

107th Session

Judgment No. 2856

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr J. L. against the International Labour Organization (ILO) on 20 November 2007 and corrected on 10 January 2008, the ILO's reply of 22 April, the complainant's rejoinder of 4 June and the Organization's surrejoinder of 5 August 2008;

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 is a Ghanaian national born in 1956. He joined the International Labour Office, the ILO's secretariat, in 1983 as a Systems Programmer at grade P.2 in the Bureau of Information Systems, which subsequently became the Information Technology and Communications Bureau (ITCOM). His position was reclassified twice and he was promoted to grade P.3 with effect from 1 February 1988 and to grade P.4 with effect from 1 August 1995. He has held a contract without limit of time since July 1989.

In 2001 the complainant's position was classified as Facilities Supervisor and Systems Engineer, at grade P.4. His main responsibility was the maintenance of the Office's IBM mainframe system within ITCOM. In 2003 the Office was in the process of developing the Integrated Resource Information System (IRIS), an Oracle-based enterprise resource planning system, designed to replace the IBM mainframe system. During the Office's transition to IRIS, alongside his responsibility for maintaining the IBM mainframe system, the complainant assumed duties on the IRIS project on a half-time basis. On 30 June 2005 IRIS became fully operational and the IBM mainframe system ceased to operate. Consequently, the complainant's position was suppressed.

On 5 December 2005 the complainant was presented with a job description for the grade P.3 position of Applications System Administrator in ITCOM and was informed that this position had been set aside for him should he not find any other job corresponding to his competencies and aspirations. On 31 May 2006 he filed a grievance with the Human Resources Development Department (HRD). A process of informal dialogue ensued, during which it was agreed that the P.3 position would be designated as P.4 for as long as the complainant remained in it. However, it was determined that the complainant was not in fact carrying out many of the duties attributed to the said position and that a substantial amount of additional training would therefore be necessary. To that end an updated skills assessment was carried out and a training plan was established. By a minute of 15 December 2006 HRD confirmed the complainant's transfer to the position of Applications System Administrator at grade P.4 with retroactive effect from 1 July 2005. The grade of the position shown on ITCOM's organigram was modified accordingly. By a minute of 22 December 2006 the Director of HRD referred to the complainant's grievance and informed him that, in light of his transfer and the minute of 15 December, HRD considered that the matter had been administratively resolved.

Meanwhile, on 19 December 2006 the complainant filed a grievance with the Joint Advisory Appeals Board, requesting that the Office assign him to a position classified at grade P.4 or higher. In

his additional submissions of 6 March 2007 he requested suitable compensation in the form of a personal promotion with immediate effect to grade P.5 and a written undertaking that his assignment to the “spurious P.4 position” would in no way jeopardise his career prospects in the Office or in other organisations of the United Nations common system. In its report of 25 June 2007 the Board unanimously recommended that the grievance be dismissed on the grounds that the complainant’s initial claims were moot and that those raised in the additional submissions were devoid of merit. By a letter dated 24 August 2007 the Executive Director of Management and Administration informed the complainant that the Director-General had decided to dismiss his grievance in accordance with the Board’s recommendations. That is the impugned decision.

B. The complainant submits that the decision to transfer him to a lower-grade position contravened the Tribunal’s case law in that he was not provided with work of the same level as that which he performed in his previous position and matching his experience. He also contends that the decision breached Article 6.11 of the Staff Regulations of the International Labour Office, which relevantly provides that “[a]n official may be transferred to duties and responsibilities attaching to a lower grade, with a corresponding change in his grade – (a) at his own request; (b) if his performance of his duties and responsibilities is unsatisfactory in the meaning of article 11.8”.

He argues that, although the decision to transfer him was a consequence of restructuring, the Office failed to respect the Joint Negotiating Committee’s Guidelines on Managing Change and Restructuring Processes, which require managers to ensure that “any issues around employment security are addressed with a clear commitment to minimizing the impact of the change or restructuring on job security and ensuring that all opportunities for training and/or redeployment are fully and actively explored”. Indeed, he was not provided with formal training or the appropriate amount of exposure to the new information management system, and when he assumed duties on the IRIS project in 2003 he was assigned low-level tasks which

were incommensurate with his skills and status. In his opinion, the Office should have established a training plan when he was first involved in the IRIS project, rather than much later, and the delay in doing so results from a “lack of foresight”.

The complainant also contends that his oral request for a job description in 2003 remained unanswered – despite the suggestion made by his responsible chief that he would be transferred to a “P.4 Functional Level II Helpdesk position” – and that the “re-grading” of the position at grade P.4, confirmed by the minute of 15 December 2006, was not accompanied by a revised job description. He considers that, in light of his education, skills and substantial experience in Information Technology, he should have been transferred to a position classified at grade P.4, reporting to a supervisor at grade P.5, and that his assignment to a grade P.3 position was “humiliating, inimical to career development, contrary to his aspirations, and highly de-motivating”.

The complainant requests that the impugned decision be set aside and that he be assigned to a “genuine P.4 position”. He claims 5,000 Swiss francs in moral damages and 3,000 francs in costs.

C. In its reply the ILO submits that the complainant has obtained satisfaction in respect of his claim to be assigned to a position at grade P.4 through his appointment to the position of Applications System Administrator at that grade with effect from 1 July 2005. Consequently, he has no cause of action and his complaint is moot and therefore irreceivable. It further submits that the complainant’s claims concerning the delay in regrading his position and in establishing a training plan are time-barred and hence irreceivable, because they were not raised in the grievance he filed with the Joint Advisory Appeals Board.

On the merits the Organization explains that the decision concerning the complainant’s transfer was taken in the context of a restructuring process that was prompted by necessary technological changes in the Office’s information management system. It also explains that it was a discretionary decision, and that it is therefore

subject to only limited review by the Tribunal. It further points out that Article 6.11 of the Staff Regulations does not apply to cases, such as this one, involving abolition of posts and redeployment or transfer of staff, which remain within the discretion of the Director-General.

It asserts that throughout the restructuring process it did its utmost to respect the complainant's dignity and good name and not to cause him any undue suffering while also ensuring a smooth and efficient transition to IRIS. It points out that the complainant maintained his P.4 grade at all times and thus suffered no financial loss or downgrading. It denies having shown "lack of foresight" and emphasises that it took measures to the extent possible to enable him to improve his competencies through training and exposure to the new system. Indeed, by allowing him to assume duties on the IRIS project and subsequently redeploying him to a suitable position, it gave him the opportunity for timely on-the-job training which would allow him to acquire the competencies required for the new Oracle-based system. In addition, a comprehensive training plan was established, under which the complainant was provided with more training during the period in question than any other staff member in a similar situation.

The ILO contends that a revision of the complainant's job description was not feasible, in light of the fact that the results of the skills assessment had confirmed that he was not in fact carrying out the duties attributed to the position at grade P.3. It further states that there is no acquired right to a promotion and that the complainant's request to be accorded a management position without having demonstrated the necessary competencies is unreasonable and has no basis in fact or in law. In its view, the duty of loyalty owed by a staff member to the Organization encompasses the duty to adapt to the changing work environment in the interest of the Organization's proper functioning.

D. In his rejoinder the complainant asserts that the complaint is receivable. Although he was assigned to a position allegedly at grade P.4, he is still performing the tasks set out in the job description for the grade P.3 position of Applications System Administrator and no revised job description has been issued to reflect his appointment at grade P.4. He states that the Office considered engaging in a process of

informal dialogue and designating his position at grade P.4 only after he had filed a grievance with HRD. Moreover, his request in 2001 to be assigned to the IRIS project in a managerial capacity was refused and a training plan was drawn up only in November 2006, that is 16 months after his transfer.

E. In its surrejoinder the ILO maintains its position. Referring in detail to the training the complainant has been provided with since the early stages of the IRIS project, it observes that, according to his latest skills assessment and performance appraisal, he is performing acceptably in a majority, but not all, of the grade P.3 duties attached to his current position, and that further training is planned to enable him to increase his skill level in the new system. It thus asserts that the tasks currently assigned to the complainant are those he is qualified to perform in the IRIS environment. In its opinion, its efforts with regard to the complainant's career development can only be considered as good practices under the Guidelines on Managing Change and Restructuring Processes.

CONSIDERATIONS

1. Further to the suppression of his position, the complainant was assigned in December 2005 to the position of Applications System Administrator in ITCOM. Although the position was classified at grade P.3, he retained his P.4 grade. On 31 May 2006 he filed a grievance with HRD, arguing that his transfer to a position at grade P.3 was inequitable. The grievance was held in abeyance with a view to resolving the matter through a process of informal dialogue. As a result of discussions between the complainant and his supervisors it was agreed that the P.3 position would be designated as P.4 for as long as he remained in it. However, it was determined that he was not actually performing all the duties attributed to the said position and that therefore additional training should be envisaged. On this basis, an updated skills assessment was carried out and a training plan was established. By a minute of 15 December 2006 the Administration confirmed the complainant's transfer to the position of Applications

System Administrator at grade P.4 with retroactive effect from 1 July 2005.

2. On 19 December 2006 the complainant filed a grievance with the Joint Advisory Appeals Board pursuant to Article 13.3.2 of the Staff Regulations against the implied rejection of his initial grievance filed with HRD on 31 May 2006. In a minute of 22 December 2006 the Organization confirmed the details of the understanding entered into with the complainant. The Board issued its report on 25 June 2007 and by a letter dated 24 August 2007 the complainant was informed that the Director-General had dismissed the grievance as moot and devoid of merit. It is this decision that the complainant impugns before the Tribunal.

3. The Organization submits that the complainant's primary claim to be assigned to a P.4 position is irreceivable as moot. It points out that in line with the agreement that was reached following informal discussions, it assigned the complainant to a P.4 position with retroactive effect from 1 July 2005 and also established a comprehensive training plan to enable him to strengthen his skills.

4. The complainant disputes the Organization's assertion that since he has now been assigned to a grade P.4 post, the claim is moot. He takes the position that his claim relates to the fact that although he was assigned to a position "labelled P.4", a revised job description reflecting that change has not been issued. Additionally, he is to a large extent performing tasks set out in the job description which was presented to him in December 2005 and which corresponded to a grade P.3 position.

5. The Tribunal rejects the Organization's argument that since the claim is now moot it is irreceivable. The Tribunal observes that a plea of mootness is not an issue of receivability. As a matter of law, a claim is moot when there is no longer a live controversy. Whether or not there is a live controversy is a matter to be determined by the Tribunal. Thus, even if a claim is moot it may still be receivable.

6. The Organization further submits that the other claims brought by the complainant relating to his secondment to the IRIS project and the delay in regrading his position and agreeing on a training plan are time-barred since they were not brought in the grievance filed with the Joint Advisory Appeals Board. While the Organization is correct that these claims were not specifically raised in the grievance, the Tribunal notes that they formed part of the overall context within which the grievance was filed.

7. In these circumstances, the Tribunal finds that there is a live controversy between the parties and, therefore, the Tribunal will deal with the complaint on its merits.

8. The complainant contends that his transfer to a lower-grade position was unlawful and humiliating. By way of relief, he requests an order setting aside the impugned decision, an assignment to a “genuine P.4 position” and an award of moral damages and of costs.

He argues that as his transfer was non-disciplinary, the Organization should have provided him with work of the same level as that which he performed in his previous position and matching his qualifications. Moreover, his organisational and analytical skills, which he acquired over a period of 27 years of service, qualified him for a position graded not less than P.4. Thus, he should have been appointed to a grade P.4 position reporting to a supervisor at grade P.5. He views his appointment to a P.3 position as humiliating, inimical to his career development, contrary to his aspirations and highly demotivating. He pleads a violation of Article 6.11 of the Staff Regulations and a failure to observe the Organization’s Guidelines on Managing Change and Restructuring Processes. He claims that the Organization designated his position at grade P.4 without providing him with a revised job description and that his requests in that respect went unheeded. He also claims that a training plan should have been established in October 2003.

9. Before dealing with the complainant’s submissions, it is useful to recall, as stated in Judgment 2510, under 10, that “an

international organisation necessarily has power to restructure some or all of its departments or units, including by the abolition of posts, the creation of new posts and the redeployment of staff (see Judgments 269 and 1614)". As the Tribunal pointed out in Judgment 1131, under 5, "[i]t may not supplant an organisation's view with its own on such matters as a restructuring of posts or redeployment of staff intended to make savings or improve efficiencies". Decisions on them are discretionary and the Tribunal's power of review in this respect is limited.

10. It is also clear that a transfer of a non-disciplinary nature "is subject to the general principles governing all decisions affecting an official's status. It must show due regard, in both form and substance, for the dignity of the official concerned, particularly by providing him with work of the same level as that which he performed in his previous post and matching his qualifications" (see Judgment 2229, under 3(a)).

11. At the outset, the complainant's grievance was in relation to his appointment, as a result of restructuring, to the position of Applications Systems Administrator at grade P.3. Although the complainant has advanced a number of arguments in support of his complaint, at this juncture, he holds a post at grade P.4 and throughout the material time he has retained his personal P.4 grade. In the Tribunal's view, the central issue is whether there is merit to the complainant's contention that he should have been placed in a "genuine P.4 position".

12. It is important to note that the reason for the restructuring was the implementation of the new Oracle-based system. In contrast to an organisational restructuring where skills may be easily transferable, the shift to the new system required the acquisition of new knowledge and skills.

13. The fundamental flaw in the complainant's position is that he has not adduced any evidence that he had the specific knowledge and skills required to function in a "genuine P.4 position" within the

Organization's new Oracle-based system. While he maintains that his 27 years of experience qualifies him for a grade P.4 post, the unfortunate reality for the complainant is that this experience was limited to the IBM mainframe system. As well, not only has he not adduced any evidence to show that he has the requisite knowledge and skills to work in an Oracle-based system, the evidence shows that he had difficulty performing a number of tasks attributed to his new position.

14. The question remains, however, whether the Organization failed to provide the complainant with the proper training and the appropriate amount of exposure to the new Oracle-based system, which would have permitted his transfer to an adequate position, as he alleges.

15. In its submissions the Organization details the comprehensive training strategy that was established to enable the complainant to strengthen his skills. Starting as early as 2001, that strategy included participation in a number of courses and a half-time secondment to the IRIS project to allow the complainant exposure to the new system. In 2004 the Chief of ITCOM asked the complainant to inform him of the type of work he was doing, the training he had undertaken, and what he contemplated for the future. In response, the complainant outlined a series of courses in which he had participated and there is evidence that in the lead-up to the launch of IRIS in 2005 he continued to participate in training workshops and modules. However, despite the extensive training he had received, the updated skills assessment done in conjunction with the informal dialogue process undertaken with a view to resolving the dispute showed that the complainant was not performing most of the duties attributed to grade P.3 and that a significant amount of additional training was required.

16. The Tribunal concludes that, in the circumstances, the Organization did its utmost to respect the complainant's dignity and good name and not to cause him any harm. Despite the fact that the

complainant did not possess the requisite skills, the grade P.3 position was designated at grade P.4 and his personal grade was not altered. However, in view of his skills deficiencies, it was not possible to provide him with work at grade P.4 within the Oracle-based system.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 14 May 2009, Mr Seydou Ba, President of the Tribunal, Ms Mary G. Gaudron, Vice-President, and Ms Dolores M. Hansen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 8 July 2009.

Seydou Ba
Mary G. Gaudron
Dolores M. Hansen
Catherine Comtet