F.

v.

IFAD

132nd Session **Judgment No. 4402**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr C. A. F. against the International Fund for Agricultural Development (IFAD) on 30 October 2018, IFAD's reply of 19 February 2019, corrected on 26 March, the complainant's rejoinder of 10 June, corrected on 17 June, IFAD's surrejoinder of 30 September, the complainant's further submissions of 18 November 2019, supplemented on 3 February 2020, and IFAD's final comments thereon of 2 March 2020;

Considering Articles II, paragraph 5, 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 not to reclassify his position.

In 2011, as part of a human resources reform programme, IFAD initiated a job audit aimed at both addressing the question of potentially misclassified positions and contributing to an updated strategic workforce plan. By an email of 21 December 2012 staff members were informed that the job audit process and SWP exercise had come to an end. The email stated that staff who had not been contacted had no change in the grade of their positions. The complainant, who held a grade P-4 position in the Office of the General Counsel (LEG), then requested a Mandatory Administrative Review of the decision not to

reclassify his position. On 10 May 2013 he was informed that there was no ground for reclassification.

On 30 June 2015 LEG was reorganised into three units with the complainant accepting to be the Head of the Operations Unit.

On 19 May 2017, within the context of the SWP exercise for 2017-2018, the Interim General Counsel submitted a request for reclassification of several positions, including the complainant's. This request was forwarded to the Executive Management Committee (EMC).

In June an organisation-wide exercise entitled "Operational Excellence for Results" (OpEx), which aimed at assessing IFAD's operational model in its entirety, was launched.

On 27 July 2017, relying, inter alia, on Section 2.4 of the Human Resources Implementing Procedures (HRIP) dealing with job classification, the complainant sent to the Director of the Human Resources Division (HRD) a request for reclassification of his position at the P-5 grade with effect from 21 December 2012 or 30 June 2015. By an email of 18 September 2017 the Director HRD informed him that the responsibility for changing a job description rested with the Division Director. He added that, due to the ongoing OpEx exercise, the EMC had determined that it did not have all the elements necessary to take a decision and that HRD was to develop options to ensure career growth perspectives in a functional and corporately coherent manner. Staff would be informed of the finalisation of the SWP exercise through their Division Director and HRD.

On 18 October the complainant, considering that his 27 July request was denied, requested a Mandatory Administrative Review of the 18 September decision, while indicating that he was awaiting the outcome of the strategic work plan process. The Director HRD replied on 20 October 2017 that requests for reclassification were treated within the context of the SWP and were not within the scope of Section 2.4.2 of the HRIP. He dismissed the complainant's request as irreceivable, considering that the complainant's allegations concerned events that had occurred in 2012-2013 and 2015 and that he had not availed himself of the appropriate mechanisms to challenge the process or the result thereof within the prescribed time limits.

On 10 November 2017 the complainant lodged an appeal with the Joint Appeals Board (JAB), challenging the 20 October 2017 decision. Drawing attention to Judgment 3855 in which the Tribunal set aside the

decision of 21 December 2012, he considered that all the decisions of the job audit not to reclassify a position were "opened for reconsideration". Since, according to him, his acquired right to promotion was breached following the 15 December 2011 decision to issue the Staff Rules and HRIP in order to replace the Human Resources Procedures Manual as of 1 January 2012, he asked that this "illegitimate decision to abolish promotion" be set aside. He also asked to be promoted to the P-5 grade with retroactive effect and to be awarded moral damages and costs.

On 11 July 2018 the JAB, considering that any request for review of the grading and description of staff members' positions is carried out at the discretion of the Administration and "is not enforceable or time-bound", concluded that staff have no legally protected interest to appeal against explicit or implicit decisions of this nature that do not satisfy their wishes or requests. It added that the complainant's claimed rights being based on IFAD's reorganisation exercise carried out in 2012, any request to challenge the decisions taken during this exercise was beyond the time allowed for appeals and that the fact that the Tribunal had "quashed the 2012 exercise" did not change the deadline to appeal. It therefore recommended that the appeal be dismissed in its entirety. In a letter dated 11 September 2018 the President of IFAD informed the complainant that he had decided to endorse the JAB's recommendation. He emphasized that Judgment 3855 did not quash the whole job audit exercise. That is the impugned decision.

On 30 October 2018 the OpEx team issued its findings and recommendations. It proposed a new LEG organigram in which the complainant's position was at the P-4 level.

The complainant asks the Tribunal to set aside the decision of the President to abolish promotion effective 1 January 2012 and to order IFAD to carry out an objective and externally verifiable review of his eligibility for promotion applying the procedures and standards in force when promotion was abolished. He also asks the Tribunal to quash the decisions dated 21 December 2012, 20 October 2017 and 11 September 2018, to award him material, moral and exemplary damages, as well as costs for his internal appeal and the present complaint.

IFAD contends that the complaint is irreceivable on several grounds and, subsidiarily, that it is devoid of merit.

CONSIDERATIONS

1. The complainant was, at relevant times, a member of the staff of IFAD. On 30 October 2018 he filed a complaint with the Tribunal. He impugns a decision of the President of 11 September 2018 endorsing a recommendation of the JAB that an internal appeal he had lodged on 10 November 2017 be dismissed. The complainant's internal appeal was against a decision of the Director HRD in an email of 20 October 2017. In that email, the Director HRD rejected the complainant's application for administrative review of a decision made by the Director on 18 September 2017. The last mentioned decision was to reject the complainant's request for the reclassification of his position made in a letter of 27 July 2017.

2. A broadly similar request concerning reclassification was made by the Interim General Counsel, the complainant's Director, on 19 May 2017 seeking the reclassification to the P-5 grade of two positions including that of the complainant. Chapter 2 of the HRIP contains two procedures whereby classifications can be reviewed. One in Section 2.4 enables a member of staff to request her or his job descriptions be reviewed by their Division Director/unit head though this can be done by a manager on her or his own initiative. In either event a process is put in train which reviews the job description and the concomitant classification. The other procedure, in Section 2.5.3, involves the review of the organisational structures of Departments and Divisions which is addressed in the context of the strategic workforce plan carried out by the Budget and Organizational Development Unit and approved by the EMC. The Director's request of 19 May 2017 was treated as a request invoking the latter process and this is accepted by the complainant in his brief. No steps were taken by the complainant or anyone else to enliven the procedure in Section 2.4.

3. It is important to bear in mind that this request of the Director of 19 May 2017 and any express or implied decision dealing with it was not the subject matter of the complainant's application for administrative review nor the subject of the internal appeal, though the request was adverted to in the complainant's pleas in his statement of appeal. It was a request for which the HRIP made provision in the sense that a procedure was established which, when followed, would ultimately

determine the fate of the request. In fact, a preliminary decision was made by the EMC at the end of June 2017 ("reclassifications with incumbents w[ill] generally not [...] be supported") and a further decision on or about 28 November 2017 ("those [reclassification requests] against filled positions were not included [by the EMC] in the current budget proposal"). It is necessary to make this observation about subject matter because the pleas of both the complainant and the organisation traverse a multitude of issues and are often discursive in nature. They do not focus, with any precision, on what was, and was not, the subject matter of the administrative review and the internal appeal.

4. Access to the Tribunal is generally conditioned by Article VII of its Statute, which requires that a complainant exhaust internal means of redress. It is also conditioned by the need for a complainant to raise a case of non-observance of the terms of appointment or non-observance of applicable Staff Regulations (see Article II of the Statute). The complainant does not point to any provision in IFAD's Staff Rules or any other normative legal document applicable at the time he made his request on 27 July 2017 expressly conferring on an individual staff member a right to make such a request directly to the Director HRD and thereby seek to have her or his position reclassified or expressly creating any corresponding duty on the organisation to consider and determine such a request.

5. The complainant seeks to avoid the consequences of there being no express right as just discussed by arguing that the reorganisation of LEG in June 2015 required the Director HRD to ensure all positions were correctly classified and, if they had not been, as argued by the complainant in his brief, the Director HRD "had an ongoing obligation to do so whenever the matter was brought to his attention". Even accepting, for present purposes, that there had been an obligation during the reorganisation to ensure positions were correctly classified, it is a large step to say that the obligation was an ongoing one, enlivened at any time by an individual who had been involved in the reorganisation requesting reclassification by correspondence directly with the Director HRD. As the Director HRD rightly pointed out in his email of 20 October 2017, any failure to address correctly the complainant's classification during the reorganisation in 2015 should have been challenged at the time, as should have decisions made in 2012-2013 which may have borne upon his classification.

6. The complainant refers to Judgment 3861 in support of a proposition that an organisation must ensure staff are properly compensated and accordingly must make sure positions are properly graded. But that judgment was far more narrowly focused. The Tribunal said "the principle of good faith and the concomitant duty of care demand that international organisations treat their staff with due consideration in order to avoid causing them undue injury; an employer must consequently inform officials in advance of any action that may imperil their rights or harm their rightful interests (see Judgment 2768, under 4)".

7. The import of the complainant's argument is that any member of staff of an international organisation has an ongoing right, enforceable through internal appeal and ultimately in the Tribunal, to request or even demand at any time a review of salary and classification which must be considered by the organisation and have a decision made on the request.

8. It is true that the Tribunal has acknowledged in, for example, Judgment 2706, consideration 12, that: "it is the duty of international organisations to abide by the principle of equality and in particular to comply with its requirement that there be equal pay for work of equal value. [...] if their rules and procedures do not ensure adherence to those requirements in respect of their staff, it is their duty to take remedial steps, whether by way of some general rule or by some specific procedure for the particular case." Additionally, it has been acknowledged in, for example, Judgment 2931, that the principle of equality feeds into the determination of an appropriate classification.

9. But the complainant has failed to establish the legal foundation for his contention that the Director HRD was under a legal duty to consider his request in his letter of 27 July 2017, let alone that he was then duty bound to reclassify the complainant's position as requested.

10. The complainant challenges the approach taken by the JAB to his internal appeal. But as the appeal was unfounded any flaw in the JAB's approach had no material effect.

11. All other claims will be dismissed and, accordingly, the complaint should be dismissed in its entirety.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 27 May 2021, Mr Patrick Frydman, President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Mr Michael F. Moore, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 7 July 2021 by video recording posted on the Tribunal's Internet page.

PATRICK FRYDMAN

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

DRAŽEN PETROVIĆ