

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

P.-Y.

v.

ICC

137th Session

Judgment No. 4751

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr G. N. P.-Y. against the International Criminal Court (ICC) on 26 August 2021, the ICC's reply of 13 January 2022, the complainant's rejoinder of 15 February 2022 and the ICC's surrejoinder of 16 May 2022;

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 ICC's refusal to grant his request for several special post allowances.

Since 10 November 2008, the complainant has held the position of Field Operations Coordinator, at grade G-6, in the Operational Risk and Support Unit (ORSU) at the ICC's Field Office in Bangui (Central African Republic). On 6 September 2018 he submitted a request for a special post allowance under Staff Rule 103.11, of which the relevant part of paragraph (b) provides that "[a] staff member who is called upon to assume the full duties and responsibilities of another post classified at a higher grade than his or her own for a temporary period of three months or more and performs such duties and responsibilities satisfactorily, may be granted a [...] special post allowance". He stated

that, since 2011 and because of the departure of his supervisor – who had held the post of Field Operations Officer (FOO) at grade P-3 – he had assumed “all functions” of both posts on his own. He requested an allowance for the period from 2011 until the date when a new FOO was appointed.

By email of 7 September 2018, the head of the ORSU, the complainant’s supervisor, dismissed the request for any special post allowance, because the complainant had not taken on all his former supervisor’s tasks and responsibilities, but agreed that he was entitled to some sort of compensation for the work performed. He therefore informed him that the Human Resources Section would determine the appropriate amount of such compensation.

On 3 August 2020 the complainant, who stated that his “request” for a special post allowance had remained unanswered, submitted a request for review to the Appeals Board seeking payment of that allowance for the periods from 22 June 2011 to 15 May 2019, which, according to him, corresponded to what he had claimed in his initial request and related to the period for which he had “worked in the place of [his] supervisor ([at grade] P-3)”; from October 2019 to January 2020, during which he had had to perform the duties of his new supervisor, who also held a P-3 post and had left the ICC before someone was appointed to replace her; and from 1 May 2020, the day after the new colleague’s appointment had ended, to 3 August 2020, the date of his request for review.

On 10 September 2020 the ICC Prosecutor, to whom the Appeals Board had forwarded the request for review, decided to reject it as irreceivable *ratione temporis* and, in any event, as unfounded. In the decision, the Prosecutor stated, inter alia, that the request for a special post allowance covering the first period had already been addressed in the administrative decision of 7 September 2018, which had not been challenged within the applicable time limit. With regard to the requests for the following two periods, the Prosecutor stated that they had never been brought to the organisation’s attention before the complainant had submitted his request for review and that they were therefore irreceivable because he had failed to exhaust the internal means of

redress. On the merits of the request, the Prosecutor considered that the conditions set out in Staff Rule 103.11 had not been met.

On 21 September 2020 the complainant lodged an internal appeal against that decision. However, the proceedings were suspended until January 2021 following an unsuccessful attempt to reach an amicable settlement.

In its report of 30 April 2021, the Appeals Board – which considered the appeal irreceivable *ratione temporis* and unfounded – recommended that the Prosecutor maintain the decision of 10 September 2020 but encouraged the resumption of settlement conversations. On 7 June 2021 the Prosecutor endorsed these two recommendations. That is the impugned decision.

On 26 August 2021 the complainant filed a complaint with the Tribunal. He asks the Tribunal to order the payment of a special post allowance for the same periods as those referred to in his request for review of 3 August 2020, but extends the last period to the date on which a new FOO at grade P-3 takes up duty. He further claims a sum of 185,000 euros in compensation for the material and moral injury which he considers he has suffered and an award of costs.

The ICC contends that the complaint is irreceivable *ratione temporis* and that the complainant failed to exhaust the internal means of redress in respect of some of his claims. It asks the Tribunal to dismiss the complaint as irreceivable and unfounded and to order the complainant to pay costs.

CONSIDERATIONS

1. The complainant seeks the setting aside of the decision of the ICC Prosecutor of 7 June 2021 rejecting his request for special post allowances for the following three periods: from 22 June 2011 to 15 May 2019; from October 2019 to January 2020; and from 1 May 2020 until the date on which a new Field Operations Officer (FOO) is appointed and takes up duty at the ICC's Field Office in Bangui (Central African Republic).

2. Besides objecting to the complaint's receivability on the grounds that the complainant lodged his internal appeal late – a contention that he adamantly refutes owing to the ambiguity of his supervisor's email of 7 September 2018 – the ICC argues that, in any event, the complaint must be dismissed as unfounded. It submits that several of the conditions set out in the applicable rules for obtaining a special post allowance are not met in the present case.

The complainant disputes this and sets out in detail the various tasks he has been required to perform since his appointment in Bangui owing to the alleged lack of any supervision at local level.

3. Staff Rule 103.11, concerning the special post allowance, provides as follows:

- “(a) Staff members may be required to assume temporarily, as a normal part of their regular duties and without extra compensation, the duties and responsibilities of higher level posts.
- (b) A staff member who is called upon to assume the full duties and responsibilities of another post classified at a higher grade than his or her own for a temporary period of three months or more and performs such duties and responsibilities satisfactorily, may be granted a non-pensionable special post allowance.
- (c) The amount of the special post allowance shall be equivalent to the salary increase, including post adjustment and dependency allowances, if any, which would be applicable upon changing to a different grade with a higher salary, in accordance with staff rule 103.9.”

In addition, paragraph 2.1 of Section 2, entitled “Conditions”, of the Guidelines on Special Post Allowances (SPA) of 1 August 2007 (Ref. ICC-HRS/2007/7385) provides as follows:

- “2.1. The Registrar or the Prosecutor, as appropriate, may authorize the granting of an SPA to a staff member if:
- (a) The staff member has assumed the **full** duties and responsibilities of an established budgeted post which is classified at **one or more** levels higher level than his/her grade (full SPA);
 - (b) The staff member has assumed the **partial** duties and responsibilities of an established budgeted post which is classified at **two or more levels** higher [...] than his/her current grade (partial SPA);

- (c) The staff member has performed the full or partial duties and responsibilities of the higher level classified budgeted post for at least three consecutive months;
- (d) The period for which the staff member performs the duties and responsibilities of the higher level classified budgeted post is not expected to exceed one year; and
- (e) The staff member's supervisor certifies that the duties and responsibilities of the higher level classified budgeted post have been satisfactorily performed by the staff member." (Original emphasis.)

Lastly, under paragraphs 5.1 and 5.2 of Section 5 of the aforementioned Guidelines, entitled "Procedures for Requesting Special Post Allowance":

"5.1. As soon as the staff member is called upon to assume the full or partial duties and responsibilities of a higher level classified budgeted post his/her supervisor shall inform Human Resources Section in writing of this temporary arrangement. Prior to assigning a staff member to carry out the full or partial functions of a higher-level post, managers have to ensure that all eligible staff from the relevant section are considered for the assignment.

5.2. Recommendations for SPA shall be prepared by supervisors in consultation with the Chief of Section and submitted to the Chief of Human Resources Section for review. The recommendations shall be supported by

- a) A statement from the supervisor indicating the exact date when the staff member took up the full functions of the higher-level post, and certifying to which extent the staff member has demonstrated his or her ability to fully or partially meet the performance expectations of all functions of the post;
- b) A justification for the selection of the recommended staff member."

4. In the present case, having examined the parties' submissions and the evidence, the Tribunal considers that, in the decision of 10 September 2020 dismissing the complainant's request for review, the ICC Prosecutor could legitimately conclude that, in the light of the relevant provisions referred to above, the complainant did not meet all the conditions set out to be granted a special post allowance.

The Tribunal notes first of all that, as the ICC rightly points out, there never was a formal decision to make the complainant assume the duties and responsibilities of a higher-level post, let alone a statement from his supervisor certifying that he had satisfactorily assumed the

duties and responsibilities of that post. It should also be noted that, while the complainant's various performance appraisals for the periods in question show that he fully met his supervisors' expectations, they do not cover the requirements of the FOO role.

As the ICC also submits, the complainant was not, in any event, required to assume all the duties and responsibilities associated with the FOO post throughout the periods he refers to. He was expressly reminded of this by his supervisor in his email of 7 September 2018, which stated that three other staff members had assisted him remotely in managing some tasks, specifically operational expenditure reporting.

In the circumstances, the Tribunal will not consider whether the complainant could have applied for a partial special post allowance pursuant to paragraph 2.1(b) of Section 2 of the aforementioned Guidelines of 1 August 2007 because the complainant claimed solely a full special post allowance. Moreover, since the parties have not included any arguments on this point in their submissions, an examination of the evidence does not in any case allow the Tribunal to ascertain whether the complainant might have been entitled to a partial allowance.

Lastly, the complainant's submissions are mainly based on his own interpretation of the duties and responsibilities he actually carried out, as well as on a personal appraisal of his performance, which cannot be taken into account by the Tribunal.

It follows that the complaint must be dismissed in its entirety as unfounded, without there being any need to rule on the organisation's objection to receivability.

5. As a counterclaim, the ICC has asked the Tribunal "to award costs against the [c]omplainant, including the costs of filing submissions", on the grounds that he "pointlessly and wilfully initiated and prolonged a dispute, with considerable consequences for the defendant [o]rganisation's resources in terms of the related costs", in particular by refusing the offer of an amicable settlement.

While it follows from what has been said above that the complaint is unfounded, that does not mean that it can be considered as vexatious. Admittedly, in the present case, the organisation does not contend that the complaint is vexatious on account of its actual content but that the complainant did not have a legitimate reason for filing it since he was offered an amicable settlement. However, the Tribunal cannot take account of information concerning any negotiations – which are inherently confidential – conducted by the parties with a view to settling a dispute before it amicably (see Judgments 4457, consideration 2, and 3586, consideration 5). Hence it could not, in any event, issue orders on the basis of such information (see Judgment 4639, consideration 11).

There are therefore no grounds for granting the ICC's counterclaim.

DECISION

For the above reasons,

The complaint is dismissed, as is the ICC's counterclaim.

In witness of this judgment, adopted on 3 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