

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

106th Session

Judgment No. 2767

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms J. B.-d. V. against the International Labour Organization (ILO) on 15 November 2007 and corrected on 29 November 2007, the Organization's reply of 4 March 2008, the complainant's rejoinder of 31 March and the ILO's surrejoinder of 5 May 2008;

Considering Article II, paragraph 1, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

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

A. The complainant, a Dutch national born in 1967, joined the International Labour Office, the ILO's secretariat, in 1990. She was employed at grade G.4 as from 1995. She was transferred to the InFocus Programme on Safety and Health at Work and the Environment, also known as InFocus Programme on SafeWork (hereinafter "SafeWork"), in November 1999 and, following a competition in which she was the successful candidate, she was promoted to grade G.5 within the same programme on 1 December 2000. She was subsequently transferred at the same grade to the InFocus Programme on Strengthening Social Dialogue.

Following a baseline job-matching exercise, the complainant was informed by a minute of 11 September 2001 that it had been decided that her post was correctly graded at G.5. On 18 October 2001 she requested a review of this decision by the Independent Review Group (IRG). In its interim report of 26 February 2004, the Group recommended that the complainant's post should be confirmed at grade G.5. It considered that her job description was clearly that of a Senior Secretary, even though her tasks were worded as those of a Senior Administrative Secretary at grade G.6. Moreover, since she was working in a section, the IRG could see no justification for modifying the grading of her post. In response to a request for clarification from the complainant, the Human Resources Policy and Administration Branch informed her that, at the time of the baseline job-matching exercise, SafeWork was a branch and not a department. On 10 May 2005 the Coordinator of the IRG notified her that, following that clarification, the IRG had decided to maintain its recommendation.

On 30 May 2005 the complainant filed a grievance with the Joint Advisory Appeals Board to contest this decision. On 28 November 2005 the Human Resources Development Department proposed, inter alia, to set aside the IRG's decision and to request the IRG to conduct a *de novo* review. The complainant accepted this proposal. However, in its final report of 21 August 2006, the IRG recommended that the post be maintained at grade G.5. On 4 October 2006 the complainant filed a second grievance with the Board, in which she objected inter alia to the fact that the IRG report had not been signed. On 21 June 2007 the Board recommended the dismissal of this grievance on the grounds that it was without substance. It did, however, take the view that the complainant had a legitimate interest to know who the members of the IRG were, but stated that this "procedural defect" did not constitute a flaw. The Board invited the Director-General to disclose the names of the members of the IRG who had examined her case. By a letter of 17 August 2007 the Executive Director of the Management and Administration Sector informed the complainant that the Director-General had accepted all the Board's recommendations, apart from that concerning the anonymity of IRG members. That is the impugned decision.

B. The complainant contends that the fact that SafeWork was wrongly described as a section had a fundamental impact on the outcome of her request concerning the grading of her post, since in its report of 26 February 2004 the IRG considered that the tasks she was performing were “clearly” those of a G.6 post but that, as she was working in a section, it found no justification for modifying the grading of her post. Since the post for which she competed successfully was that of “Programme Secretary”, she considers that logically she was assigned to a “programme”. Moreover, according to a document of the Office’s Governing Body, which she attaches to her complaint, the SafeWork programme had been created in 1999 by transforming a branch. She asserts that the Joint Advisory Appeals Board itself recognised that the IRG had made a mistake which was liable to invalidate its decision, but did not draw the appropriate conclusions from its own analysis.

The complainant further emphasises the lack of transparency and hence the unlawful nature of the job-matching procedure. She stresses that since the Director-General refused to correct the “procedural defect”, this therefore becomes a procedural flaw justifying the setting aside of the disputed decision.

The complainant asks the Tribunal to set aside the impugned decision and to award her compensation for the injury suffered. She claims costs in the amount of 10,000 Swiss francs.

C. In its reply the ILO draws attention to the fact that post classification is subject to only limited review by the Tribunal. It notes that the Joint Advisory Appeals Board considered that the Organization’s structure did not constitute a decisive factor for the grading of a post, but that it did not wish to substitute its judgement for that of the IRG. The Organization considers that the facts relied upon by the IRG accurately reflect reality. The issue of the organisational context of the complainant’s position arises because of the matrix factors applicable to secretarial posts, according to which a grade G.6 secretary is responsible for heading a secretariat of a department, sector or programme, while the duties of a grade G.5 secretary include

administrative support services at the branch, section or programme level.

The Organization acknowledges that the names of units within the Office are not always absolutely coherent, but it asserts that the distinction drawn in the matrix between a department and sector on the one hand and a branch and section on the other, reflects the level at which these units are positioned in the Office's administrative hierarchy. The term "programme" is used as a general term and does not provide any indication of hierarchical level. The ILO emphasises that in 1999 the description of SafeWork changed from "branch" to "InFocus Programme", but its hierarchical level remained unchanged. It is clear from Governing Body documents that in the 2000-2001 biennium SafeWork was still a subdivision of a department.

The ILO states that the Office was under an obligation to keep secret the names of IRG members in accordance with the rules contained in the latter's terms of reference. Nevertheless, in the light of the Board's comments and having considered the interests of the parties concerned, the Organization decided to produce signed copies of the IRG reports of 26 February 2004 and 21 August 2006 and the accompanying minutes.

D. In her rejoinder the complainant states that the initial refusal, in the impugned decision, to tell her the names of the IRG members justifies the setting aside of that decision. She maintains that the IRG recognised that her duties corresponded to grade G.6 and that the only argument it could find in support of its refusal to modify the grading of her post was that she was not working for a programme. She emphasises that it was only when she protested vehemently and when her request for review was referred back to the IRG that the latter altered its reasoning by leaving aside the description of SafeWork and basing its decision on the less senior nature of her duties. She submits that this sudden shift in reasoning shows bad faith on the part of the IRG.

E. In its surrejoinder the Organization states that, since the complainant's plea regarding the initial refusal to tell her the names of

the IRG members is now moot, her claim in this respect shows no cause of action and is therefore irreceivable. It adds that the complainant has never asserted that she suffered injury on account of having received an unsigned copy of the IRG report. The ILO takes the view that it is difficult to separate the description of SafeWork from all the considerations underpinning the IRG's technical opinion, for the latter is predicated, on the one hand, on the fact that most of the complainant's tasks did not match the G.6 grade and, on the other hand, on the circumstance that these tasks were not performed at sector or department level. It points out that, far from representing a "sudden shift in reasoning", the grounds given merely clarified the reasoning already outlined by the IRG in its interim report of 26 February 2004.

CONSIDERATIONS

1. The complainant was in a G.4 post at the International Labour Office when she was transferred to the InFocus Programme on SafeWork in November 1999; she was promoted to grade G.5 on 1 December 2000. Following a baseline job-matching exercise which took place in 2001, her post was maintained at grade G.5. The complainant was subsequently transferred at the same grade to the InFocus Programme on Strengthening Social Dialogue.

2. On 10 May 2005 the IRG, to which a request for review had been referred, confirmed that the position which the complainant had held in SafeWork as from 1 December 2000 was correctly classified at grade G.5. The complainant, having filed a grievance with the Joint Advisory Appeals Board to contest this decision, then accepted the Administration's proposal that the IRG's decision be set aside on

procedural grounds and that her case be referred back to the Group. In its final report of 21 August 2006, drawn up after fresh proceedings during which the complainant was heard, the IRG confirmed the grading of the post in question at grade G.5. The copy of this report which was sent to the complainant did not name the IRG members by whom it had been drafted.

The complainant filed a second grievance with the Board to contest this decision. On 21 June 2007 the Board recommended that the Director-General should dismiss the grievance. Nevertheless, it invited him to inform the complainant of the names of the IRG members who had examined her case. By a letter of 17 August 2007 the complainant was notified that the Director-General had dismissed her grievance in its entirety. In particular, he could not endorse the Board's reasoning insofar as it concerned the anonymity of the IRG's members. That is the decision impugned before the Tribunal.

3. The complainant's main claim is that the post she held at SafeWork as from 1 December 2000 should be graded at G.6 and not G.5, because SafeWork is a higher unit (a programme), not a subdivision of such a unit (a section). Furthermore, her tasks within this programme involved a higher level of responsibility, a fact which the IRG had recognised before suddenly changing its mind in this respect.

4. Both parties accept that the Tribunal has only a limited power to review the Administration's decisions regarding post classification. It will intervene only if the disputed evaluation was made in breach of a rule of form or of procedure, was based on an error of fact or of law, overlooked some essential fact, or was tainted with abuse of authority or if a clearly mistaken conclusion was drawn from the facts (see Judgments 1874, under 3, and 2514, under 13).

The complainant takes the Organization to task for committing an error of fact by refusing to classify the post she held at SafeWork from 1 December 2000 at grade G.6.

5. (a) The Organization produces part of the matrix applicable to secretarial posts, according to which G.5 secretaries provide a full range of advanced secretarial work of a highly difficult and responsible nature. The distinction between the tasks performed by these officials and those performed by grade G.6 secretaries does not, at least at first sight, stem from the actual difficulty of the daily tasks respectively entrusted to them, but only from the level of their responsibilities as determined by the position of the administrative unit to which the secretary is assigned within the hierarchy of the Organization.

(b) The Organization appends *in parte qua* to its reply a document entitled “Programme and Budget proposals for 2000-01: Approval of the detailed budget and further development of strategic budgeting”. According to this document, at the time in question the Social Protection Sector of the Office was subdivided into four major units, including the Labour Protection Department. This department was itself subdivided into three programmes including the InFocus Programme on SafeWork.

The designation “programme” is not decisive when determining the hierarchical position of SafeWork within the Organization. In the above-mentioned document for example, the InFocus Programme on Socio-Economic Security is a major unit on a par with a department, whereas the InFocus Programme on SafeWork is merely a subdivision of a department. Moreover, it is clear from the factor “Nature and complexity of the job” in the above-mentioned matrix that a grade G.5 secretary can provide administrative support services at programme level and that a G.6 secretary can head a secretariat of a programme.

(c) The complainant has produced no evidence to support the view that, despite what must be inferred from the above-mentioned documents, at the time in question SafeWork was regarded as a higher unit, which would have justified her promotion to grade G.6.

In these circumstances, the Organization cannot be accused of having committed an error of fact.

6. The complainant also criticises the fact that the IRG report of 21 August 2006 did not name the members who had drafted it.

In its report of 21 June 2007 the Board recalled that the IRG's proceedings were governed by its terms of reference, which provide in paragraphs 8 and 21 that the names of members constituting a panel to hear a grading appeal shall be confidential. It explained that this confidentiality rule and anonymity were designed to avoid any interference in those proceedings, but it underlined that paragraph 24 of the terms of reference did not expressly require anonymity when notifying the incumbent of the IRG's final decision. In the Board's opinion, failure to disclose the names of the persons who had taken the final decision would be likely to "give rise to distrust, demoralisation or resentment" among the staff members concerned. It therefore recommended that the Director-General inform the complainant – who has an interest in this disclosure which is worthy of protection – of the names of the IRG members who had examined her case. The Director-General refused to follow this recommendation.

7. (a) The Board referred to the Tribunal's case law concerning the transparency of complaint and appeal procedures, which is based on the right to due process. According to that case law, the staff member is entitled to be apprised of all items of information material to the outcome of his or her claims (see Judgments 1815, under 5, and 2700, under 5 and 6). The composition of an advisory body is one such item, since the identity of its members might have a bearing on the reasoning behind and credibility of the body's recommendation or opinion. The staff member is therefore at least entitled to comment on its composition.

(b) The Director-General did not rely on any special feature of the case in order to justify his refusal to follow the recommendation of the Board. In this respect, the argument that the complainant did in fact find out who was on the IRG panel at the hearing on 7 July 2006 is inoperative, since in accordance with paragraph 21 of the IRG's terms of reference this hearing took place in the presence of the IRG members who had examined her case as well as two additional members, so that it was impossible to know which members would take the decision.

It must be concluded that the Director-General refused without good reason to rectify a procedural flaw by not informing the complainant of the identity of the IRG members.

8. A copy of both IRG reports showing the names of the members of each panel has, however, been produced by the ILO during the proceedings before the Tribunal. The complaint therefore no longer shows a cause of action in this respect.

The complainant should nevertheless be awarded compensation in the amount of 1,000 Swiss francs for the injury she suffered as a result of the procedural flaw which was not rectified until after the complaint had been filed with the Tribunal.

She should also be awarded costs, which shall be set at 1,000 francs.

DECISION

For the above reasons,

1. The ILO shall pay the complainant 1,000 Swiss francs in compensation for the injury suffered.
2. It shall also pay her costs in the amount of 1,000 francs.
3. All other claims are dismissed.

In witness of this judgment, adopted on 5 November 2008, Mr Seydou Ba, President of the Tribunal, Mr Claude Rouiller, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 4 February 2009.

Seydou Ba
Claude Rouiller
Patrick Frydman
Catherine Comtet