

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

109th Session

Judgment No. 2940

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs B. R. against the International Labour Organization (ILO) on 17 December 2008 and corrected on 29 January 2009, the ILO's reply of 6 May, the complainant's rejoinder of 13 July and the Organization's surrejoinder of 31 August 2009;

Considering Articles II, paragraph 1, and VII 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 Irish national, joined the International Labour Office, the ILO's secretariat, in 1975, as a secretary at the Branch Office in London, where she worked until her separation on 31 December 2003.

During the general job-grading exercise conducted by the International Labour Office in 2001, her post of programme assistant was classified at grade G.5; she was informed of this decision on 1 November 2001.

On 30 November 2001 the complainant sent a request for review of this initial grading to the Regional Director of Field Programmes in Europe and Central Asia, stating that G.7 was the most appropriate grade for her post. The request was forwarded to the Human Resources Development Department and subsequently to the Independent Review Group (IRG). In its interim report, which was communicated to the complainant on 29 August 2003, the IRG noted that her duties and responsibilities appeared to be divided between two job families – that of “administrative assistants” and that of “clerical support staff” – and that it might thus be inferred that the complainant held a “mixed post”. It concluded that the post “could be a borderline between G.5 and G.6” but issued a recommendation in favour of maintaining the G.5 grading, which was confirmed by the above-mentioned Department on 27 October 2003.

The IRG held an oral hearing with the complainant on 6 December 2006. In its final report, which included an account of the hearing with the complainant, it recommended that her post be maintained at grade G.5. This report, dated 30 January 2007, was sent to the complainant by e-mail on 31 January. On 1 February the Human Resources Development Department informed the complainant that the post she occupied had been confirmed at grade G.5 and that her case was therefore closed.

On 1 March 2007 the complainant lodged a grievance with the Joint Advisory Appeals Board. In its report of 9 July 2008 the Board, while expressing regret for the delay in the procedure, recommended that the Director-General dismiss the grievance as groundless. The complainant was informed by a letter of 9 September 2008 that the Director-General had dismissed her grievance. That is the impugned decision.

B. The complainant objects to the fact that the copy of the IRG report that was forwarded to her was unsigned, since she was unable, owing to the anonymity of its members, to “verify [their] impartiality”.

She considers that the IRG “failed to weigh up objectively the pros and cons of [her] request for reclassification” and “did not undertake the necessary rigorous and comparative assessment”. According to the complainant, the IRG should have compared the nature of her duties with those described in the table of matrix factors pertaining to the “programme assistants” job family, which correspond to the grade she requested. It appears not to have respected its terms of reference, in particular the provisions of paragraph 22(a) of the version dated 8 August 2003, which stipulates, *inter alia*, that it should state specific reasons for choosing one grade rather than another.

The complainant asks the Tribunal to set aside the impugned decision, to award her compensation for the injury suffered, and to refer her request for reclassification back to the IRG. She also claims 2,000 Swiss francs in costs.

C. In its reply the ILO submits that the complaint is irreceivable insofar as it relies on a possible procedural irregularity in the IRG report, namely that the copy forwarded to the complainant was unsigned. It argues that, as this plea was not raised during the internal appeal procedure, the complainant has failed to exhaust internal remedies. The ILO produces a copy of the report dated 30 January 2007 bearing the signature of the members of the IRG panel who undertook the final examination of the complainant’s case. It states that this initiative reflects its concern to take into account Judgment 2767.

On the merits, the Organization asserts that decisions concerning the grading of posts fall within its discretionary authority. It adds that “[t]he IRG conducted the required rigorous examination and its decision was properly substantiated”, having regard, *inter alia*, to paragraph 22 of its terms of reference. In particular, it did in fact compare the complainant’s post with the relevant matrix factors. It considered that her duties comprised some elements corresponding to the “administrative assistants” job family and others corresponding to the “clerical support staff” family and that her post was therefore a “mixed post”. In its report of 30 January 2007 the IRG indicated that

the complainant's duties were a "close match" to those of posts at grade G.5 in both of the above-mentioned job families and not to those corresponding to posts at grade G.6.

The ILO emphasises that the approval of financial commitments is one of the criteria which, according to the corresponding matrix, distinguishes grade G.6 or G.7 administrative assistants from their counterparts at a lower grade. It is clear, however, from the report of 30 January 2007 that the complainant did not have the responsibility to approve such commitments. This finding of the IRG is particularly important since the question had been left unanswered in its interim report of 29 August 2003 for want of sufficient information on the matter at the time.

D. In her rejoinder the complainant asserts that, since her claims are identical to those submitted in the internal procedure, her plea regarding the anonymity of the IRG members is fully receivable. Furthermore, she calls on the ILO to prove that the signatories of the IRG report were appointed jointly by the ILO Staff Union and the Administration.

With regard to the violation of paragraph 22 of the IRG's terms of reference, she states that the explanation given by the ILO in its reply is belated and that it is not the result of a process of reflection by the IRG as a joint body. It was the IRG that ought to have provided such a substantiated and detailed response.

The complainant asserts that the level of her responsibilities – which also involved, according to her, some elements pertaining to financial responsibilities – manifestly did not correspond to grade G.5 but to grade G.6 or even G.7. However, the IRG ignored her job description.

E. In its surrejoinder the ILO maintains the objection to receivability raised in its reply, emphasising that the claims submitted by the complainant to the Joint Advisory Appeals Board and the Tribunal are only superficially identical. It also submits that the claim that the Administration should prove that the signatories of the IRG report

were appointed jointly by the Staff Union and the Administration is a new one and hence irreceivable for failure to exhaust internal remedies.

On the merits, the ILO points out that, while it is correct that the complainant's duties involved some elements pertaining to financial responsibilities, those elements in no way contradict the IRG's finding that the complainant did not have the responsibility to approve financial commitments.

CONSIDERATIONS

1. After having worked for the ILO as a secretary at the Branch Office in London, the complainant occupied the post of programme assistant in the same Office. Her appointment was terminated by mutual agreement on 31 December 2003.

At the end of the general job-grading exercise conducted in 2001 under the Collective Agreement on Arrangements for the Establishment of a Baseline Classification and Grading concluded between the International Labour Office and the Staff Union on 14 March 2001, the complainant's post was classified at grade G.5. On 30 November 2001 the complainant filed a request for review of this initial grading, stating that G.7 was the most appropriate grade for her post. In its interim report of 29 August 2003 the IRG recommended that the post be maintained at grade G.5. On 27 October 2003 the Human Resources Development Department confirmed that grading.

2. The complainant then pointed out that she had not been heard and that she wished to comment on the characteristics of the duties assigned to her as programme assistant. A lengthy administrative procedure ensued, ending on 30 January 2007 when the IRG issued its final report in which it recommended maintaining the G.5 grading. This recommendation was subsequently confirmed by the Human Resources Development Department.

On 9 July 2008 the Joint Advisory Appeals Board recommended to the Director-General that he dismiss the grievance lodged by the complainant against this decision as groundless. It expressed regret for the delay incurred during the classification procedure, which it attributed to various communication problems.

The complainant was informed by letter of 9 September 2008 that the Director-General had approved that recommendation and dismissed her grievance. That is the decision impugned before the Tribunal.

3. The complainant does not object to the length of the procedure involved in addressing her request for reclassification. As far as procedure is concerned, she merely criticises the IRG report because the copy forwarded to her was unsigned, so that she was unable to ascertain the membership of that body and hence to verify whether its members afforded the requisite guarantees of impartiality.

(a) The ILO challenges the receivability of this plea on the grounds that it was raised for the first time in the complaint. The objection is mistaken: the receivability of a complaint is assessed in the light of its claims. Inasmuch as the complainant may challenge the classification measure affecting her as well as the procedure that culminated in the adoption of that measure – a point that is not in dispute – she may enter whatever pleas she likes, including any she did not make in support of her internal appeal (see Judgment 1519, under 14).

(b) In accordance with the right to due process, which calls for transparent procedures, a staff member is entitled to be apprised of all items of information material to the outcome of his or her claims. 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 (see Judgment 2767, under 7(a)).

The ILO did not comply with that obligation until the present proceedings were under way. It then produced, as an annex to its reply,

a copy of the report of 30 January 2007 – which included an account of the hearing before the IRG – bearing the signatures of the members of the IRG panel that finally examined the complainant’s case. The complaint therefore no longer shows a cause of action in this regard.

The Tribunal will, however, order compensation for the injury caused by this procedural irregularity, which was not remedied until after the filing of the complaint.

4. The complainant contends that the IRG neither weighed up objectively “the pros and cons” of her request for reclassification nor undertook a “rigorous and comparative assessment” of the nature of a programme assistant’s duties. According to paragraph 22(a) of the version of its terms of reference dated 8 August 2003, the IRG was required, *inter alia*, to indicate the specific reasons for choosing one grade rather than another. This called for a careful examination of the duties pertaining to the post in question and a close comparison of the duties with those set out in the table of matrix factors.

5. It is true that the reasons given by the IRG in its interim report of 29 August 2003, recommending that the grading of the complainant’s post be maintained at G.5, was somewhat ambiguous. The terms it used to define the complainant’s responsibilities and compare them with those contained in the table of matrix factors corresponding to the job families of “administrative assistants” and “clerical support staff” were imprecise. The IRG in fact recognised, based on the information it had received and its own considerations, that the complainant’s post could be situated on the “borderline between G.5 and G.6”.

The Joint Advisory Appeals Board did not, however, base its findings on this interim report. Indeed, the IRG subsequently held an oral hearing with the complainant, at her request. In its final report of 30 January 2007, the IRG referred to the complainant’s hearing of 6 December 2006 and unequivocally stated the reasons that had led it to abide by the findings of its initial report.

According to the new report, the complainant's duties corresponded to those pertaining to grade G.5 in the above-mentioned table of matrix factors. The IRG's recommendation to maintain the classification at that grade is based largely on the finding that the complainant did not have the responsibility to approve financial commitments, which is a criterion, according to the corresponding matrix factors, that differentiates the duties assigned to administrative assistants at grade G.6 or G.7 from those assigned to administrative assistants at a lower grade.

6. The Tribunal, which exercises only a limited power of review over measures involving the classification or reclassification of posts in an organisation's structure, will not substitute its own assessment for that of the ILO (see Judgment 2807, under 5). Hence it will not in this case set aside the decision whereby the Director-General endorsed the Joint Advisory Appeals Board's recommendation.

7. The complainant is entitled to compensation of 1,000 Swiss francs for the damage that she suffered from the procedural irregularity noted under 3 above.

8. She is also entitled to costs, which the Tribunal sets at 500 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 500 francs.
3. All other claims are dismissed.

In witness of this judgment, adopted on 7 May 2010, Mr Seydou Ba, Vice-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 8 July 2010.

Seydou Ba
Claude Rouiller
Patrick Frydman
Catherine Comtet