Centre and the responsible chief. According to her, "the appraisal of the 'basic' competencies of preselected candidates in view of a certain grade or

group of grades, carried out by the Assessment Centre, is followed by a comparative appraisal of the 'technical' competencies of candidates eligible for a particular post, carried out by the responsible chief". A breach of the rules for dividing responsibilities between these two bodies "risks misleading the appointing authority inasmuch as the latter must rely on the assessments made by these bodies, which are supposedly limited to assessments falling within the scope of their respective competences". However, in this case she claims that "evidence in the dossier indisputably establishes abuse of authority by the 'technical panel', whose assessment of [her] competencies […] and presumably [of those] of other applicants encroached upon the Assessment Centre's remit". Candidates' behaviour and motivation, she submits, are expressly included among the competencies to be evaluated by the Assessment Centre.

10. The Tribunal recalls that, according to its case law on the interpretation of Article 1.1 of the Collective Agreement on a Procedure for Recruitment and Selection of 6 October 2000 (see in particular Judgment 3110, under 11), if an advertised post requires particular "behavioural competencies", that is a matter to be evaluated by the body responsible for technical evaluation, in this case the Selection Board, and not the Assessment Centre.

In this case, as the defendant states without contradiction by the complainant, the advertised post required particular behavioural competencies, which were listed in the vacancy notice. This plea must therefore be dismissed.

11. The complainant alleges that the impugned decision is unlawful as "secret rules" were applied during the competition process which had been unilaterally introduced by the Chief of the French Unit and of which candidates had not been informed in advance by the vacancy notice, while that person was not even a member of the Selection Board. The complainant is referring to the weighting of the written examinations (80 per cent) and the oral examination (20 per cent) of the technical evaluation and to the threshold of 4.75 points

below which a candidate could not be deemed to fulfil the criteria of excellence expected for the advertised post.

12. The Tribunal considers that this plea is also ill founded. As the defendant aptly points out, no staff regulation or rule compels the Organization to inform applicants taking part in a competition of the manner in which the examinations that they are sitting are assessed; Annex I to the Staff Regulations sets forth what a vacancy notice should contain and makes no mention of the methods used to correct examinations, nor of how they will be marked.

As it was reasonable to establish a weighting factor for each examination and a qualifying score in view of the requirements listed by the vacancy notice, the Organization cannot be criticised for having proceeded as it did, given that no rule prevented that approach.

13. Furthermore, the complainant alleges that the Organization violated Annex I to the Staff Regulations and the vacancy notice since the technical evaluation was not rigorous, the candidates' knowledge of two working languages in addition to French not being tested.

14. The Tribunal has already dismissed this plea in Judgment 3032 and informed the complainants in question, who asserted that the candidates appearing on the shortlist were never able to demonstrate that they had a command of two languages in addition to French, that it could not entertain the plea since the complainants had not provided evidence of any error committed by the Selection Board in assessing the candidates' qualifications and knowledge.

The complainant has not brought forward any new evidence in this case proving that an error was committed or contradicting the evidence contained in the files examined *in camera*. This plea must therefore be rejected.

15. The complainant alleges that the "appointment" of the internal candidate initially selected at the end of the first competition is unlawful.

16. The Tribunal considers that this plea has no factual basis. As the defendant states, no appointment was made to the post in question after the competition that was declared unsuccessful. The person still occupying the post was retained in the expectation that it would be filled by a competitive process. The defendant affirms, without contradiction by the complainant, that a new competition for the post was initiated in September 2012.

17. The complainant seeks redress for the injury that she allegedly suffered as a result of the "attempted violation" committed by her supervisor who, according to the complainant, intended to breach the confidentiality of the interview held on 27 March 2012 by unjustifiably arranging for the Chief of the German Unit to be present.

18. However, given that the Chief of the German Unit was not present at the interview, as admitted by the complainant herself, the Tribunal cannot but dismiss this claim on the grounds that no injury was suffered.

19. When expanding on one of her pleas, the complainant alleges that the impugned decision constitutes a misuse of authority inasmuch as, according to her, "[t]he setting of a minimum score in the written exam did not stem from a good-faith value judgment of the skills required but rather from the desire to end up by keeping the two persons previously appointed in the vacant posts".

20. The Tribunal recalls that it has consistently held that misuse of authority cannot be presumed and that the burden of proof lies with the person who pleads it (see Judgment 2116, under 4). In this case, the complainant does not provide any evidence in support of her plea.

21. Since none of the complainant's pleas can be allowed, the complaint must be dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 7 May 2015, Mr Claude Rouiller, Vice-President of the Tribunal, Mr Seydou Ba, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 30 June 2015.

(Signed)

CLAUDE ROUILLER SEYDOU BA PATRICK FRYDMAN

DRAŽEN PETROVIĆ