

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

D. (No. 3)

v.

ILO

128th Session

Judgment No. 4186

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Mr A. D. against the International Labour Organization (ILO) on 17 March 2016 and corrected on 28 April, the ILO's reply of 22 July, the complainant's rejoinder of 24 August and the ILO's surrejoinder of 11 October 2016;

Considering Articles II, paragraph 1, and VII 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 challenges the decision to reject his request for a job grading review.

On 30 November 2011 the complainant, who had held a grade G.7 position since 2001, sent his supervisor a request for a job grading review, in accordance with paragraphs 3 and 4 of Circular No. 639 (Rev. 2), Series 6, of 31 August 2005. He considered that his job should be regraded at grade P.3. On 27 January 2012 his supervisor replied that the conditions for a review as defined in paragraph 3 of the Circular were not met since his duties and responsibilities had not materially changed for at least 12 consecutive months. On 24 February 2012 the complainant filed an appeal with the Independent Review Group (IRG) to challenge that decision. On 30 July 2014 the IRG recommended that

the complainant's position be confirmed at grade G.7. By a minute dated 11 August 2014 the complainant was informed that the Director-General had endorsed that recommendation.

On 10 September the complainant lodged a grievance with the Joint Advisory Appeals Board (JAAB). He requested the setting aside of the decision of 11 August 2014 and compensation for the material and moral damage he considered he had suffered. In its report of 4 November 2015 the JAAB concluded that the IRG had not conducted a full examination of the facts as it had not sought to obtain further information from the complainant, his supervisor or the classification adviser. Furthermore, the JAAB considered that the IRG had carried out a superficial examination since it had not analyzed all the factors of the relevant matrixes, that is to say the various elements listed in the tables summarizing all the functions relating to a "generic job" which make it possible to determine the appropriate grade for each staff member. It therefore recommended that a new examination, based in particular on the expertise of a classification adviser, be carried out.

By letter of 22 December 2015 the complainant was informed that the Director-General considered that he could not follow the Board's recommendation since he found that the reasoning on which it was based was legally unsound. He considered that the IRG had examined a complete file and that it was open to him to consider that the documents at his disposal were sufficient to enable him to conclude that the complainant was indeed in a grade G.7 position. Moreover, the IRG had not, in his view, committed any error of fact or law in analyzing only the factors that it regarded as being the most important and the most relevant. Consequently, the Director-General had decided to reject the complainant's grievance as unfounded. That is the impugned decision.

The complainant asks the Tribunal to set aside that decision, to enforce the recommendation of the JAAB by ordering a further review of his job grading request and to compensate him for the material and moral injury he considers he has suffered.

The ILO submits that the complaint should be dismissed as unfounded.

CONSIDERATIONS

1. The complainant seeks the setting aside of the Director-General's decision of 22 December 2015, the reconsideration by the IRG of his request for a job grading review and compensation from the Organization for the material and moral injury he considers he has suffered as a result of the failure to regrade his position.

2. In support of his claims, the complainant submits, first of all, that the IRG failed to conduct a detailed in-depth examination of his request for a job grading review in that it failed to request additional information.

3. The ILO submits that there is nothing in the file to support the conclusion that the IRG did not undertake a thorough examination of the complainant's request, since it asked the complainant to provide it with additional information in order to have a "more complete picture" of his position.

4. In accordance with paragraph 16 of the IRG's Terms of Reference, the IRG will "examine the appeal and provide a reasoned recommendation, by majority decision, to the Director-General in a report, as outlined in paragraph 18 [...], either to upgrade or to maintain at its current grade level the position under review. In the course of its examination, the Panel may seek the views of or additional information from the staff member and the relevant manager." The Tribunal notes that, contrary to the complainant's allegations, paragraph 16 provides only for the possibility, not the obligation, for the IRG to request additional information if it considers that it does not have sufficient elements to make a determination. In the explanations that he provides to the JAAB, the IRG Coordinator states that the complainant "was neither consulted nor heard because the members of the Panel were unanimous in their assessment of this case and there were no questions on [their] part"*.

* Registry's translation.

IRG, in response to its request of 1 July 2014, work samples on 8 July 2014, cannot contend that the IRG was obliged to request additional information in this case. This plea must therefore be rejected.

5. The complainant criticizes the IRG for not having analyzed all the factors of the relevant matrixes. In his view, the IRG could not express an opinion on the grading of the tasks without examining all of those factors. The ILO, on the other hand, submits that the complainant's tasks were compared to the relevant factors in the G.7 and P.3 matrixes. Thus, in examining the factors that seemed to it to be the most important and the most relevant, the IRG did not fail to take into account any essential fact.

6. It is well established in the Tribunal's case law that the grounds for reviewing the classification of a post are limited and ordinarily a classification decision would only be set aside if it was taken without authority, was made in breach of the rules of form or procedure, was based on an error of fact or law, overlooked an essential fact, was tainted with abuse of authority or if a truly mistaken conclusion was drawn from the facts (see, for example, Judgments 1647, consideration 7, and 1067, consideration 2). Indeed, the classification of posts involves the exercise of value judgements as to the nature and extent of the duties and responsibilities of the posts, and it is not the Tribunal's role to undertake this process of evaluation (see, for example, Judgment 3294, consideration 8). The grading of posts is a matter within the discretion of the executive head of an international organisation (or of the person acting on his behalf) (see, for example, Judgment 3082, consideration 20).

7. In the present case, it is apparent from the file that, in order to verify whether the characteristics of the complainant's position corresponded to the G.7 matrix, the IRG examined the relevant factors in the matrix corresponding to that grade and reached the conclusion that the position did indeed correspond to grade G.7. With regard to a possible regarding at grade P.3, although it is true that the IRG did not specifically examine all the factors in the matrix relating to that grade, it found that for one essential factor, namely the one entitled "Nature

and complexity of the job”, the characteristics of the complainant’s position did not correspond to those of a position in that grade. Therefore, and contrary to the complainant’s contention, the IRG was not required to examine all the other factors in the matrix corresponding to that grade. The Tribunal considers that in confirming, on the basis of these findings of the IRG, that the complainant’s position should remain classified at grade G.7, the Director-General did not err in fact or in law and did not omit to take into account essential facts or draw from the facts a truly mistaken conclusion. This plea is therefore unfounded.

8. It follows from all the foregoing that the decision to maintain the complainant’s position at grade G.7 is not unlawful and cannot, therefore, entitle him to compensation for the alleged moral and material injury resulting therefrom. The complaint must therefore be dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 9 May 2019, Mr Patrick Frydman, Vice-President of the Tribunal, Ms Fatoumata Diakité, Judge, and Mr Yves Kreins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 3 July 2019.

(Signed)

PATRICK FRYDMAN

FATOUMATA DIAKITÉ

YVES KREINS

DRAŽEN PETROVIĆ