

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**S. A. (No. 2)**

**v.**

**CERN**

**137th Session**

**Judgment No. 4740**

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr J.-L. S. A. against the European Organization for Nuclear Research (CERN) on 12 March 2021, CERN's reply of 5 July 2021, the complainant's rejoinder of 6 August 2021 and CERN's surrejoinder of 28 October 2021;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions;

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

The complainant challenges his classification following a career review.

Some of the facts relevant to the present case are to be found in Judgment 4273, delivered in public on 24 July 2020, concerning the complainant's first complaint. Suffice it to recall that, on 17 December 2015, in the context of the 2015 five-yearly review, the Council of CERN approved the Director-General's proposals relating, in particular, to basic salaries for staff members and the career structure within the Organization. More specifically, the proposals involved maintaining basic salaries at their current level, streamlining the career structure, compensating performance in a better way and introducing a new system of merit recognition. The date on which these proposals were scheduled to come into force was 1 January 2016 in respect of the non-

adjustment of basic salaries and 1 September 2016 in respect of the measures relating to the career structure. In the implementation of the latter measures, staff members were assigned to specific benchmark jobs, that is to say categories of jobs covering a set of individual employment situations involving similar main activities and a common purpose. These benchmark jobs were initially assigned on a provisional basis so that they could be reviewed later if need be. Thus, if staff members considered that they had been assigned to a benchmark job that did not match their functions, they could discuss the matter with their supervisors and the Administration. Benchmark jobs were to be definitively assigned to staff members by 1 July 2017.

The complainant, who held the Belgian diploma of “*ingénieur industriel*”, was recruited in 1992 with the job title “operations technical engineer (accelerators)”. On 18 August 2016, following the introduction of the new career structure, he was informed that he was provisionally assigned to the benchmark job “accelerator/industrial process operations technical engineer” and that he was assigned grade 5 as from 1 September. His basic salary remained unchanged. On 14 October he lodged an internal appeal against the decision of the Council of CERN of 17 December 2015 to “alter the career structure and the associated salary scale”. He argued that, in his view, his assignment to the new benchmark job significantly diminished his career prospects and that his Belgian diploma had been undervalued. He requested that the general decision of 17 December 2015 be set aside and that he be assigned to the benchmark job “engineer”. He reiterated these grievances and requests on 13 December 2016 in a letter sent jointly with other staff members who held the same diploma as he did to the Head of the Human Resources Department. He received a reply informing him that a benchmark job depended on the functions carried out and not on the diploma held and that, if he considered that his classification did not reflect the level of his functions, he could request a career review, which he declined to do at the time. On 30 June 2017 his definitive benchmark job – which was the same as that assigned on 18 August 2016 – was confirmed.

Several other staff members filed an appeal with the Joint Advisory Appeals Board against the same decision. In view of the similarities between some of those appeals, the Board decided to deal with the alteration to the career structure and the classification of holders of a Belgian diploma of “*ingénieur industriel*” jointly, and then consider the personal situation of each complainant separately. In its opinion delivered on 27 April 2018 in relation to the complainant, the Board found that the 2015 five-yearly review was not procedurally flawed and that the Organization had acted transparently. With regard to the new career structure, the Board recommended that more detailed information be provided to supervisors on the opportunities afforded by the new system in terms of promotion and merit recognition. As to the more specific question of classification of holders of a Belgian diploma, the Board recommended that the Organization suggest to the complainant that he undergo a career review in order to ascertain whether a reclassification was warranted. On 25 May 2018 the complainant was informed of the Director-General’s decision to follow this recommendation and advised that the Human Resources Department would contact him shortly regarding a career review. That was the decision impugned in his first complaint, which was dismissed by the Tribunal in the aforementioned Judgment 4273.

On 5 July 2018 the Head of the Human Resources Department, referring to the decision of 25 May, informed the complainant that, in accordance with the provisions of Administrative Circular No. 26 (Rev. 11) entitled “Recognition of merit”, his situation would, if he agreed, be reviewed by a Departmental Committee (also called “Career Review Board”) and by a representative of the Human Resources Department. As a precaution, he was reminded that the purpose of a career review of this kind was to assess his level of expertise and level of the functions he exercised, with reference to the criteria set out in the Promotions Guide, and that a promotion would only ensue if he fulfilled the criteria listed in Circular No. 26. On 26 July the complainant agreed to have his professional situation examined by means of a career review.

The Career Review Board heard the complainant on 19 September 2018 and met on 24 September to exchange views on his situation. That meeting was followed by several further discussions. After a detailed examination of the complainant's level of expertise and functions, the Committee recommended that his benchmark job should remain as "accelerator/industrial process operations technical engineer" at grade 5. Having been informed of the Director-General's decision of 7 January 2019 to follow that recommendation, the complainant asked to be provided with the Committee's report and the recommendation made by his head of department, so that he could "understand and evaluate the reasons for [that] decision". On 8 February he received the detailed outcome of the assessment carried out during his career review.

On 14 March 2019 he lodged an internal appeal against the decision of 7 January, asking for that decision to be set aside, for his current benchmark job to be changed to "engineer" or "applied physicist" and, subsidiarily, for a promotion to grade 6 within his benchmark job.

The Joint Advisory Appeals Board delivered its opinion on 11 November 2020 after hearing the parties. It found that there had been no procedural irregularities in the career review process and unanimously recommended, inter alia, that the appeal should be dismissed. By a letter of 11 December 2020, of which he was notified on 14 December, the complainant was informed that the Director-General had decided to follow that recommendation. That is the impugned decision.

The complainant – who claims that he was downgraded in view of the outcome of his career review – asks the Tribunal to set aside the impugned decision and to order that he be reclassified in the benchmark job "applied physicist" at grade 6, on equal pay. Alternatively, he seeks a re-assessment of his level of expertise and the classification of his post by an independent expert. Lastly, he claims damages of 10,000 euros for the moral injury he alleges he has suffered and the award of costs in the sum of 20,000 euros.

CERN submits that the complainant's allegation of downgrading is unfounded and irreceivable since the complainant did not, in any event, challenge that purported "administrative decision" within the

prescribed time limits. The Organization therefore asks the Tribunal to dismiss the complaint as partly irreceivable and entirely unfounded.

### CONSIDERATIONS

1. The complainant impugns before the Tribunal the Director-General's decision of 11 December 2020 dismissing the internal appeal he had filed on 14 March 2019 against the Director-General's previous decision of 7 January 2019 which had informed him that, following a career review carried out by the Career Review Board, his level of expertise and functions matched his classification in the benchmark job of "accelerator/industrial process operations technical engineer" at grade 5. In the impugned decision, the Director-General endorsed the unanimous recommendation made by the Joint Advisory Appeals Board on 11 November 2020 that the complainant's internal appeal should be dismissed.

2. The Tribunal notes first of all that, in his internal appeal, the complainant submitted that the procedure leading to the Director-General's decision of 7 January 2019 was flawed, that insufficient reasons were provided for that decision, that essential facts were not taken into account in his career review and that, in any case, the new career structure at CERN was, in his opinion, entirely unlawful.

The Tribunal further notes that, in its unanimous opinion of 11 November 2020, the Joint Advisory Appeals Board concluded that none of the procedural flaws relied on had been established, that the evidence produced at the hearing of the parties, experts and witnesses was not sufficient to establish any error or omission in the assessment of the level of the complainant's expertise and functions, and that the complainant's arguments as to the unlawfulness of the new career structure adopted by the Organization were irreceivable, meaning that his claim for the findings of his career review to be rejected was unfounded.

3. In his complaint, in addition to the setting aside of the impugned decision of 11 December 2020, the complainant asks the Tribunal to order that he be reclassified in the benchmark job of “applied physicist” at grade 6, on equal pay, or, alternatively, to order that his level of expertise be reassessed and his post reclassified by an independent expert and that he be awarded damages of 10,000 euros for the moral injury he alleges he has suffered together with costs in the sum of 20,000 euros.

4. The complainant requests oral proceedings. However, the Tribunal considers that the parties have presented sufficiently extensive and detailed submissions and documents to allow it to be properly informed of their arguments and the relevant evidence. The request for oral proceedings is therefore rejected.

5. The Tribunal notes that the internal appeal leading to the present complaint concerned a career review carried out by the Organization in accordance with a review procedure which had been previously explained to the complainant in a letter of 5 July 2018 from the Head of the Human Resources Department, as a result of which, on 26 July, the complainant agreed to have his work situation reviewed in the manner proposed by CERN. The assessment made by the Career Review Board, the body responsible for carrying out the career review, concluded that the complainant’s level of expertise and functions were correctly classified at grade 5 and that the criteria necessary for the complainant to be reclassified in the benchmark job of “accelerator/ industrial process operations technical engineer” at grade 6, or in that of “mechanical engineer” or “applied physicist”, had not been met in the present case.

6. According to paragraph 45 of Administrative Circular No. 26 (Rev. 11), entitled “Recognition of merit”, the purpose of a career review undertaken in order to allocate a post to a benchmark job or to a higher grade within the same benchmark job is “to assess the level of expertise, as well as the level of functions exercised by the staff member, with reference to the criteria set out in the Promotions Guide”.

The Tribunal observes that the allocation of a post to a benchmark job or to a higher grade within the same benchmark job following a career review carried out within that defined legal framework necessarily involves the exercise of a value judgement as to the nature and extent of the tasks and responsibilities attached to that post – in other words, the “level of functions” – as well as an assessment of the level of expertise of the staff member concerned. That value judgement must be left to the discretion of the executive head of the Organization and it is not for the Tribunal to replace the Organization’s assessment with its own. Consequently, in the same way as for decisions taken by an organisation in relation to the classification or reclassification of posts, the Tribunal will only review a decision in this area on limited grounds and will only set it 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, if an essential fact was overlooked in the making of the decision, if a truly mistaken conclusion was drawn from the facts or if there has been an abuse of authority (see, for example, Judgments 4502, consideration 6, 4221, consideration 11, 4000, consideration 7, and 3589, consideration 4).

7. The Tribunal notes, in the first place, that none of the arguments raised by the complainant in his submissions relating to what he regards as procedural flaws, to the purportedly incorrect evaluation of his career review or, lastly, to the unlawful downgrading to which he claims he was subjected in 2017 was upheld by the Joint Advisory Appeals Board. However, despite the fact that the Board provided a thorough and detailed analysis in its unanimous opinion of 11 November 2020 and the Director-General rightly stated, in the impugned decision, that it had not found any error or omission in the review of the complainant’s level of expertise or level of functions carried out by the Career Review Board, the complainant, remarkably, makes no comment whatsoever on the content of that analysis.

8. In the second place, the Tribunal notes, with regard to the purported procedural flaws in his career review, the complainant submits that the review was flawed in that there was no collegial

discussion within the department, no proposal was made by his Head of Department, the Career Review Board did not actually carry out a review, no collegial discussion took place within the Board, and the members of the Board did not sign the career review form.

However, the Tribunal considers that, as pointed out in the opinion of the Joint Advisory Appeals Board, these procedural flaws have not been established in view of the manner in which it was decided that the career review would be carried out and to which the complainant agreed. Furthermore, the flaws relied on cannot be regarded as substantial or such as to render unlawful the impugned decision.

9. It is clear from the submissions and the evidence on file that the disputed career review was first organised outside of the annual promotions exercise, following a letter of 5 July 2018 from the Head of the Human Resources Department who proposed that the complainant's situation be reviewed in accordance with paragraph 51 of the aforementioned Administrative Circular No. 26 (Rev. 11) by a Career Review Board and a representative of the Head of the Human Resources Department. Since the complainant agreed to this in a letter of 26 July 2018, the career review in question was not one initiated by his Head of Department but one conducted at the request of the complainant.

It is clear from the file that, in the case of a career review such as this which was initiated at the request of the staff member, a practice existed – and was later codified – whereby a different procedure was followed, meaning that the Head of Department had no prior involvement, there was no collegial discussion within the department and the proposition of the Career Review Board was sent directly to the Director-General. This was the procedure followed in the present case.

10. It is also clear from the submissions and the evidence on file that the career review was conducted by a Career Review Board consisting of two members of the Departmental Committee and a representative of the Head of the Human Resources Department, as had been indicated to the complainant. The latter was heard on 19 September 2018 by these three individuals, who then held exchanges



and discussions as part of the review process followed. The career review form completed by the Career Review Board also contains general comments and reasons for the Board's conclusion that the complainant's level of expertise and level of functions were correctly evaluated at grade 5. The complainant's argument that the form was not signed by the three Board members is of no consequence in view of the fact that there appears to be no formal requirement to that effect in either Administrative Circular No. 26 (Rev. 11) or the Promotions Guide and it is also apparent from the evidence on file that the required analysis was carried out and that the exercise was conducted rigorously and in accordance with the applicable rules.

In that regard, the Tribunal also notes that there is evidence on file that the members of the Board organised a meeting, held discussions and produced a detailed analysis of the complainant's situation. The complainant does not adduce any evidence to show that the Board did not carry out the detailed evaluation required for the purposes of his career review. In the Tribunal's view, the complainant's suggestion that, because the Board members did not sign the prescribed form, there is reason to doubt that their deliberations took place or that they were thorough in the exercise they undertook is devoid of merit. On the contrary, the Tribunal considers the complainant's assertion that the Board did not actually carry out the evaluation of his level of expertise and level of functions itself to be factually incorrect and contradicted by the evidence on file.

11. In the third place, the Tribunal observes that, ultimately, the complainant is essentially asking it to re-examine the career review carried out by the Career Review Board on the grounds that it was fundamentally inaccurate and should be rejected "altogether". However, it must be found that the complainant misconstrues the nature of the Tribunal's power of review in such a situation. As stated in consideration 6, above, it is not for the Tribunal to carry out its own evaluation of the nature and extent of the tasks and responsibilities attached to a post or of the level of expertise of the staff member in question, and the decision taken following a career review can only be

set aside on limited grounds, none of which has been established in the present case.

Suffice it to note in this regard that the complainant's allegation that incorrect weighting was given to the criteria used by the Career Review Board constitutes an invitation to the Tribunal to substitute its assessment for that of the Board and is thus a misconstruction of the Tribunal's role in the matter. As for the complainant's argument that he was incorrectly awarded scores that fell "in between two factors", it appears that the grade change and benchmark job change form followed by the Board in its analysis does indeed allow for the allocation of a half-level, as does the Promotions Guide.

It follows that the complainant's arguments do not support a finding that the decision to maintain his classification in the benchmark job "accelerator/industrial process operations technical engineer" at grade 5 was the result of an error of fact or law, of a failure to take into account an essential fact, of an abuse of authority or of a clearly mistaken conclusion drawn from the facts. These arguments must therefore be rejected.

12. In the fourth and last place, the Tribunal considers that, as the Joint Advisory Appeals Board noted in its opinion and the Organization rightly pointed out in its submissions, the many claims made by the complainant that he was wrongly downgraded in 2017 following the introduction of the new careers structure are irreceivable. Those claims fall outside the scope of the complainant's internal appeal and of the present complaint. If the complainant believed that he had been wrongly downgraded, it was up to him to file an internal appeal against what he regarded as the relevant "administrative decision", within the time limits prescribed for that purpose, before filing a complaint with the Tribunal, if necessary. The submissions and the evidence on file show that he is now time-barred from doing so. The Board acted correctly in disregarding the complainant's arguments concerning his purported downgrading and the Tribunal considers that any inferences or arguments that the complainant seeks to draw therefrom must be rejected.

13. Given that the complainant is unable to prove any substantial procedural flaw in the career review process carried out by the Career Review Board, and given that there is not, in the present case, any evidence of abuse of CERN's discretion in the classification of his post, and given also that the complainant has failed to establish that any errors or omissions were made in the evaluation of his level of expertise and functions, the various pleas he puts forward must be dismissed as unfounded. It follows that the complainant's claim for compensation for the moral injury he allegedly suffered, and for which, moreover, he provides no evidence, must also be dismissed.

14. It follows from the foregoing that the complaint must be dismissed in its entirety.

#### DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 13 November 2023, Mr Patrick Frydman, President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Mirka Dreger, Registrar.

Delivered on 31 January 2024 by video recording posted on the Tribunal's Internet page.

*(Signed)*

PATRICK FRYDMAN    JACQUES JAUMOTTE    CLÉMENT GASCON

MIRKA DREGER