

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

P.
v.
ILO

126th Session

Judgment No. 4040

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs S. P. against the International Labour Organization (ILO) on 11 April 2016 and corrected on 2 June, the ILO's reply of 26 July, the complainant's rejoinder of 26 August and the ILO's surrejoinder of 2 November 2016;

Considering Articles II, paragraph 1, and VII 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 challenges the rejection of her request for the reclassification of her post.

At the material time the complainant was employed at the International Training Centre of the ILO ("the Centre") in Turin, Italy, as Programme Secretary in the Enterprise, Microfinance and Local Development Unit of the Training Department at grade G.4. On 3 November 2014 the complainant and her responsible chief completed a Position Description Questionnaire (PDQ) pursuant to Circular No. 98/27 of 24 June 1998 regarding the classification of jobs in the Professional and General Service categories at the Turin Centre ("the Circular") with the aim of having the classification of the complainant's post reviewed. In April 2015 the external classifier who was charged

with reviewing the grade of the post interviewed both the complainant and the Director of Training. The classifier subsequently issued a desk audit report in which she recommended that the complainant's post be maintained at the G.4 level. The complainant was notified of that recommendation on 26 June and was provided with a copy of the desk audit report.

In July the complainant submitted an appeal to the Grading Appeals Committee (GAC) in which she challenged the desk audit report. In its report of 16 September 2015 the GAC re-examined the classifier's evaluation of the subject post and recommended that it be reclassified at grade G.5. On 7 October 2015 the complainant was informed that the Director of the Centre had decided not to accept the GAC's recommendation and to maintain her post at grade G.4.

On 19 November 2015 the complainant submitted an internal complaint in accordance with Article 12.2 of the Staff Regulations of the International Training Centre in which she challenged the decision of 7 October 2015 and sought various forms of relief including the reclassification of her post in accordance with the GAC recommendation. On 11 April 2016 she filed a complaint with the Tribunal, indicating on the complaint form that she had received no reply to her internal complaint within the 60-day period provided for in Article VII, paragraph 3, of the Tribunal's Statute.

By a minute sheet of 18 April 2016 the complainant was informed that the new Director of the Centre had decided to dismiss her internal complaint on the grounds that there was no evidence that the classification process was flawed or conducted in breach of the applicable procedures, or that the decision of 7 October 2015 was flawed.

The complainant asks the Tribunal to quash the decision of 7 October 2015, "enforce" the GAC's "decision" to reclassify her post at grade G.5 and order the Director of the Centre to promote her with retroactive effect from November 2014. She seeks material and moral damages, as well as 2,000 euros in costs. In her rejoinder she requests the Tribunal to rescind the Director's decision not to endorse the GAC recommendation.

The ILO submits that the Tribunal is not competent to issue an injunction enforcing the GAC's recommendation and it asks the Tribunal to dismiss the complaint as clearly devoid of merit.

CONSIDERATIONS

1. The complainant seeks disclosure of the full report of the GAC. Given that the ILO has appended this report to its reply, this request is now moot.

2. The complainant and her responsible chief initiated the process to review and reclassify her G.4 post in November 2014, pursuant to the Circular. An external classifier conducted the review and recommended that the post be maintained at the G.4 level. On appeal, however, the GAC recommended to the Director of the Centre that the post be reclassified at the G.5 level. The Director's rejection of this recommendation was the subject of an internal complaint to the Director of the Centre, pursuant to Article 12.2 of the Staff Regulations. Having received no reply from the Director, the complainant filed the present complaint on 11 April 2016. However, the Director of the Centre subsequently issued a final decision and on 18 April 2016 the complainant was informed that her internal complaint was dismissed. The present complaint, although initially directed against an implied rejection of her internal complaint, should now be viewed as challenging that express final decision, taken in the course of the proceedings, which the complainant has had the opportunity to address in her rejoinder.

Among her claims for relief, the complainant asks the Tribunal to order her promotion from grade G.4 to G.5 as of November 2014. This claim will be dismissed as the Tribunal has no competence to order an organisation to promote a staff member (see, for example, Judgment 3370, consideration 8).

3. The basic applicable principles where the reclassification of a post is challenged were stated as follows in Judgment 3589, consideration 4:

“It is well established that the grounds for reviewing the classification of a post are limited and ordinarily a classification decision would only be set aside if it was taken without authority, had been made in breach of the rules of form or procedure, was based on an error of fact or law, was made having overlooked an essential fact, was tainted with abuse of authority or if a truly mistaken conclusion had been drawn from the facts (see, for example, Judgments 1647, consideration 7, and 1067, consideration 2). This is because the classification of posts involves the exercise of value judgements as to the nature and extent of the duties and responsibilities of the posts and it is not the Tribunal’s role to undertake this process of evaluation (see, for example, Judgment 3294, consideration 8). The grading of posts is a matter within the discretion of the executive head of the organisation (or the person acting on her or his behalf) (see, for example, Judgment 3082, consideration 20).”

4. The complainant contends that the Director erred in accepting the external classifier’s recommendation to maintain her post at the G.4 level, rather than the GAC’s recommendation, because the review process by the classifier was flawed. This claim is unfounded. The complainant’s contention that the review process was flawed because her request for one of her direct supervisors to be interviewed was not granted is without foundation as the process did not require such an interview. Paragraph 10 of the Circular provides as follows:

“The review of the individual positions under the continuing machinery will be carried out by job-classification specialist(s) on the basis of the PDQ. The classifier will have an interview with the incumbent and, as required, obtain information from the responsible chief or any other person.”

The classifier acted in accordance with this provision when she interviewed the complainant and the Director of Training. Whether the Director of Training was only recently appointed to that position is of no particular moment as the duties and responsibilities of a post are the focus of a reclassification exercise, rather than the performance of the incumbent in the post. The Tribunal dismisses, as speculative conjecture, the complainant’s suggestion that the Director of Training’s interview probably influenced the classifier, who underestimated the complexity of the duties of the post. The Director of Training was, in fact, the complainant’s higher level chief from November 2013, and, as such, was lawfully interviewed pursuant to paragraph 10 of the Circular.

There is no evidence that the review conducted by the classifier was procedurally flawed.

5. The complainant's appeal to the GAC, pursuant to the Circular, challenged the ratings which the classifier gave for six of the seven evaluation factors that were considered. Paragraphs 17 and 18 of the Circular relevantly set out the purview of the GAC as follows:

“17. The Committee shall be furnished with all the elements of information relevant to the classification of the job, including the complete report of the classifier and will examine the classification criteria established to make sure that they are correctly applied. The Committee may decide to hear the appellant, the responsible chief or any other official whose views it considers to be useful. [...]

18. The Grading Appeals Committee will make recommendations in its report to the Director as to the appropriate grade of the job, with copy to the Personnel Office. [...] The Director's decision on the basis of the Committee's recommendation will be communicated to the responsible chief and the official concerned, by the Personnel Office.”

6. These provisions required the GAC to examine the classification criteria established to make sure that the classifier had correctly applied them and make a recommendation to the Director as to the grade level that was to be attached to the post. The Director's options were either to accept or reject the GAC's recommendation. In the event that she did not accept it, she had to properly motivate that decision. Essentially, in her decision of 7 October 2015 she did not accept the GAC's recommendation to reclassify the post to the G.5 level because, in her view, the GAC exceeded its purview to examine the classification criteria established to ensure that the classifier had correctly applied those criteria.

7. It is observed that the GAC did not agree with the classifier's findings on four evaluation factors and accordingly increased the ratings and the points which the classifier had given. The GAC therefore awarded a total of 1,020 points, as against the 880 points which the classifier awarded, and thereupon recommended the reclassification of the post to the G.5 level (which ranges from 900-1,114 points).

8. The impugned decision of 18 April 2016 rejecting the complainant's internal complaint was based, in large measure, on the initial rejection by the former Director of the recommendation of the GAC in her decision of 7 October 2015. Central to the decision of 7 October 2015 was the Director's conclusion that the GAC had not done what the Circular required it to do. In considering whether this conclusion is correct, it is convenient to review in a little more detail the role of the GAC under the Circular. Paragraphs 17 and 18 are set out earlier in consideration 5 and their effect is briefly summarised in consideration 6 above. However the task of "examin[ing] the classification criteria established to make sure that they are correctly applied" (which the Director thought the GAC had failed to do) has to be understood in the overall context of the whole Circular.

9. In a case such as the present, the Circular contemplates in Paragraph 4(c), that an official can request a review if, in the official's opinion, she or he "has been performing for at least twelve months duties and responsibilities which are materially different from those outlined in the job description relating to the job which [she or] he occupies". Fairly clearly the procedures established by the Circular are intended to test the correctness of this opinion. To do so requires a consideration of the actual work performed. It is not a consideration of the work performed to assess the standard of performance (whether unsatisfactory at one end of the spectrum or excellent at the other) as happens in a performance appraisal. Rather it is to consider the tasks actually performed which may include the consideration of their complexity and the skills required. In the result, if there is discord between the existing grading (almost certainly established by reference to a duty statement prepared sometime earlier) and the tasks actually performed, then a basis for regrading the position may emerge through the processes contemplated by the Circular.

10. Those processes commence, in substance, with the official concerned completing a questionnaire (Paragraph 6 of the Circular) which is then submitted to a job-classification specialist(s) who reviews the position (Paragraph 10 of the Circular) and makes an assessment about whether the existing grading is appropriate. This latter element is

not expressly identified in the Circular but reasonably clearly can be inferred. That is because the next substantive step (in the absence of an appeal) involves the Personnel Office recommending to the Director the appropriate grading and almost certainly the scheme contemplates that occurring because the specialist(s) had provided advice about the appropriate grading.

11. The Circular does provide for an appeal against the conclusion about the proposed grade to be recommended by the Personnel Office (based on the results of the review by the specialist(s)) and that appeal is heard by the GAC. Under the heading “Appeals”, Paragraphs 14 to 18 of the Circular set out the procedures to be followed, in general terms how the GAC should approach the review and what is done following the appeal.

12. The word “appeal” can comprehend a range of diverse procedures. In some contexts it will be a reference to a complete reconsideration of the subject matter of the appeal without regard to the views of the body from which the appeal is brought. In such a case, the appeal body makes a decision or assessment afresh. In other contexts it might involve an assessment of whether an error was made by the body from whom the appeal is brought and in the absence of error, the appeal will be unsuccessful. If error is identified, the role of the appeal body may be to make the decision or assessment itself or it may be to remit the matter to the body from whom the appeal was brought. Ultimately, what is comprehended by the word “appeal” must be determined by reference to the context in the normative legal document in which the appeal process is established.

13. As mentioned earlier, the appeal process created by the Circular entails (by reference to Paragraph 17) the GAC examining “the classification criteria established to make sure that they are correctly applied”. However, the mechanism by which this is to be done is not specified in the Circular. There are two pointers in the Circular concerning the breadth of the role of the GAC. The first is that the appellant is obliged (Paragraph 15) to identify the ratings with which

she or he disagrees. This is obviously intended to be a prelude to the consideration of the ratings by the GAC. The second is that the GAC must recommend, in its report, the “appropriate grade of the job” (Paragraph 18). Fairly clearly, this will be based on its own assessment of the grading which may coincide with the view of the specialist(s) but equally, it may not.

14. In the decision of 7 October 2015, the Director was critical of what the GAC had done which, in substance, was to undertake its own assessment of the classification criteria and score each appropriately, as it viewed the matter. It was stated that the GAC had failed to provide any evidence that the criteria were not correctly applied by the external classifier. But it was not a question of the GAC “providing evidence of error”. In undertaking its own assessment the GAC engaged in a process of ascertaining whether the classification criteria were correctly applied. As it emerged, its assessment demonstrated, by necessary implication, that it believed they had not been correctly applied by the external classifier because of the material difference between the overall assessment of the classifier and the overall assessment of the GAC. While the GAC could have approached what it was required to do under the Circular differently, what it did was not outside the bounds of what it was required to do.

15. Another criticism of the Director was that the GAC failed to take into account that “there is an established and coherent classification structure in place”. Two points can be made about this criticism. The first is that it is not obvious from the external classifier’s report, which the Director relied on, that the classifier took this into account. The second is that it is by no means clear from the terms of the Circular that this is a relevant consideration in the assessment made by the GAC.

16. The Tribunal is satisfied that the Director erred in identifying error on the part of the GAC as discussed in the preceding considerations, in the decision of 7 October 2015. The impugned decision of 18 April 2016 dismissing the internal complaint was based on that earlier decision. Accordingly, the impugned decision should be set aside as should the decision of 7 October 2015. The matter should be remitted

to the ILO for the Director of the Centre to reconsider the report of the GAC and make a new decision. The complainant has suffered moral injury as a result of the impugned decision, for which she will be awarded moral damages in the amount of 10,000 euros. She is also entitled to costs, which the Tribunal sets at 1,000 euros.

DECISION

For the above reasons,

1. The impugned decision dated 18 April 2016 is set aside, as is the decision of 7 October 2015.
2. The case is remitted to the ILO for the Director of the Centre to reconsider the report of the GAC and make a new decision.
3. The ILO shall pay the complainant moral damages in the amount of 10,000 euros.
4. The ILO shall also pay the complainant 1,000 euros in costs.
5. All other claims are dismissed.

In witness of this judgment, adopted on 16 May 2018, Mr Giuseppe Barbagallo, President of the Tribunal, Mr Michael F. Moore, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 26 June 2018.

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

HUGH A. RAWLINS

DRAŽEN PETROVIĆ