

R. (No. 4)

v.

ILO

131st Session

Judgment No. 4384

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourth complaint filed by Mr C. R. against the International Labour Organization (ILO) on 1 February 2019, the ILO's reply of 7 March, the complainant's rejoinder of 20 March, the ILO's surrejoinder of 18 April, the complainant's additional submissions of 30 May and the ILO's final comments of 14 June 2019;

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 not to reclassify his post.

At the material time, the complainant held the position of Senior Evaluation Officer at grade P.4. On 26 November 2014 he submitted a request for a job grading review of his post to his line manager, in accordance with paragraph 4 of Circular No. 639 (Rev.2), Series 6, of 31 August 2005 on the job grading procedure (hereinafter "Circular No. 639"), asking for a reclassification at grade P.5. Following a technical evaluation conducted by an external consultant on behalf of the Human Resources Development Department (HRD), and validated by the latter on 4 June 2015, the complainant was informed on 10 June 2015 that his position had been confirmed at grade P.4.

On 18 June 2015 the complainant filed an appeal against this decision with the Independent Review Group (IRG). In February 2016 he filed a grievance with HRD challenging the delay in the process. In the absence of a reply within the prescribed time limit, he submitted a grievance to the Joint Advisory Appeals Board (JAAB) on 9 May 2016. On 11 May HRD recognized the significant delay in the IRG process and awarded him 1,000 Swiss francs on that account. On 25 May the complainant withdrew his grievance to the JAAB.

The IRG issued its report on 22 February 2017 recommending that the complainant's position be confirmed at grade P.4. The report was transmitted to the Office of the Director-General (CABINET) for the Director-General to take a final decision. On 3 May CABINET wrote to the IRG coordinator noting that the complainant had never seen the full technical evaluation report conducted by the external consultant and validated by HRD and that, consequently, he had not been given the opportunity to provide arguments or evidence to the IRG in support of his appeal. It accordingly requested that the IRG coordinator provide the complainant with a copy of the report and ask that the latter explain in writing to the IRG the elements of the evaluation with which he disagreed. On 24 May the IRG coordinator agreed with CABINET's objections and explained that the previous coordinator did not consistently communicate the report to officials filing appeals with the IRG. On 7 July 2017 the complainant requested the JAAB to resume the review of his previous grievance. His request was rejected.

By a Minute of 9 August 2017 prepared by CABINET the complainant was awarded 1,500 Swiss francs for the procedural delay in examining his appeal. CABINET also transmitted a copy of the full technical evaluation report, as well as the IRG report and invited the complainant to provide his comments, which he did on 17 August. The IRG coordinator was informed of those further submissions on 28 August. On 8 November the complainant filed a grievance with HRD challenging the fact that three months had passed since the submission of his comments to the IRG without any follow-up action.

On 20 November 2017 the IRG issued a "supplementary report" confirming its initial recommendation of 22 February 2017. On 4 December the Director-General endorsed the IRG's recommendation and confirmed the complainant's position at grade P.4. On 15 December 2017 the complainant submitted a grievance to the JAAB against that decision.

In its report of 9 January 2019 the JAAB did not call into question the substantive results of the job grading review but recommended that the complainant be awarded 1,000 Swiss francs in moral damages owing to the ILO's failure to provide him with the classification report at an early stage of the job grading appeal process and 2,500 Swiss francs in moral damages for the delays incurred in reviewing his grievance. It also recommended that, in the event that the complainant submitted a new request for a job grading review, it be carried out promptly and within the three-month time limit. It finally made a general recommendation concerning Circular No. 639 and a practical suggestion concerning the handling of job grading appeals by the IRG.

By letter of 23 January 2019 the complainant was informed of the Director-General's decision to confirm the P.4 grade of his position and to endorse the recommendation to award him 1,000 Swiss francs in moral damages for late disclosure of the technical evaluation report (in addition to the previous moral damages already paid to him on 31 May 2016 and 11 December 2018 for the excessive delays in the job grading process). Concerning the recommendation to award him 2,500 Swiss francs for the delays incurred in reviewing his grievance, the Director-General considered that the length of the JAAB's proceedings had not been excessive and that the complainant was not entitled to any additional payment. The Director-General nevertheless instructed HRD to ensure that any new job grading request by the complainant be treated promptly and within the time limit set forth in Circular No. 639 and took due note of the JAAB's general recommendation and practical suggestion. That is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision, as well as the IRG's reports, and to order the ILO to reclassify his position at grade P.5 at an appropriate step without further delay. He claims material damages in an amount equal to the difference in salary (including post adjustment) as of the date of submission of his reclassification request, together with an order to adjust his pension contributions accordingly and to reimburse him in respect of the tax obligations incurred. He also claims moral damages for the excessive delay in the internal appeal procedure. Finally, in his additional submissions he asks the Tribunal to disregard certain statements made in the surrejoinder, which he considers as offensive and condescending.

The ILO asks the Tribunal to dismiss the complaint as entirely devoid of merit. It submits that some of the complainant's claims, which are formulated for the first time in these proceedings, are irreceivable for failure to exhaust the internal means of redress and that his request that his post be reclassified is beyond the Tribunal's competence.

CONSIDERATIONS

1. The complainant impugns the decision of the Director-General communicated to him by letter of 23 January 2019. In that letter, the complainant was informed that the Director-General had accepted the JAAB's recommendation that he be awarded 1,000 Swiss francs in moral damages for the Organization's failure to communicate the technical evaluation report of his job grading request at an early stage of the process, in addition to the 2,500 Swiss francs already paid to him on 31 May 2016 and 11 December 2018 for the excessive delays in the job grading process. Additionally, it was noted that the Director-General had instructed HRD to ensure that any future job grading request by the complainant be treated promptly and within the specified three-month time limit. The Director-General did not accept the JAAB's recommendation to award the complainant 2,500 Swiss francs in moral damages for the delays incurred in reviewing his grievance, as he did not consider the length of the JAAB's proceedings to have been excessive. The complainant was also informed that the Director-General had taken due note of the JAAB's general recommendation regarding the review of Circular No. 639 and of its practical suggestion regarding the handling of job grading appeals by the IRG.

2. In its report, dated 9 January 2019, the JAAB concluded that the complainant's appeal was receivable and well founded in part. It unanimously determined that there was no reason to question any aspect of the job grading review or its outcome but identified shortcomings on account of procedural issues. Specifically, it considered that "by deciding to review the [complainant]'s case in full knowledge of the fact that its assessment would not include the [complainant]'s divergent views, the IRG failed to respect its terms of reference" and therefore "failed to act in full compliance with the provisions it was bound by". The JAAB noted that the IRG coordinator was informed on 28 August 2017 of further submissions from the complainant (after he had been given a copy of

the full technical evaluation report by CABINET on 9 August 2017). In those submissions, the complainant provided further evidence and addressed the discrepancies he found in the classification report. In light of these submissions, the JAAB found that the IRG was then “in a position to carry out its evaluation afresh in full knowledge of the facts”. Following a new review, taking into consideration the complainant’s new submissions, the IRG maintained its 22 February 2017 recommendation that the complainant’s position be confirmed at the P.4 level. The JAAB found that it could not call into question any part of the IRG’s findings, conclusions or recommendations. Although it considered that the wording of paragraph 13 of Circular No. 639 (according to which “[t]he technical evaluation shall normally be completed and communicated to the staff member [...] within three months”) did not imperatively require that the technical evaluation be communicated to the staff member, the JAAB nonetheless concluded that “it was incumbent on the [ILO] to transmit the technical evaluation [report] to the [complainant]”. It considered the complainant’s arguments regarding “incomplete evidence” and “ cursory review of the new information” to be unfounded and the delays in the job grading appeal process to have been excessive, concluding that the sum of 2,500 Swiss francs already offered to the complainant in compensation for the delays was adequate. It recommended that the Director-General award the complainant 1,000 Swiss francs in moral damages for failure to provide him with the technical evaluation report at an early stage of the process and 2,500 Swiss francs in moral damages for the delays in reviewing the complainant’s grievance. It also recommended that any new job grading request by the complainant be carried out promptly and within the given three-month time limit. As a general recommendation and practical suggestion, the JAAB recommended that the Director-General take appropriate measures to ensure that Circular No. 639 would be carefully reviewed in order to remove any ambiguity as to the requirements to be fulfilled at each stage of the job grading procedure and ensure that the IRG “expressly reviews, assesses and refers to all the factors of a given matrix in its report”, ideally creating a template form for the purpose of consistency.

3. The complainant asserts that an incorrect classification occurred based on the following grounds:

- (a) the HRD inputs contained inaccurate post descriptions (job family and job description);

- (b) there were numerous flaws in the reclassification procedure followed by HRD;
- (c) the JAAB lacked independence, did not follow its own rules and failed to enforce deadlines for the receipt of the written submissions; and
- (d) HRD and the IRG drew wrong inferences from the evidence pertaining to his reclassification request.

In his additional submissions, authorized by the President of the Tribunal, the complainant asserts that the Organization's surrejoinder included "*ad hominem* attacks, false innuendos and erroneous logic" which he found offensive and condescending. As the Organization's comments did not refute specific arguments contained in the rejoinder, he asks the Tribunal to disregard some of the paragraphs contained in the surrejoinder.

4. According to Judgment 4186, consideration 6, "[i]t 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)."

5. The complainant submits that the HRD inputs contained inaccurate post descriptions (job family and job description) which resulted in an incorrect classification of his post. Specifically, he states that HRD had applied a wrong job description (P.5 Senior Programme Analyst instead of P.5 Senior Evaluation Specialist) to carry out his reclassification request. According to the evidence presented, the tailored job descriptions for P.2 to P.5 Evaluation Officers, which had been developed by the Evaluation Office in 2012, have not been finalized or adopted and therefore the P.5 Senior Programme Analyst generic job

description was properly used in the reclassification exercise and job grading appeal process. Considering this, the Tribunal finds that this argument is unfounded.

6. The complainant argues that there were flaws in the reclassification procedure followed by HRD, namely that he was not provided with a copy of the technical evaluation report at the end of the job grading exercise and he remained in an improperly classified post longer than necessary due to the excessive delays in the procedures. The Tribunal notes that the failure to provide the complainant with a copy of the technical evaluation report at an earlier stage of the job grading review process was corrected by CABINET, which, by a Minute of 9 August 2017, provided the complainant with a copy of the report to ensure that he had an opportunity to comment on it. The complainant was also informed by that Minute that he would be compensated with an amount of 1,500 Swiss francs for the procedural delay in the consideration of his appeal. The JAAB also recommended that he be awarded 1,000 Swiss francs in moral damages owing to the ILO's failure to provide him with the technical evaluation report at an early stage of the job grading appeal process. The Tribunal is satisfied that the complainant was given an opportunity to submit his comments on the report to the IRG, which duly considered them prior to drafting its second (and final) report, dated 20 November 2017, and that the complainant was sufficiently compensated for the late disclosure of the report.

7. The complainant asserts that the JAAB lacked independence and did not follow its own rules. He states that the JAAB did not provide him with copies of the communications it had with the Administration, contrary to the provisions of paragraph 6 of Annex IV to the Staff Regulations, did not enforce the deadlines set out for receipt of the Administration's submissions and did not respect the three-month deadline for submitting its report to the Director-General in accordance with paragraph 17 of the same Annex. Paragraph 6 of Annex IV provides as follows: "Any written communication of the Board with one of the parties shall be copied by the Board's secretariat to the other party." This plea is well founded insofar as it addresses the fact that the JAAB did not inform the complainant of the extension of time limit granted to the Organization, the non-compliance with the deadlines for submissions and the delay in the issuance of the JAAB's report. However, the

complainant's assertion that the JAAB lacked independence is unsubstantiated. The three above-mentioned flaws do not affect the conclusions of the JAAB's report, which stand, but they shall be remedied by an award of moral damages. Indeed, as part of its duty of care, the Organization has an obligation to maintain a properly functioning appeal system which adheres to the established rules and regulations (see, for example, Judgment 3027, consideration 6). According to the JAAB report's timeline of facts relating to the grievance procedure, the Director of HRD was sent a copy of the complainant's appeal on 18 December 2017 in accordance with Annex IV to the Staff Regulations and reminded that HRD's comments would be due within one month of receipt of that communication. Having received no comments from the Administration, on 29 January 2018 the JAAB again wrote to the Director of HRD to enquire as to the status of the Administration's comments with respect to the complainant's case. It also noted that, "[i]n accordance with [the] JAAB[']s procedures, the [ILO]'s comments were expected within one month of receipt of [the] previous letter [...] received on 18 December 2017". It asked to be informed whether those comments would be forthcoming. The Board received a copy of the ILO's comments on 1 February 2018. In its report, sent to the Director-General on 14 January 2019, the JAAB recognized the delays incurred in reviewing the complainant's appeal and recommended the payment of 2,500 Swiss francs in moral damages. The Director-General did not endorse that recommendation.

8. Finally, the complainant argues that HRD and the IRG drew wrong inferences from the evidence pertaining to his reclassification request. To support this, he states, *inter alia*, that "[t]he short, single paragraph in which it dismissed all of [the complainant]'s submissions without providing any details showed that the IRG made wrong inferences from the evidence pertaining to [the complainant's] reclassification request". In Judgment 3608, consideration 7, the Tribunal observed that it is well settled in the case law that reports of internal appeal bodies generally warrant "considerable deference". In the present case, the JAAB's report was both detailed and thorough in its analysis of the classification exercise and its assessments by the IRG. The JAAB found no uncorrected flaws in the evaluation of the complainant's post classification and fully justified its conclusions, hence its report warrants that deference.

Accordingly, the Tribunal, finding no flaws as cited in consideration 4 above, shall not undertake to reweigh the evidence presented.

9. In light of the above considerations, the Tribunal finds that the complaint is well founded in part. With regard to the complainant's request to disregard some of the paragraphs contained in the surrejoinder, the Tribunal accedes. Those paragraphs do not refute any arguments presented in the complaint or rejoinder and were inappropriate, and thus the Tribunal hereby disregards them. As detailed in consideration 7 above, the complainant is entitled to an award of moral damages, in addition to amounts already paid to him, for the flaws in the internal appeal proceedings, which the Tribunal assesses at 5,000 Swiss francs. As the complaint succeeds in part, the complainant is also entitled to an award of costs, which the Tribunal sets at 800 Swiss francs. All other claims must be dismissed.

DECISION

For the above reasons,

1. The ILO shall pay the complainant moral damages in the amount of 5,000 Swiss francs.
2. It shall also pay him costs in the amount of 800 Swiss francs.
3. All other claims are dismissed.

In witness of this judgment, adopted on 9 December 2020, 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 18 February 2021 by video recording posted on the Tribunal's Internet page.

PATRICK FRYDMAN

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

DRAŽEN PETROVIĆ