

**SIXTY-FIRST ORDINARY SESSION**

***In re* RUDIN (No. 4)**

**Judgment 808**

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourth complaint filed by Miss H el ene Rudin against the International Labour Organisation (ILO) on 10 June 1986 and corrected on 4 August, the ILO's reply of 5 November 1986, the complainant's rejoinder of 5 January 1987 and the ILO's surrejoinder of 4 February 1987;

Considering Article II, paragraph 1, of the Statute of the Tribunal and Articles 1.9(a), 6.1, 6.4, 6.11, 13.2 and 14.8 of the Staff Regulations of the International Labour Office;

Having examined the written evidence, oral proceedings having been neither applied for by the parties nor ordered by the Tribunal;

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

A. The complainant's career is summed up in Judgments 377, 405 and 630. In 1975 she held a post in the Editorial and Document Services Department of the Office. After review her post was regraded from G.7 to P.2. On its abolition in 1978 she was transferred to the Document Services Branch at G.7. After the Tribunal delivered Judgment 630 the Administration sought an alternative assignment for her and on 18 July 1985 it appointed her assistant cashier as from 22 July at grade G.7. In a minute of 19 July to the Personnel Development Branch she said that though she accepted the assignment her new duties were less responsible than those she had had in the Editorial Department; the assignment should therefore be treated as provisional and not prejudicial to her claim to grade P.3. In a minute of 25 July the Personnel Development Branch answered that her new assignment was final and that in any event her duties bore the same grade as her previous post. She filed an internal "complaint" on 15 January 1986. A letter which the Chief of the Personnel Department wrote to her on 13 March and which is the impugned decision informed her that the Director-

General had rejected that complaint.

B. The complainant narrates in some detail the history of her earlier disputes with the ILO. She objects to the grading of the assistant cashier's post she has held since July 1985. She points out that her duties are those of a General Service category official and that she comes under a chief cashier who also has grade G.7, whereas in the Document Services Branch she was performing Professional category duties and was directly answerable to the head of branch who had grade D.1. She alleges breach of Article 6.11 of the Staff Regulations, on "Transfer to duties and responsibilities attaching to a lower grade", on the grounds that the procedure for such transfer was not followed in her case. Although she is not objecting to her new assignment she wants it to be made quite clear that it is merely provisional pending a final one better suited to her qualifications. She invites the Tribunal to declare that her permanent assignment to less responsible duties is unlawful, to quash the decision insofar as it is final and to award her costs, including counsel's fees.

C. In its reply the ILO points out that because of the upgrading to P.2 of the complainant's post in the Editorial and Document Services Department she did have an opportunity of promotion to that grade; yet she scorned it. In any event regrading relates only to the post and need not have any effect on the incumbent's own grade. The fact that an official has had more responsible work before gives him no right to the higher grade: all he is entitled to is a post that carries the same grade as the post he is on. It was by her own choice that the complainant failed to get promotion to P.2, and the ILO's sole duty was to put her on a post that warranted the grade she had always had. It did so. Since the grade of the assistant cashier's post matched the complainant's there was no reason to make her assignment provisional or temporary. The ILO invites the Tribunal to dismiss her claims.

D. In her rejoinder the complainant enlarges on her pleas and seeks to refute the defendant's arguments. She seeks

to make it plain that she is not asking the Tribunal to declare her right to P.2: her sole purpose in raising the issue was to show that her transfer to the assistant cashier's post was tantamount to a professional downgrading. She submits that her previous duties and the circumstances in which she performed them are essential facts that the ILO overlooked. There was therefore breach of Article 1.9(a) of the Staff Regulations, which says that the Director-General "shall assign an official to his duties ... subject to the terms of his appointment, account being taken of his qualifications". She is now in a "dead-end job". She presses her claims.

E. In its surrejoinder the ILO points out in particular that the wording of Article 1.9(a) leaves the Director-General some discretion: the assignment does not have to match the official's qualifications exactly but merely take account of them. Since the complainant's duties do correspond to her grade and take reasonable account of her qualifications the article was complied with. That does not rule out another transfer on her promotion in accordance with the prescribed procedures; so it is mistaken to say she is in a dead-end job.

## CONSIDERATIONS:

1. The complainant is a G.7 official of the ILO and this complaint is about her assignment as an assistant cashier in the Treasury and Investments Branch. It is the latest in a series of disputes between her and the ILO, and the Tribunal has already heard three complaints by her which it will begin by recapitulating.

### Background

2. Her first complaint, which dates back to 1978, was about the classification under a new grading system of the post she then held in the Editorial and Document Services Department. The post had been graded P.2 on the strength of a post description but she wanted P.3, a claim that was turned down after review. The Tribunal dismissed the complaint in Judgment 377 on 4 June 1979.

3. That dispute over, in the end the complainant kept her old grade, G.7. She is still G.7 and she suggests that for the time being that is in her financial interest.

4. A while later, though still in 1978, she lodged a second complaint objecting to curtailment of the duties of her post in the Department. The Tribunal dismissed it as well, in Judgment 405 of 24 April 1980.

5. In 1983 came her third complaint, in which she said that the new head of the branch she was employed in had kept her idle for at least two years because they did not get on well.

6. In Judgment 630, which it delivered on 5 December 1984, the Tribunal severely reprovved the Administration for its attitude. It affirmed (in 5) the "right of the employee of an organisation to a proper administrative position" and to "hold a post and perform the duties pertaining thereto". It held that the Administration had not "done its utmost to find proper duties and responsibilities" for a staff member who, though perhaps not easy to deal with, had served well and must be given proper duties and responsibilities. It awarded her 10,000 Swiss francs in damages.

7. The ILO cast around for some new assignment for the complainant. By a letter of 18 July 1985 Mr. Ilgin of the Personnel Development Branch told her that the Director-General was transferring her to the Treasury and Investments Branch where she would hold the assistant cashier's post that had just fallen vacant. A detailed description of the post was appended. Mr. Ilgin recalled the Administration's attempts to find her suitable work and said he hoped she would show her mettle in her new post and let bygones be bygones.

8. In a minute of 19 July 1985 the complainant said she had some objections to the assignment. For one thing, though the post was G.7 some of the duties were inferior to what she had been doing in the Editorial and Document Services Department. For another, her consent to the assignment did not mean she was waiving her claim to grade P.3.

9. Answering on 25 July, Mr. Ilgin said that her new post was indeed graded G.7 and always had been. "It therefore corresponds to G.7, the grade you have continued to have since rejecting the regrading at P.2 of your post in the Editorial Department". Mr. Ilgin also pointed out that the complainant's transfer was a decision of the Director-General's and did not call for her consent.

10. The complainant explained again in a minute of 20 August 1985 why she regarded her new assignment as merely "provisional", but Mr. Ilgin's reply of 18 September said that the Director-General's decision was final.

11. On 15 January 1986 the complainant lodged an internal "complaint" under Article 13.2 of the Staff Regulations repeating her main grievance, which was that her duties in the Branch were far inferior to those she had had in the Department. She pressed her claim to regrading at P.3 and in any event claimed P.2 on the strength of the regrading of her old post at that grade.

12. On 13 March 1986 the Chief of the Personnel Department informed her that the Director-General rejected her claims for reasons that he stated. First, on the abolition of her post in the Editorial Department she had been moved to the Document Services Branch and there her grade had still been G.7. Her transfer to the Treasury and Investments Branch therefore brought about no change in grade. Secondly, her new assignment was in keeping with what the Tribunal had said in Judgment 630. Thirdly, the Director-General's decision was, as had been said before, not subject to her consent.

#### The merits

13. The decision the complainant impugns is the one of 13 March 1986 set out above. She asks the Tribunal (a) to declare her assignment to inferior duties unlawful, (b) to quash the transfer "insofar as it is a final decision" and (c) to award her costs.

14. The complainant's pleas prompt a preliminary comment. One salient fact is that her grade both before and after transfer was G.7. Though she duly objected to the regrading of her former post she never got P.2 and she carried on at G.7. So she may not plead some hypothetical entitlement to P.2 in support of a claim either to more responsible work in her G.7 post or to a regrading at P.3.

#### The grade

15. In substance the complainant repeats the arguments she put forward in her internal appeal. She sees the transfer as "professional downgrading" and the post as less responsible than her old one. She thinks she is in a "dead-end job". She submits that since she has been downgraded there is breach of Article 6.11 of the Staff Regulations.

16. The ILO answers that the only safeguard in the Staff Regulations is that on transfer the grade should remain the same. Under Article 1.9(a) the Director-General shall assign an official to duties "subject to the terms of his appointment, account being taken of his qualifications". The ILO submits that the rule was complied with and that Article 6.11 is irrelevant because the complainant was not transferred to duties "attaching to a lower grade".

17. The material issue is not whether, as the complainant says, her new duties are inferior to her old ones, but whether there was compliance with the rule in the Staff Regulations that a staff member's duties should match his grade, which will cover a more or less wide range of posts.

18. One thing beyond question is that the transfer did not cause the complainant any drop in grade, so that her basic rights under the Staff Regulations are unimpaired. The only question possibly at issue is whether her new post comprises duties and responsibilities that warrant G.7 and, as the Organisation has explained, there is no question but that it does since the duties of assistant cashier have always carried that grade.

19. In other words, what the complainant has done, so as to draw a comparison between her old and her present posts, is simply to give her own wishes priority over the ILO's grading standards and the allocation of posts according to those standards to the various grades provided for in the Staff Regulations. The plea that her present duties are inferior therefore fails.

#### The finality of the transfer

20. The second claim is to the quashing of the transfer insofar as it is final. Seemingly what she wants is to safeguard her claims to transfer to a post more to her own liking and later promotion to P.3.

21. The claim is irreceivable. The ILO had already made it quite plain, and has confirmed yet again in these proceedings, that her assignment to the assistant cashier's post was final. So what the complainant really wants is not that the Tribunal quash the Director-General's decision in whole or in part but that it alter the nature and effect of the decision. That is not the sort of claim the Tribunal will allow.

22. In sum the Director-General may assign the staff as the Organisation's interests require provided he respects their grades and the grading structure. Transfer does not depend on their consent and they must be willing to put their hand to any work that suits their grade, their qualifications and the terms of their appointment.

23. The complaint therefore fails.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, Mr. Jacques Ducoux, Vice-President, and Mr. Pierre Pescatore, Deputy Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 13 March 1987.

(Signed)

André Grisel  
Jacques Ducoux  
Pierre Pescatore  
A.B. Gardner