**L.-K. (No. 6)**

***v.***

**ILO**

**124th Session** **Judgment No. 3885**

THE ADMINISTRATIVE TRIBUNAL,

Considering the sixth complaint filed by Mr C. L.-K. against the International Labour Organization (ILO) on 2 July 2014 and corrected on 8 August, the ILO's reply of 8 December 2014, the email of 15 April 2015 by which the complainant informed the Registrar of the Tribunal that he did not wish to file a rejoinder;

Considering the ILO's additional submissions of 4 August, the complainant's comments thereon of 22 September 2015, the documents submitted by the ILO on 24 January 2017 and by the complainant on 25 January 2017 pursuant to 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 contests the decision to defer the promulgation of the revised post adjustment multiplier for staff of the United Nations (UN) system working in New York, United States of America.

In accordance with Article 3.9(a) of the Staff Regulations the remuneration of officials in the Professional category and above is adjusted for cost-of-living variations at different duty stations and over time in relation to a base index by means of a post adjustment. The amount of the post adjustment is determined by multiplying 1 per cent

of the net salary by a multiplier reflecting the classification for the duty station concerned, as determined by the competent body. The competent body for the regulation and coordination of the conditions of service of the organisations of the UN common system, to which the ILO belongs, is the International Civil Service Commission (ICSC).

In July 2012 the ICSC noted that a post adjustment multiplier of 68.0 would become due in New York on 1 August 2012 in accordance with the approved methodology and decided to defer the promulgation of the revised New York post adjustment multiplier in view of the financial situation of the UN. It also decided that, unless the UN General Assembly acted otherwise, the multiplier would be promulgated on 1 January 2013 with a retroactive effect as of 1 August 2012.

On 31 January 2013 the complainant, an official of the International Labour Office – the ILO's secretariat –, filed a grievance with the Human Resources Development Department (HRD) contesting the decisions of the ICSC and the UN General Assembly to defer the promulgation of the revised post adjustment multiplier in New York. He specified that he was acting in his capacity as Chairperson of the ILO Staff Union Committee and in his personal capacity as a staff member of the ILO in the Professional category posted in Geneva, Switzerland. He asked the Director-General to set aside the "unlawful decisions taken by the ICSC and the General Assembly", to pay all staff in the Professional category and above the salaries and any entitlements which would have been adjusted in line with the post adjustment multiplier and the consolidation of post adjustment into base floor, and to pay all staff retroactively all monies owed from August 2012 and for any months which passed before action was taken, with compound interest.

The Director of HRD rejected his grievance on 30 April 2013 as irreceivable for lack of a cause of action. On 31 May 2013 the complainant filed a grievance with the Joint Advisory Appeals Board (JAAB), which held in its report of 6 February 2014 that it had no jurisdiction over decisions taken by external bodies such as the ICSC or the General Assembly; it merely had the power to review decisions taken by the Office that affect the terms and conditions of employment of its staff members. The JAAB therefore considered that the contested

decision was the Office's decision to implement the decision taken by the ICSC and subsequently endorsed by the General Assembly. The JAAB found that the proper functioning of the post adjustment mechanism was a safeguard that all staff members in the Professional category and above, regardless of their duty station, derived from the Staff Regulations and from their terms of employment. The complainant therefore had a valid cause of action, and it was thus not inconceivable that he could file a grievance in his capacity as Chairperson of the Staff Union Committee.

By a letter of 7 April 2014 the complainant was informed that the Director-General had decided to reject his grievance as irreceivable for lack of a cause of action and for lack of standing. Since the challenged decision concerned only two ILO staff members based in New York, the complainant's rights were not adversely affected and the contested decision did not have a broad adverse impact on a large number of staff members. That is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision "to implement the unlawful decisions by the ICSC and the General Assembly". He also asks the Tribunal to order the ILO to pay all staff in the Professional category and above the salaries and other entitlements that would have been adjusted in line with the post adjustment multipliers had the decision to defer the promulgation of the revised post adjustment multiplier not been implemented and to pay retroactively all monies owed from August 2012 and for any months which pass before action is taken. He further claims compound interest on the amount described above together with "any other adequate compensation". Lastly, he claims 2,000 Swiss francs in costs.

The ILO asks the Tribunal to dismiss the complaint as irreceivable for lack of a cause of action and lack of standing and, subsidiarily, devoid of merit.

## CONSIDERATIONS

1. The complainant contests the decision to defer the promulgation of the revised post adjustment multiplier for staff of the

UN common system working in New York, as implemented by the ILO. He declares that his claim is submitted in his "personal capacity, as an individual member of the Staff Union Committee and as a representative of this body in order to preserve common rights and interests of Staff".

2. The Tribunal observes that, as the challenged decision pertained to the post adjustment multiplier in New York, it affected only the remuneration of officials in the Professional category and above based there. The complainant, at the relevant time, was based in Geneva and the decision did not affect him or his terms and conditions of employment as required by Article II, paragraph 1, of the Statute of the Tribunal.

3. Moreover, there is no provision in the Tribunal's Statute which allows a member of a Staff Committee to represent, before the Tribunal, other officials adversely affected by a decision (see Judgment 3642, under 14). The complainant has not provided any proof that officials in other duty stations have been affected. The Executive Secretary of the ICSC, in an email dated 3 January 2013 and submitted for *in camera* review by the JAAB, stated that "the post adjustment indexes of the other duty stations [would] not be affected by the deferral of the post adjustment increase in New York".

4. The JAAB considered that "the proper functioning of the common system post adjustment mechanism as such [was] a safeguard that all staff members in the Professional and higher categories, regardless of their duty station, derive[d] from the Staff Regulations and from the terms of their appointments". It therefore found that the complainant had a cause of action. The Tribunal demurs. According to the Tribunal's jurisprudence in Judgment 3642, under 14:

> "It might be thought all officials have a 'right' to have the organisation which employs them comply with and observe the organisation's Staff Regulations irrespective of whether any failure to comply or non-observance has any bearing on their own situation as an official of the organisation. If this were so, all officials would have standing to commence proceedings in the Tribunal in relation to any non-observance of the Staff Regulations. It is highly improbable that the Statute [of the Tribunal] intended this result. But is an elected staff representative able to enforce this 'right' even though all

> other officials cannot unless affected by the non-observance? There is no basis in the language or structure of the Statute or by reference to the nature of the jurisdiction conferred on the Tribunal, to suggest this is so. Consistent with the entire focus of the Statute, the right of an elected representative to enforce the Staff Regulations for the benefit of all staff is limited to circumstances where the provision (which has allegedly not been observed) confers a right on the elected representative as a member of staff. It might be a right limited to the staff representative (such as the right to be consulted) or it might be a right enjoyed by all staff (such as the right to freedom of association)."

5. In light of the above considerations, the complaint must be dismissed for lack of a cause of action.

## DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 16 May 2017, Mr Claude Rouiller, President of the Tribunal, Mr Giuseppe Barbagallo, Vice-President, and Ms Dolores M. Hansen, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 28 June 2017.

CLAUDE ROUILLER

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

DRAŽEN PETROVIĆ