

115th Session

Judgment No. 3220

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr S. S. against the International Labour Organization (ILO) on 16 March 2010 and the Organization's reply of 16 June 2010;

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. Facts relevant to this case are to be found in Judgment 3219, also delivered this day, concerning the complainant's first complaint and Judgment 3050, delivered on 6 July 2011, concerning his third complaint. Suffice it to recall that in August 2007 he was transferred from Beirut to the Office of Internal Audit and Oversight (IAO) at headquarters in Geneva, and assigned, on a temporary basis, pending identification of a longer term assignment, to the same position that he held prior to leaving for Beirut.

In November 2007 a vacancy announcement was published for the grade P.5 position of Principal Investigator/Chief of Investigation and Inspection Unit in the IAO. The complainant applied and was shortlisted. In May 2008, pending the outcome of the competition procedure, he was appointed as Officer-in-Charge of the Investigation and Inspection Unit in the IAO, and in that capacity he was granted a special allowance at the P.5 level as from November 2008. In January 2009 he was awarded a merit increment.

The complainant was informed in February 2009 that he had not been selected for the position of Principal Investigator/Chief of Investigation and Inspection Unit. In September 2009 the Chief Internal Auditor, who was the complainant's line manager, filled in the Job Data Questionnaire with the complainant to request a job upgrade, in accordance with paragraph 9 of Circular No. 639 (Rev.2), Series 6, concerning the job grading procedure (hereinafter "the Circular"). In the questionnaire the line manager explained that the objective was to create a P.5 position of Principal Compliance Officer in the IAO, and she gave a detailed description of the tasks the incumbent would have to undertake. She added that the complainant had the capabilities to perform them and that he was in fact "already successfully executing all of the tasks at the proposed P5 grade". Once the questionnaire was finalised, she forwarded it to the Director-General's Office.

On 27 October 2009 the Chief Internal Auditor made a further request for "Reorganization of IAO and Job Grading Review", to which she attached the same description of the tasks for the post she proposed to create in her Office. In November 2009 the complainant requested the line manager to provide him with information concerning the status of his request for a job upgrade. She replied that her proposal for an upgrade had been "set aside" by the Director-General's Office.

On 10 November 2009 the complainant submitted a grievance to the Joint Advisory Appeals Board (JAAB) challenging the alleged rejection by the Director-General's Office of his line manager's request for a job upgrade. He asked the JAAB to recommend that the

job grading procedure be allowed to take place and that he be awarded compensation for the damages suffered.

In its report of 24 February 2010 the JAAB noted that, according to the Circular, a decision on a grading review should be initiated by the line manager, endorsed by the higher level chief and then forwarded to the Human Resources Development Department (HRD) for a technical evaluation. HRD's decision may be contested before the Independent Review Group, which will make a recommendation to the Director-General who is responsible for making the final decision. Within one month from the notification of that decision or from the date when the decision was due, a staff member may file a grievance with the JAAB on the grounds that the decision is vitiated by a material breach of a rule of procedure or unfair treatment. The JAAB noted that, in the present case, the line manager's proposal had not been endorsed by the higher level chief, the Director-General's Office. In its view, the Director-General's Office was entitled not to support the request for a job upgrade initiated by the complainant's line manager. As a result, no technical evaluation could be undertaken by HRD and consequently no decision refusing a grading review could be taken by the Director-General. In the absence of a final decision on the request for a job upgrade, the JAAB recommended that the grievance be rejected as being irreceivable, and it declined to examine the complainant's allegations of retaliation by the Director-General's Office.

By letter of 5 March 2010 the complainant was informed that the Director-General had decided to reject his grievance as irreceivable. That is the impugned decision.

B. The complainant indicates that he was not in a position to follow the steps outlined in the Circular to obtain a job upgrade, because the Director-General's Office blocked the upgrade proposal before it was formally filed, thereby preventing him from obtaining a technical evaluation by HRD and denying him the right to submit an appeal to the Independent Review Group in line with the provisions of the Circular. He explains that the proposal for a job upgrade was sent to

the Director-General's Office, and not to HRD, because the IAO reports directly to the Director-General, which means that the proposal made by his line manager had to be agreed first by the Director-General's Office, the "higher level chief" referred to in the Circular. In that context, he submits that the verbal information he received from his line manager that her request for a job upgrade had been "set aside" constituted notification of a decision as foreseen in paragraph 22 of the Circular. He emphasises that he has never received any written notification concerning that request. Subsequently, in parallel to filing his grievance with the JAAB, he submitted his own written request for a job upgrade to his line manager, in accordance with paragraphs 3 and 4 of the Circular. His line manager approved it and then submitted it to HRD which "blocked the procedure" without any legitimate reason. Consequently, on 12 February 2010 he filed an appeal with the Independent Review Group. That appeal is still pending.

The complainant alleges abuse of authority on the grounds that the Director-General's Office rejected a legitimate request for a job upgrade without giving any reason for doing so. He asserts that he met the two conditions laid down in paragraph 3 of the Circular for initiating a job grading review: his duties and responsibilities were redistributed following the reorganisation of the IAO, and he had increased responsibilities and work output over a period longer than 12 months, all of which was indicated in the Job Data Questionnaire submitted with his request. He adds that his request for a job upgrade was legitimate, given that he was the "longest-serving" official in the IAO, that he performed work in audit and investigation at the P.5 level as from August 2007, that he was the only official in the IAO to have the Certified Internal Auditor professional qualification, and that he had received an excellent performance appraisal report when he was Officer-in-Charge of the Investigation and Inspection Unit between February 2007 and January 2009.

The complainant contends that he was not treated with due respect for his dignity, because HRD did not try to identify a long-term assignment for him which matched his experience and

qualifications, and that the Office has subjected him to “unwarranted retaliation” for having filed a complaint with the Tribunal.

In addition, he alleges breach of due process during the internal appeal proceedings. First, he asserts that the Secretary of the JAAB committed a breach of confidentiality by contacting the Staff Union lawyer without his permission to discuss matters relating to his grievance. Second, he contends that in addition to the documentation officially submitted by HRD, the JAAB was provided with other information, of which he was not made aware at the time. He further submits that the review of his grievance by the JAAB was a “total and utter farce”, pointing for instance to the fact that his grievance was considered to be a simple job grading case and that the JAAB refused to examine his allegations of retaliation because they were directed at the Director-General’s Office.

The complainant asks the Tribunal to order the ILO to allow the job grading procedure set out in the Circular to take place and to compensate him for the damages suffered.

C. In its reply the ILO contends that the refusal by the Director-General’s Office to entertain the proposal made by the line manager to have the complainant’s job upgraded was not a decision that could be challenged before the JAAB. The latter therefore correctly concluded that the grievance submitted by the complainant was irreceivable, as is, consequently, his complaint before the Tribunal.

The Organization denies any abuse of authority, asserting that it applied the applicable rules, in particular the Circular, and that there was no reason to depart from them. It explains that the decision whether or not to proceed with the reorganisation of a department with a view to creating a new position for a staff member entailing a job upgrade is one which lies within the Director-General’s discretionary authority. It stresses that the reorganisation proposal submitted by the line manager in late October 2009 came less than two years after the previous restructuring of the IAO and that it was a “patent pretext” for upgrading the complainant. It adds that, in any event, the

complainant's duties and responsibilities had not changed for the 12 months preceding the request for a job upgrade, and that consequently he did not fulfil the requirements of the Circular. Indeed, upon his return to headquarters in 2007, he was assigned duties only on a temporary basis, pending identification of a suitable position funded by the regular budget; consequently, he was not the incumbent of a post with duties and responsibilities that had changed over the last 12-month period, as required by paragraphs 3b) and 4 of the Circular.

CONSIDERATIONS

1. On 10 November 2009 the complainant submitted a grievance to the JAAB regarding the unfounded dismissal by the Director-General's Office of the Chief Internal Auditor's request that his position be upgraded. The grievance cites a number of Staff Regulations, Circular No. 639 (Rev.2), Series 6, and retaliation for having filed an earlier grievance with the JAAB. The only document appended to the grievance is a Job Data Questionnaire of September 2009 authored by the Chief Internal Auditor and the complainant and addressed to the Director-General's Office and HRD. The subject of the document is a request for promotion. On 5 March 2010 the complainant was informed that the Director-General had accepted the JAAB's recommendation and had dismissed the grievance as irreceivable.

2. This is the complainant's second of a series of four complaints to the Tribunal. The Organization and the complainant submit that this complaint and the remaining complaints should be joined. As the relevant facts and applicable law are sufficiently distinct, they will not be joined.

3. As detailed above, there is considerable confusion in the parties' pleadings regarding the subject matter of the complaint. In September 2009 the complainant and his line manager, the Chief Internal Auditor, made a request to upgrade the complainant's position. The complainant states that in response to a request for

information on the status of the request, the Chief Internal Auditor told him that the request was “set aside” by the Director-General’s Office. This led the complainant to file the above-noted grievance.

4. At the end of October 2009 the Chief Internal Auditor made another request. Although the complainant describes it as an “upgrade” of his position, it appears to have been a request for a reorganisation of the IAO, which involved only the creation of one additional permanent P.5 position. Although not explicitly a reorganisation request, the October request was made “along with a job grading review of the post encumbered by [the complainant]” and is almost identical to the September request. In view of the content of the grievance of 10 November 2009 and the various consultations between the Chief Internal Auditor and HRD between September 2009 and the date the grievance was filed, the request at issue in this complaint is the Chief Internal Auditor’s request of September.

5. Circular No. 639 (Rev.2), Series 6, relevantly provides:

“3. A job grading review can be initiated by a staff member or a line manager in respect of a job whose incumbent^[...] has satisfactorily completed the probationary period when:

(a) duties and responsibilities have been redistributed on a permanent basis amongst jobs in or between (an) organizational unit(s) in the context of a formal reorganization; [...]

[...]

9. A line manager may initiate a review if the conditions for such a review are met in line with paragraph 3 above. In that case, the line manager shall complete a Job Data Questionnaire^[...] together with the staff member **and higher level chief, and send it to HRD** [...] with a reasoned request for review indicating the generic job description and grade of the job.

[...]

10. HRD [...] will acknowledge receipt in writing of requests for review and accompanying Job Data Questionnaires and will carry out a technical evaluation in chronological order of receipt of the review requests.

[...]

16. The staff member may file an appeal with the Independent Review Group (IRG)^[...] against:

- a decision under paragraph 6 [...] refusing a grading review;
- a decision under paragraph 12 [...] whereby the review has concluded that the generic job and grade requested should not be granted;
- an implied rejection of the review under paragraph 14 [...].”

(Emphasis added.)

6. Paragraph 22 of the Circular provides that a grievance may be filed with the JAAB from the Director-General’s decision endorsing or rejecting the Independent Review Group’s recommendation.

7. The complainant submits that after he filed his grievance he “was not in a position to follow the steps for grading procedures outlined in Circular 6/639 because [the Director-General’s Office] blocked the upgrade proposal before it was formally filed and thus deprived [him] of the possibility to have a technical evaluation and the right to submit an appeal with the Independent Review Group (IRG) in line with the provisions of the Circular”. The complainant views the discussion he had with the Chief Internal Auditor regarding the decision of the Director-General’s Office to dismiss the request for a job upgrade as a notification of a decision as contemplated in paragraph 22 of the Circular.

8. The complainant takes the position that none of the additional steps that would be required by HRD could take place after the rejection of the request. The JAAB incorrectly found that an appeal can only be brought from a final decision taken by the Director-General on the basis of the recommendation of the Independent Review Group or from his failure to take a decision on the recommendation and not from a decision of the Director-General’s Office.

9. It is clear that the complainant brought his grievance too early in the process while the Chief Internal Auditor and the Director-General’s Office were still working out the nature of the request that

was going to be made. The fact that the Director-General's Office set aside the proposal for the reorganisation of the IAO and a job grading review of the complainant's post did not imply a final rejection of the Chief Internal Auditor's request. The action the complainant challenges as a final decision was not a final decision and was merely at a very early stage of the process for a job upgrade request. Although the reorganisation "request" had already been made when the complainant filed his grievance, it was still ongoing by the time he made the grievance. At this stage, it cannot be said that the terms and conditions of the complainant's employment were engaged. It follows that the complaint is irreceivable.

10. It is also observed that the JAAB was correct that Circular No. 639 (Rev.2), Series 6, did not permit a challenge to the JAAB based on the presumed rejection of a request by the Director-General's Office before the job upgrading procedure had even begun.

DECISION

For the above reasons,
The complaint is dismissed as irreceivable.

In witness of this judgment, adopted on 10 May 2013, Mr Giuseppe Barbagallo, Presiding Judge of the Tribunal for this case, Ms Dolores M. Hansen, Judge, and Mr Michael F. Moore, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 4 July 2013.

Giuseppe Barbagallo
Dolores M. Hansen
Michael F. Moore
Catherine Comtet