

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

114th Session

Judgment No. 3157

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr A. D. against the International Labour Organization (ILO) on 22 October 2010, the Organization's reply of 26 January 2011, the complainant's rejoinder of 3 May and the ILO's surrejoinder of 22 July 2011;

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, an Italian national born in 1963, joined the International Labour Office, the ILO's secretariat, in 1995 as a building management assistant at grade G.6 in the Internal Administration Bureau (INTER). He was promoted to grade P.1 in 1997 after competing successfully for the post of building automation assistant, and then to grade P.2 in the year 2000 in the context of the job-grading exercise. In 2003, after another competition, he was appointed to a grade P.3 post in the ILO's Regional Office for Asia and the Pacific. In February 2008 he was transferred at the same grade to the Information Technology and Communications Bureau at the Organization's headquarters in Geneva.

In April 2009 the complainant took part in a competition to fill the grade P.3 post of Property Inventory Officer in INTER. The vacancy notice stated that only internal candidates were eligible to apply. Only five of the eight applications received could be regarded as coming from internal candidates within the meaning of paragraphs 15 and 16 of Annex I to the Staff Regulations. After an initial screening of these applications, the Human Resources Development Department forwarded them to the responsible chief with the comment that none of the candidates had all the required qualifications specified in the vacancy notice. The responsible chief drew up a shortlist of three candidates who were to undergo technical evaluation. The complainant was not included on that list.

The evaluation took place on 15 May 2009. The panel headed by the responsible chief selected only one candidate, Mr D., on the grounds that he alone possessed all the required qualifications specified in the vacancy notice. In accordance with the procedure laid down in paragraph 12 of Annex I to the Staff Regulations, the technical evaluation report was forwarded to the Staff Union, which, in its comments, stated that the fact that some of the criteria which the responsible chief had applied did not tally with the requirements listed in the vacancy notice, that the complainant's experience in INTER had been ignored and that the recommended candidate did not possess the number of years of professional experience required for the post, warranted the cancellation of the competition. These comments were forwarded to the responsible chief, who replied in a minute of 12 June 2009 that, as far as he knew, the complainant had never carried out duties related to the fields of activity covered by the advertised post and that the successful candidate did have the requisite number of years of experience in the pertinent areas. On 14 July the Director-General decided to fill the post by appointing Mr D., who had been working in INTER since August 2004.

When the complainant was informed on 21 July 2009 that his application had been unsuccessful, he requested an interview with the responsible chief in order to obtain feedback on the technical evaluation. The Human Resources Development Department replied

in an e-mail of 27 July that he could not be granted an interview because he had not been shortlisted, but that he could be given some information “as a favour”. He was told that all the candidates, including himself, to some extent possessed the required language skills as well as the competencies and aptitudes listed in the vacancy notice, but that only three candidates had training “at least partly” matching the requirements of the post, especially with regard to financial management and management of movable and immovable property and that, of the three shortlisted candidates, only one had the necessary experience in the areas of activity concerned. He was also told that, “having regard to [his] training and the limited nature of [his] experience” in those areas, the view had been taken that he did not satisfy the minimum requirements defined in the vacancy notice.

On 12 November 2009 the complainant filed a grievance with the Director of the Human Resources Development Department. She rejected this grievance on 12 February 2010. The complainant then referred the matter to the Joint Advisory Appeals Board which, in its report of 21 May 2010, recommended that the Director-General should dismiss the grievance as unfounded. The Board considered, however, that it was not clear why the responsible chief had selected one candidate rather than another to undergo technical evaluation. It noted that, apart from the successful candidate, “none of the candidates entirely satisfied the training requirements or had the necessary professional experience”, and that, in view of the fact that the complainant had held a post in the same service which had borne some relation to the duties of the advertised post, he could reasonably have expected to see his name on the shortlist. The Board concluded that the selection process had lacked transparency but that there was nevertheless no reason to question the objectiveness of the technical evaluation, because the complainant did not have the necessary university degree or the requisite experience. The complainant was informed by a letter of 12 July 2010 that the Director-General had adopted the Board’s recommendation. That is the impugned decision.

B. The complainant states that he received unequal treatment because he was not placed on the shortlist, and he emphasises that the

Board considered that he could reasonably have expected to see his name on that list. In his opinion, the evidence on file clearly shows that the successful candidate did not possess all the required qualifications because, when he applied, he was still seven months short of the five years of experience needed. Indeed, the Human Resources Development Department acknowledged this fact.

The complainant also denounces the responsible chief's personal prejudice which, in his opinion, renders the appointment of Mr D. unlawful. He contends that this personal prejudice was reflected in the decision to hold an internal competition, whereas competitions to fill grade P.3 posts are normally open to external candidates, and in the fact that the responsible chief shortlisted "token contenders" to stand against the favoured candidate in order to give the impression that the latter was the best qualified. In his view, the outcome of the competition would have been radically different if that candidate had been compared with officials of the requisite standard. Indeed, the Human Resources Development Department actually admitted that none of the shortlisted candidates possessed all the minimum required qualifications.

Lastly, the complainant submits that the rules governing the appointment of the assessors responsible for conducting the test at the Assessment Centre were not respected, and that the Board examined the competition file without granting him access to it, in breach of the adversarial principle.

He asks the Tribunal to set aside the impugned decision and to cancel the selection process and disputed appointment. He also asks the Tribunal to order redress for the injury suffered and to award him costs in the amount of 2,000 Swiss francs.

C. In its reply the Organization submits that the complainant did not suffer any injury by not being shortlisted since Mr D. was the only one who possessed all the required qualifications. It considers that the erroneous statement that none of the candidates had all the minimum required qualifications, which was made by the Human Resources Development Department in the note forwarding the applications to

the responsible chief, was duly clarified by the Board, which drew attention to the fact that the panel had considered that Mr D. did have the necessary five years of experience, because “before being employed at the Office he had worked in the field of property surveying in Switzerland for almost three years”. The Organization states that the decision to shortlist the two other candidates rather than the complainant was not tainted with any error because, unlike the complainant, they held university degrees in fields of activity similar to that covered by the advertised post.

The ILO also submits that, not only did the complainant not have the requisite training, but he also lacked the relevant professional experience. It contends that when he worked in INTER his duties were essentially technical and computer-related, whereas the holder of the advertised post would have to perform administrative and financial duties in the field of asset management and develop policy in that area. In its opinion, the responsible chief was therefore right not to include him on the shortlist.

The Organization points out that the competition file is strictly confidential and explains that, with the agreement of the Staff Union, it had to call on the services of external assessors to conduct the test at the Assessment Centre because no one “from inside” could be found. The fact that external assessors approved by the Staff Union took part in the selection process therefore cannot be regarded as unlawful in this case. It rejects the argument that the decision to restrict the competition to internal candidates was tainted with personal prejudice because that recruitment procedure was unusual for a grade P.3 post, emphasising that this approach is provided for in paragraph 8 of Annex I to the Staff Regulations.

At the Tribunal’s request, the ILO transmitted a copy of the complaint to Mr D. He replied on 16 December 2010 that he considered “in good faith” that he met the requirements of the post to which he had been appointed.

D. In his rejoinder the complainant submits that the documents supplied by the ILO in its reply indicate that Mr D. did not possess the

minimum required qualifications and that in 2008 he had been appointed ad interim to the grade P.3 post of Property Inventory Officer, while he was holding a G.5 post. In his view, this transfer, without a competition, of an official from the General Service category to a post in the Professional category was “suspicious”, to say the least, if not unlawful, especially as a competition was to be held for that post. The complainant maintains that, unlike the shortlisted candidates, he did have the necessary experience and he denies that the Staff Union unconditionally approved the recruitment of external assessors.

E. In its surrejoinder the ILO explains that as from 2004 Mr D. gradually had to take over the duties of his supervisor, who had frequently been absent on health grounds. This situation had justified his transfer to his supervisor’s post in 2008 and had enabled him to acquire the requisite international experience.

CONSIDERATIONS

1. In March 2009 a competition, open exclusively to internal candidates from the International Labour Office, was held to fill the grade P.3 post of Property Inventory Officer in INTER. The vacancy notice specified that the candidates should:

- hold an advanced university degree in property management, analysis and surveying, or equivalent training;
- have five years of experience in the fields of movable and immovable property analysis and surveying, including three years at the international level; and
- have an excellent command of one working language of the ILO, and good knowledge of a second, while knowledge of a third official language would be an asset.

2. Eight candidates applied, but only five, including the complainant who held a grade P.3 post, met the conditions for being deemed internal candidates within the meaning of Annex I to the

Staff Regulations. After an initial screening, the Human Resources Development Department forwarded the five applications to the responsible chief in charge of the competition in order that he might draw up a shortlist. He selected three candidates, excluding the complainant, for technical evaluation. This evaluation was conducted on 15 May 2009 by a panel headed by the responsible chief. Mr D. was the only candidate considered to possess all the qualifications required in the vacancy notice. On 14 July the Director-General decided to appoint that candidate. On 21 July 2009 the complainant was informed that his application had been unsuccessful.

3. The complainant, relying on paragraph 13 of Annex I to the Staff Regulations, requested an interview with the responsible chief. He received the reply that, as he was not one of the candidates who had undergone technical evaluation, his request could not be granted. He was, however, informed that he had not been placed on the shortlist because, unlike the three candidates who were shortlisted, he had no training corresponding to that required in the vacancy notice and because his professional experience in the fields of activity covered by the advertised post was “limited”.

4. The grievance which he filed with the Human Resources Development Department in order to challenge the lawfulness of the selection process was dismissed. He then referred the matter to the Joint Advisory Appeals Board, asking it to recommend that the Director-General cancel the selection process and ensuing appointment, draw all the legal consequences therefrom and, subsidiarily, redress the moral and material injury which he considered he had suffered.

5. He was informed by a letter of 12 July 2010, which constitutes the impugned decision, that the Director-General had decided to adopt the Board’s recommendation that his grievance be dismissed as unfounded.

6. The complainant’s first plea is that he did not receive equal treatment in that he was not placed on the shortlist. He emphasises

that the Board noted that, when the Human Resources Development Department had forwarded to the responsible chief the applications of the five candidates who could have been regarded as internal within the meaning of Annex I to the Staff Regulations, it had stated that none of them met all the requirements listed in the vacancy notice. In the complainant's opinion, it was therefore unlawful to invite three of these candidates, but not him, to undergo technical evaluation.

7. The ILO contends that the candidate who was ultimately appointed was the only one who possessed all the required qualifications, that the two other shortlisted candidates did not have the necessary professional experience, but that they did hold a university degree "in a field similar to that covered by the advertised post", whereas the complainant had neither the training nor the professional experience needed for that post.

8. As the Tribunal has consistently held, although an appointment by an international organisation is a discretionary decision and hence subject to only limited review, it may be set aside if it was taken without authority or in breach of a rule of form or of procedure, or if it was based on a mistake of fact or of law, or if some material fact was overlooked, or if there was abuse of authority, or if a clearly wrong conclusion was drawn from the evidence.

9. In the instant case, having regard to the submissions and, in particular, the report of the Joint Advisory Appeals Board, the Tribunal notes that the complainant was excluded from the technical evaluation on the grounds that he did not possess all the required qualifications, but that the two candidates shortlisted alongside Mr D. did not possess them either.

10. As stated earlier, the Organization seeks to justify the shortlisting of the two unsuccessful candidates by saying that, although they lacked the necessary professional experience, they did have a university degree "in a field similar to that covered by the advertised post". The complainant, however, had held a post in the

same service which bore some relation to the duties pertaining to the post in question; but this fact, which the Board underscored when it stated that he “could have reasonably expected to be shortlisted”, was not taken into account when the shortlist was drawn up.

11. In light of the foregoing, the Tribunal finds that the complainant received unequal treatment when the shortlist was established. As the selection process is tainted with a flaw, the impugned decision must be set aside and the disputed appointment must be cancelled, without there being any need to rule on the complainant’s other pleas. The Organization must shield the successful candidate from any injury that might result from the cancellation of his appointment, which he accepted in good faith.

12. The complainant is entitled to moral damages in the amount of 3,000 Swiss francs.

13. As he succeeds, he is entitled to costs, which the Tribunal sets at 750 francs.

DECISION

For the above reasons,

1. The impugned decision is set aside.
2. The selection process and resultant appointment are cancelled.
3. The candidate who was appointed shall be shielded from any injury.
4. The ILO shall pay the complainant moral damages in the amount of 3,000 Swiss francs.
5. It shall also pay him 750 francs in costs.

In witness of this judgment, adopted on 9 November 2012, Mr Seydou Ba, President of the Tribunal, Ms Dolores M. Hansen, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 6 February 2013.

Seydou Ba
Dolores M. Hansen
Patrick Frydman
Catherine Comtet