

In re MOLLARD

Judgment No. 299

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the International Labour Organisation (ILO) drawn up by Miss Madeleine Mollard on 7 April 1976, the IBO's reply of 18 May 1976, the complainant's rejoinder of 9 June 1976, the ILO's surrejoinder of 2 December 1976, the complainant's communication of 20 December 1976, the ILO's memorandum of 21 March 1977 and the complainant's reply thereto of 4 April 1977, and the ILO's farther memorandum of 14 April 1977;

Considering Article II, paragraph 1, of the Statute of the Tribunal and the Staff Regulations of the International Labour Office;

Having examined the documents in the dossier, oral proceedings having been neither requested by the parties nor ordered by the Tribunal;

Considering that the material facts of the case are as follows:

A. The complainant joined the staff of the International Labour Office on 30 May 1962 as a secretary at grade G.3. On 1 August 1968 she was promoted to G.4 and then, with effect from 1 October 1971, to G.5 as a result of the regrading of the post of documents clerk which she held in the General Conditions of Work Branch.

B. On 2 April 1974 the complainant asked for a higher grade, her main argument being that her job description was identical to that of a G.7 post for a documents clerk in the Social Security Branch. Her request was dismissed on 15 May 1974, mainly on the grounds that there had been no change since 1972, when a general survey had been made of the grading of General Service category posts. In accordance with Article 13.1 of the Staff Regulations, on 24 July 1974 the complainant asked for review of that decision. On 28 August she was told that her request would go before the Grading Committee - the body which heard appeals on the grading of General Service category posts - and that the Committee's decision would take retroactive effect from 1 August 1974. On 10 December 1975 the complainant lodged a "complaint" under Article 13.2 of the Staff Regulations. On 11 February 1976 she was told that the Grading Committee had considered her request for review under Article 13.1, that on its recommendation the Director-General had decided to confirm the grading of her post at G.5, and that her "complaint" of 10 December 1975 under Article 13.2 was under study "and would shortly be answered". By letter of 11 March 1976 she was told that the Grading Committee had held her post to be properly graded G.5, but that in considering her "complaint" the Director-General had found some disparities in the grading of posts of documents clerks and had decided to look into such disparities to see whether they were really warranted by any objective criteria. The letter added: "The Director-General believes that pending the outcome of that inquiry the decision notified [on 11 February 1976] should be upheld", i.e. according to the Organisation the post should continue for the time being to be G.5. On 7 April 1976 the complainant filed the present complaint.

C. The complainant points out that the internal "complaint" under Article 13.2 of the Staff Regulations was not allowed "except in so far as she received a dilatory reply affording no guarantee of retroactive effect". She contends that two posts with identical duties were not given the same grade; that the Administration has never challenged the validity of the job description on which both gradings were based; that by giving different grades to two identical posts of which the description is not contested the Personnel Department drew from the dossier clearly mistaken conclusions which call for review; and that the disparity in grading is at odds with Article 2.2 of the Staff Regulations, which means that identical grades should correspond to identical duties and responsibilities.

D. In her claims for relief the complainant asks the Tribunal to declare that the Personnel Department, in grading two identical posts differently, drew clearly mistaken conclusions from the dossier; to find that the difference in grading is at odds with Article 2.2 of the Staff Regulations; and accordingly to quash the Director-General's decision confirming the grading of her post at G.5 and to order the regrading of the post at G.7 with retroactive effect from 1 August 1974.

E. In reply the Organisation contends that the complaint is irreceivable and asks the Tribunal to dismiss it as such. It points out that, the matter having been referred to him under Article 13.2 of the Staff Regulations, the Director-General decided to review the grading of all documents clerks in the Office to determine whether the complainant's post should, according to the principle of equal treatment, be regraded whether the post of documents clerk in the Social Security Branch was properly graded G.7 and whether the two posts were indeed identical "not only as to the job description but also as to the level of difficulty". Accordingly the Director-General could not take a final decision on the question of equal treatment until the comprehensive review had been made. On the other hand, since the Grading Committee had taken the view that the complainant's post was correctly graded G.5, the Director-General had no choice but to maintain the status quo until he could take a decision on the application of the principle of equal treatment. "That is the sole purpose of the decision of 11 March, which therefore cannot be held to be final nor form the subject of an appeal to the Tribunal."

F. In her rejoinder the complainant points out that the Director-General's only concrete decision was to dismiss her claim and that the Director-General upheld the decision to grade her at G.5. Although the reply to her claim mentioned her request for a survey of documents clerks' posts by the Grading Committee, she was given no assurance as to the date of any decision the Director-General might take as a result and as to the date on which any such decision would take effect. "If the decision confirming the grade of the complainant's post was to be regarded as provisional, the final decision would be postponed sine die and the complainant would have no assurance that the decision would be taken by any given date. An appeal to the Administrative Tribunal would thus be ruled out indefinitely. The decision notified to the complainant on 11 March 1976 is therefore tantamount to a final decision." The complainant points out that she first referred the matter to the Administration over two years before filing her complaint and she presses her claims for relief.

G. In its surrejoinder the Organisation points out that the case it made out in its reply was wholly based on the fact that the Director-General's decision was not final. Arrangements have since been made for a final decision to be taken on the complainant's case. The Director-General instructed the committee on grading of General Service category posts to review the position of the complainant and of the documents clerk in the Social Security Branch with reference to grading standards and the index of classification of documents clerks' posts. That review having been carried out, on 26 November 1976 the Director-General took a final decision which was notified to the complainant on the same day and which confirmed her grading at G.5. "That is therefore the only decision which she may impugn under Article VII of the Statute of the Tribunal." The Organisation accordingly asks the Tribunal to declare the complaint irreceivable.

H. At the Tribunal's invitation the Organisation submitted its observations on the merits. It argues that the job description, which was identical for the complainant and the documents clerk in the Social Security Branch, by its very nature cannot afford a proper basis for establishing any real discrimination. On the contrary, the difference in the grading of the two posts is not shown to be unwarranted, because the actual responsibilities pertaining to them are different. The Organisation therefore asks the Tribunal to dismiss the complaint as unfounded.

I. In reply to the Organisation's observations on the merits the complainant confirms her original claims.

CONSIDERATIONS:

The complainant, a documents clerk, applied for review of the grading of her post at G.5. She points out, among other things, that her job description, the sole basis for her grading, is identical to that of the G.7 post of a documents clerk in the Social Security Branch and she asks to have the anomaly corrected.

The Organisation replies that in grading posts account should be taken not only of the material description of the duties pertaining to each post but also of the nature and importance of the incumbent's actual responsibilities.

In view of the provisions of Article 2.2 of the Staff Regulations and the information in Circular No. 44 of 31 December 1969 the Tribunal holds that, although in this case the job description for a post is the sole basis which should be taken into account, it should cover not only purely descriptive material considerations but also subjective ones: account must be taken of, for example, staff members' actual responsibilities.

True, the complainant's duties may be regarded as identical, according to their material description, with those of another official whose post is graded G.7. But it appears from the documents in the dossier, and in particular from the Grading Committee's report of 17 November 1976, that the complainant's post in fact called for the exercise of

lesser responsibility and for lesser technical knowledge than the other post, and that the two posts were therefore not on a par.

Hence the impugned decision taken by the Director-General on the Grading Committee's recommendation was in no way unlawful and was not based on any material errors of fact. Moreover, the Director-General made an appraisal of facts which is not subject to review by the Tribunal.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Morellet, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 6 June 1977.

(Signed)

M. Letourneur
André Grisel
Devlin

Roland Morellet