Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

B. (No. 4)

v.

ILO

123rd Session **Judgment No. 3773**

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourth complaint filed by Ms B. B. against the International Labour Organization (ILO) on 1 April 2014 and corrected on 30 April, the ILO's reply of 8 October and the complainant's e-mail of 24 November 2014 informing the Registrar of the Tribunal that she would not file a rejoinder;

Considering the documents produced by the complainant at the Tribunal's request;

Considering Article II, paragraph 1, 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 disputes the calculation of the number of years of service taken into consideration in order to determine the date on which she became eligible for personal promotion.

On 22 October 2009 the International Labour Office, the ILO's secretariat, published Office Procedure IGDS No. 125 (Version 1) governing the personal promotion system. This system offers two possible tracks for moving up a grade within the same category. Paragraph 8 of IGDS No. 125 explains that, to be eligible for promotion under the second track, officials must have completed 25 years of service at the

ILO, including at least 13 in their current grade. Moreover paragraph 9 states that "[f]or both tracks, all contracts established under the Staff Regulations or the Rules Governing Conditions of Service of Short-term Officials count for the purpose of calculating the required length of service. Interruptions of service of more than 31 days, either on special leave (with or without pay) or between two contracts, do not count for the purpose of calculating the required length of service".

Between 10 June 1985 and 31 March 1994 the complainant was employed by the ILO on short-term contracts, most of which were so-called "daily" contracts, with breaks of sometimes less than 31 days. As from 1 April 1994 she was given a fixed-term contract for a grade P.3 post. This contract was renewed several times before being converted into a contract without limit of time in 2002.

In March 2011 the complainant enquired as to when she would become eligible for a personal promotion. She was eventually informed on 5 December 2012 that, since the date on which she had "taken up her duties" was 1 April 1994, she would be eligible for personal promotion under the second track as from 1 April 2019. However, she was also told that the issue of taking daily contracts into consideration for the purposes of calculating the required length of service in order to be eligible for personal promotion had been referred to a joint panel and that she would be informed once the panel had reached a decision.

On 24 January 2013 the complainant filed a grievance with the Human Resources Development Department in which she contended that, according to her own calculations based on paragraph 9 of IGDS No. 25 and Circular No. 630, Series 6, concerning the inappropriate use of employment contracts in the Office, she had accumulated 1,899 days of service between 10 June 1985 and 31 March 1994, which should be taken into account when calculating her years of service. She argued that it was unlawful for the Office not to take into account those days of service. On 12 April 2013 she received the reply that her grievance was premature, particularly because no decision had yet been taken on the method for calculating periods of service under daily and monthly-paid contracts.

On 13 May 2013 the complainant filed an appeal with the Joint Advisory Appeals Board. She maintained that the length of her service between 10 June 1985 and 31 March 1994 should be calculated on the basis of 219 working days per calendar year, while at the same time taking account of the fact that in some years she had worked a greater number of days. She therefore asked for a personal promotion backdated to 2010. Subsidiarily she sought redress for the material and moral injury which she considered she had suffered. Although the relevant joint bodies had still not reached a decision, the Organization, on the basis of a different method of calculation, submitted that the complainant would be eligible for a personal promotion during the 2013 exercise at the earliest.

In its report of 28 October 2013 the Board concluded that, over the period in question, the complainant had accumulated five years and ten months of service and that she had therefore completed 25 years of service at the Office in 2013. It therefore recommended that the Director-General should regard 2013 as the year in which she became eligible for personal promotion under the second track.

By a letter dated 11 December 2013, which was delivered to her in person on 6 January 2014, the complainant was informed that the Director-General had accepted that recommendation and that she would be eligible for personal promotion as from 1 June 2013. That is the impugned decision.

The complainant requests the setting aside of this decision, the calculation of her length of service using the method based on a divisor of 219 and redress for the injury she has suffered. She also claims costs.

The Organization submits that the complaint should be dismissed as unfounded.

CONSIDERATIONS

1. The complainant disputes the calculation of the years of service taken into consideration in order to determine the date on which she became eligible for a personal promotion.

She considers that the Joint Advisory Appeals Board's calculation of her years of service under short-term contracts is unlawful. She contends that a normal working year at the Office comprises 219 working days and that it is this number which should be used as the divisor when calculating the length of her service between 10 June 1985 and 31 March 1994. She also submits that the Office's refusal to take "the necessary measures" to regularise her situation, despite the clarity of the applicable texts, constitutes a breach of her working conditions. She asserts that, in accordance with a "general principle of law", the Human Resources Development Department could not "refuse to take a decision on the pretext that the law was silent, abstruse or inadequate".

2. The ILO contends that, if the divisor recommended by the complainant, i.e. 219, were used to calculate the length of her service under short-term contracts, it would work out at a total of 8.8 years of service between 10 June 1985 and 31 March 1994, whereas she did not work for all that time during that period. In the Organization's opinion, this method produces illogical results, because its application would lead to the complainant being credited with more than one year of service for certain years. The ILO endorses the reasoning of the Joint Advisory Appeals Board that for short-term "daily" contracts, which do not give officials any leave entitlement, and for interruptions in service of less than 31 days, the divisor must be 323, whereas for the only monthly-paid short-term contract which, according to the ILO, the complainant held and which did include a leave entitlement, it must be 365.

Moreover, the ILO explains that it was impossible to provide the complainant with a clear-cut answer to her question regarding the date of her eligibility for a personal promotion, because the competent bodies had not adopted a position. It contends that this "absence of a decision" could not, in this case, adversely affect the complainant, as she was not eligible anyway for personal promotion at that point during the 2010 exercise.

3. The Tribunal notes that although paragraph 9 of IGDS No. 125 provides that all contracts established under the Staff Regulations or the Rules Governing Conditions of Service of Short-term Officials and

interruptions of service of less than 31 days count for the purpose of calculating the required length of service, no provision of the Staff Regulations or the Rules specifies the applicable method of calculation.

4. The Tribunal considers that, as recommended by the Joint Advisory Appeals Board, the length of service under monthly-paid short-term contracts should be calculated in exactly the same way as the years of service of an official holding a contract without limit of time, or a fixed-term contract, in other words on the basis of 365 days. For daily-paid short-term contracts the divisor to be applied is 323, since that is the figure given in Rule 2.1(d) of the Rules Governing Conditions of Service of Short-term Officials for the purpose of calculating the remuneration of officials employed under such contracts. The impugned decision is therefore perfectly correct in stating that, based on the divisors 365 and 323, the complainant had accumulated five years and ten months of service between 10 June 1985 and 31 March 1994 and that she had accrued a total of 25 years of service with the ILO in 2013, which made her eligible for personal promotion as from 1 June 2013.

5. However, it is well settled in the Tribunal's case law that international organisations must respond to requests from their staff members within a reasonable period of time (see Judgment 3188, under 5). In the instant case, in March 2011 the complainant asked the ILO when she would become eligible for a personal promotion. It was not until 5 December 2012, in other words more than one and a half years later, that the ILO gave her an initial reply. The Tribunal considers that this delay is abnormal and constitutes a breach of the Organization's duty of diligence towards a member of its staff. This breach is all the more glaring for the fact that the Organization's reply was merely provisional, since the issue of how to calculate years of service under daily contracts had been referred to a joint panel. This situation caused the complainant moral injury which must be redressed by an award of compensation in the amount of 3,000 Swiss francs.

6. As the complainant succeeds in part, she is entitled to costs, which will be set at 500 Swiss francs.

DECISION

For the above reasons,

1. The ILO shall pay the complainant moral damages in the amount of 3,000 Swiss francs.
2. It shall also pay her 500 Swiss francs in costs.
3. All other claims are dismissed.

In witness of this judgment, adopted on 10 November 2016, Mr Claude Rouiller, President of the Tribunal, Mr Patrick Frydman, Judge, and Ms Fatoumata Diakité, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 8 February 2017.

(Signed)

CLAUDE ROUILLER PATRICK FRYDMAN FATOUMATA DIAKITÉ

DRAŽEN PETROVIĆ