

FORTY-SECOND ORDINARY SESSION

In re RUDIN

Judgment No. 377

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the International Labour Organisation (ILO) by Miss Helen Rudin on 23 March 1978, the ILO's reply of 14 June, the complainant's rejoinder of 29 September and the ILO's surrejoinder of 1 November 1978;

Considering Article II, paragraph 1, of the Statute of the Tribunal, the Staff Regulations of the International Labour Office, particularly articles 2.2, 13.1 and 13.2, Circular No. 92, Series 6, of 21 May 1974, Circular No. 93, Series 6, of 29 May 1974, Circular No. 105, Series 6, of 31 December 1974, and the Rules of Procedure dated 23 July 1976 of the Professional Grading Appeals Committee;

Having examined the documents in the dossier and considering unnecessary the oral proceedings applied for by the complainant;

Considering that the material facts of the case are as follows:

A. On 26 November 1973 the complainant was assigned to the Editorial and Document Services Department of the International Labour Office as Department Programme Planning Officer. She belonged to the General Service category of staff and held the grade G .7. With the introduction of a system of grading Professional category posts her post was graded P.2 by the Personnel Department on the basis of her post description. She appealed against that grading to the Professional Grading Appeals Committee. She was informed by the grading officials of the Personnel Department of the reasons for the grading. She submitted observations in writing and was later given a hearing by the Appeals Committee. On 31 March 1977 she was told that on the Appeals Committee's recommendation the Director-General had confirmed the grading of her post at P. 2. She then submitted a "complaint" under article 13.2 of the Staff Regulations. The ILO points out that under that article the Director-General may either take a decision on the complaint himself or else refer it to a Joint Committee for observations and report. The Director-General took the view that since grading was a very technical matter he should consult specialists. He therefore referred the complaint to the Professional Grading Appeals Committee for review. The Committee gave the complainant a hearing. It confirmed the grading of her post at P.2. The Director-General endorsed its recommendation in a final decision which was notified to the complainant on 3 January 1978 and which she now impugns.

B. As to the procedure followed, the complainant objects to the referral of her case to an advisory body, the Appeals Committee, and not to the Joint Committee, on the grounds that it was the Appeals Committee itself which had recommended the decision she was contesting. Moreover, the Committee felt neither able nor bound to hear the witnesses who might have shed light on the matter or make the necessary investigations, namely the survey which the complainant asked for (of the duties of the other programme planning officers graded P.4 and the official and actual duties of the personal assistant to the chief of the Department). The Committee failed to mention in its report, "as it was under a duty to do", the complainant's request for a survey and to give a substantiated decision on that request. For all those reasons the impugned decision should be quashed on the grounds of procedural irregularity. As to the merits, the complainant contends that the grading of her post - based on the tables appended to Circular No. 93 of 29 May 1974, which give six factors of assessment, each with a maximum value of 150 points - was given only a superficial review. The Appeals Committee - and hence the Director-General too - overlooked essential facts and made arbitrary use of discretionary authority "by confirming the grading of the complainant's post at the upper limit of P.2 and not giving it the number of points required to make it P.3".

C. The complainant asks the Tribunal: preliminarily: to declare the complaint receivable; to allow the complainant to use every legal means of proving her allegations; to order such measures of investigation as may be necessary to establish the facts; principally: to quash the decision to grade the complainant's post at P.2; to declare that that post

shall be graded P.3 with effect from 1 January 1975; alternatively, should the Tribunal so prefer: to request the Director-General of the International Labour Office to review the impugned decision on the basis of a report by a Joint Committee with full powers of inquiry; and to award costs, including the fees of the complainant's counsel, against the ILO.

D. As to the points of procedure, the ILO observes that the complainant takes the Appeals Committee to task for having failed, when it took up the case the second time, to allow her request for an inquiry into the duties of the personal assistant to the chief of the Department. Since it is beyond dispute that the complainant alone was responsible for performing the duties of her post, there was no point in holding the inquiry she asked for just to establish that fact. Moreover, it would have been an irrelevant exercise to carry out, for the sake of comparison, a survey of the duties of the programme planning officers who held higher grades. As for the complainant's argument that the Appeals Committee gave no reason for its recommendation, the Organisation points out that, in the absence of new arguments or facts, a lengthy repetition of the reasons for the Committee's recommendation would have served no purpose. As to the merits, the ILO contends that in making the recommendation on which the Director-General based his decision the Appeals Committee was fully aware of all the material facts and, in particular, did not attribute any of the complainant's duties to the personal assistant of the chief of the Department. As to the other arguments, which relate to the application of the grading factors, they touch on matters of factual assessment which are outside the Tribunal's power of review.

E. The Organisation therefore asks the Tribunal to dismiss the complaint as unfounded.

CONSIDERATIONS:

It appears from the wording of article 13.2 of the Staff Regulations that although the Director-General may, if he wishes, consult the Joint Committee on a "complaint" submitted to him by a staff member he is under no duty to do so. By virtue of his authority as executive head of the ILO, he may, when he wants advice before taking a decision affecting a staff member, consult either the Joint Committee or any other body he wishes. The complainant appealed to the Director-General against a decision on her grading which he had taken on the recommendation of the ad hoc appeals committee, and it was open to him either to decide on that appeal without prior advice or else to seek further advice. In the latter case, there was no objection to his consulting again, before taking the impugned decision, the committee which he had already consulted particularly since the matter was of an essentially technical nature. The committee had full authority to give advice and in particular to give a hearing to anyone whose evidence it might consider worth having or to order any inquiry it might consider warranted.

As regards the procedure which was followed, it appears from the wording of its report that the committee carried out a complete review of the complainant's case and so did what the Director-General had asked of it. The committee was empowered to dismiss as pointless or immaterial the complainant's applications for an inquiry and for the hearing of witnesses.

Its report begins with a summary of the complainant's case and the opinion of the technical adviser, answers all the arguments put to it and, contrary to what the complainant maintains, adequately bears out its conclusions.

As to the merits, the complainant is dissatisfied with the grade which, on the committee's advice, the Director-General gave her post. In grading that post the executive head exercised his discretionary authority. Hence the Tribunal will consider neither whether the grading criteria applied were sound, nor whether they were correctly chosen and applied nor, in particular, whether the degree of responsibility attaching to the complainant's post was properly taken into account.

The case would be different only if the Tribunal discovered some clear mistake of assessment in the decision which the Director-General came to. No such conclusion may be drawn from the documents in the dossier. Hence the complaint appears unfounded and must therefore be dismissed.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right

Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Allan Gardner, Assistant Registrar of the Tribunal.

Delivered in public sitting in Geneva on 18 June 1979.

(Signed)

M. Letourneur
André Grisel
Devlin

A.B. Gardner

Updated by PFR. Approved by CC. Last update: 7 July 2000.