

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

S. (No. 6)

v.

ILO

124th Session

Judgment No. 3886

THE ADMINISTRATIVE TRIBUNAL,

Considering the sixth complaint filed by Mr S. S. against the International Labour Organization (ILO) on 17 July 2014 and corrected on 4 August, the ILO's reply of 11 November 2014, the complainant's rejoinder of 2 March 2015 and the ILO's surrejoinder of 29 May 2015;

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 contests the decision to reject his request for a job grading review.

Facts relevant to this case are to be found in Judgment 3050, delivered in public on 6 July 2011, concerning the complainant's third complaint and in Judgment 3219, delivered in public on 4 July 2013, concerning his first complaint.

Suffice it to recall that the complainant joined the International Labour Office, the ILO's secretariat, in Geneva, Switzerland, in 1999 and was transferred in February 2004 to the position of Senior Personnel, Administrative and Finance Officer in the Regional Office for the Arab States in Beirut, Lebanon. In August 2007 he was transferred to the Office of Internal Audit and Oversight (IAO) at headquarters in Geneva,

and assigned, on a temporary basis, pending identification of a longer term assignment, to the same position that he held prior to leaving for Beirut.

In November 2007 a vacancy announcement was published for the grade P.5 position of Principal Investigator/Chief of Investigation and Inspection Unit in the IAO. The complainant applied and was shortlisted. In May 2008, pending the outcome of the competition procedure, he was appointed as Officer-in-Charge of the Investigation and Inspection Unit in the IAO, and in that capacity he was granted a special allowance at the P.5 level as from November 2008.

On 11 November 2009 the complainant submitted a request to his responsible chief for a job grading review of his post in accordance with paragraphs 3 and 4 of Circular No. 639 (Rev.2), Series 6, of 31 August 2005 (hereinafter "Circular No. 639"). He asserted that he had been performing internal audit and investigation work at the P.5 level since May 2008 and that he thus met the requirements of paragraph 3(b) of Circular No. 639, given that his duties and responsibilities had materially changed for at least 12 consecutive months. The following day his responsible chief submitted the request to the Human Resources Development Department (HRD). Having received no reply to his request, either from his responsible chief or from HRD, on 12 February 2010 the complainant filed an appeal with the Independent Review Group (IRG) against the implied rejection of his job grading request. In September 2012 the IRG invited him to a meeting. On 1 April 2014 he received the report of the IRG of 27 March recommending that the Director-General consider his request for a job grading review to be irreceivable. The IRG noted that paragraph 3(a) (*recte* (b)) of Circular No. 639 required a staff member seeking a job grading review to have held the position in question for at least 12 months, which was not the complainant's case, as his assignment was only temporary. It considered that a formal reorganization, within the meaning of paragraph 3(b) (*recte* (a)), would be required in order for the post to be reclassified. It further held that the appreciation expressed by the complainant's responsible chief did not warrant a job grading review, and that the special allowance he received for performing duties of a higher grade should not be taken

into consideration. The fact that he performed duties of a higher grade on an *ad interim* basis did not warrant a regrading.

On 22 April 2014 the complainant received a minute sheet dated 17 April 2014 informing him of the Director-General's decision to endorse the IRG's recommendation. That is the decision the complainant impugns before the Tribunal.

The complainant asks the Tribunal to set aside the impugned decision and to order the ILO to upgrade his post to the P.5 level with retroactive effect from 1 May 2008. He also claims material and moral damages and costs.

The ILO asks the Tribunal to dismiss the complaint as without merit.

CONSIDERATIONS

1. The complainant impugns the Director-General's decision, communicated to him by a minute sheet dated 17 April 2014, endorsing the 27 March 2014 recommendation of the IRG to dismiss the complainant's request for a job grading review of his post as irreceivable. The IRG found his request to be irreceivable as his situation did not fulfil the requirements of paragraph 3 of Circular No. 639.

2. Paragraph 3 of Circular No. 639 under "General conditions" provides:

- "3. A job grading review can be initiated by a staff member or a line manager in respect of a job whose incumbent has satisfactorily completed the probationary period when:
- (a) duties and responsibilities have been redistributed on a permanent basis amongst jobs in or between (an) organizational unit(s) in the context of a formal reorganization; or
 - (b) without a reorganization, the duties and responsibilities of a job have materially changed for at least 12 consecutive months."

Paragraph 19 provides:

- "19. Appeals will be treated in chronological order of their receipt. The IRG will normally complete consideration of each appeal and communicate a reasoned recommendation to the Director-General, with a copy to the line manager and the staff member concerned within three months from

receipt of the appeal. Where a proper examination of a case requires an extension of this period, the IRG shall inform the staff member in writing of the time when it will be in a position to issue a recommendation.”

3. In a minute sheet dated 11 November 2009, the complainant submitted his formal request for a job grading review. In it he stated, *inter alia*, that he had been performing internal audit and investigation work at the P.5 level since May 2008 while serving as Officer-in-Charge of the Investigation and Inspection Unit, and that he therefore met the requirements of Circular No. 639, paragraph 3(b), as his duties and responsibilities had materially changed for more than 12 consecutive months. He attached a job description for the post of Principal Auditor and Investigator as well as a job data questionnaire to his request.

4. The complainant was temporarily assigned to the newly created P.5 post of Principal Investigator/Chief of Investigation and Inspection Unit in the IAO from May 2008 pending the outcome of the recruitment competition for that post. The successful candidate was assigned to the position in September 2009, but due to sick leave he took up his duties only in January 2010.

5. The complainant requested a job grading review of his post based on a mistaken interpretation of paragraph 3(b) of Circular No. 639. As cited above, that provision allows for a job grading review when the duties of a post have materially changed for a period of 12 consecutive months or longer. In the complainant’s case, he believes that as his duties as a staff member changed with the temporary assignment, it was enough to trigger the provision. The Tribunal notes that the provision refers only to the duties of the post itself, and does not expand to allow also for the changes to a staff member’s duties. The post that the complainant was temporarily occupying was graded at the P.5 level and the job description and list of duties pertaining to that post were commensurate with the P.5 grading. As such, there was no reason to request a job grading review. The complainant himself held grade P.4, and was temporarily acting at the P.5 level, with commensurate compensation, and was expected to return to a P.4 post following the completion of the temporary assignment (i.e. pending the outcome of

the recruitment exercise for that temporarily-occupied post). It is further noted that there had been no formal reorganization which could have fulfilled the requirements of paragraph 3(a) of Circular No. 639.

6. The complainant claims that the proceedings before the IRG took four years, which constitutes an inordinate delay. The ILO submits that the delay is reasonable as the complainant's request was clearly irreceivable and did not cause him any prejudice. The Tribunal notes that paragraph 19 of Circular No. 639, as cited above, provides that appeals shall normally be processed within three months. As the complainant's request was not complicated and the Organization has not provided any real justification for the delay, the complainant is entitled to an award of moral damages. Considering the obvious irreceivability of the original request, the Tribunal sets the award at 2,500 Swiss francs.

7. The complainant asks the Tribunal to obtain testimony from the complainant's former responsible chief with regard to a document attached to his complaint which relates to his complaint against competition 2007/79. The Tribunal rejects this request as the document has no bearing on the present complaint.

8. The complainant asserts that the Organization "has not abandoned its widespread violations of [its] rules and policies [...] nor does it have the intention to stop the constructive dismissal efforts to which [he] is still subjected". The Tribunal notes, firstly, that bad faith must be proven, not assumed, and secondly, that the Organization acted in good faith by offering a settlement agreement to the complainant.

9. In light of the above, the Tribunal finds the complaint to be unfounded in part. The founded claim against the inordinate delay in the IRG proceedings entitles the complainant to the award of moral damages and, as he succeeds in part, he is also entitled to an award of costs which the Tribunal sets at 300 Swiss francs. All other claims shall be dismissed.

DECISION

For the above reasons,

1. The ILO shall pay the complainant 2,500 Swiss francs for the inordinate delay in the IRG proceedings.
2. It shall pay him costs in the amount of 300 Swiss francs.
3. All other claims are dismissed.

In witness of this judgment, adopted on 2 May 2017, Mr Giuseppe Barbagallo, Vice-President of the Tribunal, Ms Dolores M. Hansen, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 28 June 2017.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

HUGH A. RAWLINS

DRAŽEN PETROVIĆ