

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

R.
v.
WIPO

126th Session

Judgment No. 4000

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr P. R. R. against the World Intellectual Property Organization (WIPO) on 16 June 2014 and corrected on 28 July, WIPO's reply of 8 December 2014, the complainant's rejoinder of 30 March 2015 and WIPO's surrejoinder of 9 July 2015;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions;

Considering that the facts of the case may be summed up as follows:

The complainant challenges the decision not to reclassify his post at grade P-4.

In July 2006 the complainant was granted a promotion on merit to grade P-3, while the post of Assistant Program Officer he occupied remained at the P-2 level. In July 2010, further to several reorganizations, the complainant was assigned as Head of the newly created Caribbean Unit of the Regional Bureau for Latin America and the Caribbean ("the LAC Bureau"). This post (post No. 1037) was likewise graded at the P-2 level.

In September 2010 the complainant's then supervisor, the Director of the LAC Bureau, requested that his post be reclassified at grade P-4. However, as the creation of this post and the complainant's transfer to it

had occurred only recently, the Administration decided that the request should be re-submitted in one year's time, in accordance with the unanimous recommendation of the Classification Committee.

The request for reclassification was accordingly re-submitted on 16 June 2011. An external classification expert conducted a desk audit of the complainant's post on 23 June 2011, but the outcome of the desk audit was not shared with the complainant at that juncture.

The complainant's post was examined by the Classification Committee in June 2012. The Committee recommended that the post be reclassified at grade P-3 with effect from 1 July 2012. By an e-mail of 31 July 2012, the complainant was informed of the Director General's decision to approve that recommendation. He lodged a request for review of that decision on 10 August, which was dismissed by the Director General on 5 October 2012.

By an email of 3 September 2013 the complainant was informed that there was to be a reorganization of the LAC Bureau whereby the Caribbean Unit would become the Caribbean Section and that a new post of Head of the Caribbean Section at grade P-4 would shortly be advertised. The post was advertised on 9 September 2013 and the complainant applied for it, but he was not ultimately successful.

Meanwhile, on 3 December 2012 the complainant appealed against the decision of 5 October before the Appeal Board. In the course of the internal appeal proceedings, the Administration revealed to the complainant and the Appeal Board that the external classification expert had recommended that the complainant's post be reclassified at grade P-4. In its conclusions of 5 November 2013 the Appeal Board found that, while the Classification Committee was not obliged to follow the technical assessment made by the external classification expert, it was required to do its own valuation and calculation indicating an overall result below the level of points needed for the P-4 grade. As there was no indication of any such valuation and calculation, the report was insufficient, in the Appeal Board's view, for the Director General to reach a decision on the complainant's request for reclassification at grade P-4. It recommended that the decision to reclassify his post at grade P-3 be withdrawn and that the request for reclassification be re-

submitted to the Classification Committee in order for the Director General to take a new decision. It also recommended that a copy of the external classification expert's report and the new report of the Classification Committee be provided to the complainant, upon his request, and that the complainant's costs be reimbursed in an amount corresponding to eight hours of legal services.

By a letter of 6 December 2013 the complainant was informed of the Director General's decision to adopt the Appeal Board's recommendations, with the exception of the award of costs. The letter indicated that as staff members did not require legal representation for internal appeal proceedings, WIPO did not normally compensate legal costs incurred at that stage.

On 12 December 2013 the Classification Committee confirmed its initial recommendation that the complainant's post be classified at grade P-3. By a letter of 21 March 2014 the complainant was informed of the Director General's decision to adopt that recommendation, based on the Classification Committee's own technical assessment. Attached to the letter was a copy of the reports of the external classification expert and of the Classification Committee. That is the impugned decision.

The complainant asks the Tribunal to reclassify his post of Head of the Caribbean Unit at grade P-4 or, alternatively, to quash the impugned decision and remit the matter to the Director General for reconsideration based on regulatory criteria and instructions by the Tribunal. He claims material damages in an amount equal to the difference between the salary and benefits to which he would have been entitled had his post been reclassified at grade P-4 from 1 January 2012 and those actually received by him since that date. He also claims 20,000 Swiss francs in moral damages, as well as 20,000 francs in costs.

On 7 September 2015 the complainant filed a second complaint challenging the decision not to select him for the post of Head of the Caribbean Section and requested that his two complaints be joined.

WIPO requests the Tribunal to dismiss the complaint as partially irreceivable, as the decision to appoint another candidate to the post of Head of the Caribbean Section is the subject of his second complaint before the Tribunal and any challenge to the decision to reorganise

the Caribbean Unit is time-barred. In addition, it contends that the complainant's claims with respect to the decision of 5 October 2012 are moot as that decision was withdrawn, and that his claims for material and moral damages are irreceivable for failure to exhaust internal remedies. It submits that the complaint is entirely without merit.

CONSIDERATIONS

1. The complainant applies for the joinder of this complaint, in which he challenges the decision to classify his post as Head of the Caribbean Unit of the LAC Bureau (post No. 1037, hereinafter "the subject post") at the P-3 level, with his second complaint. In the latter complaint he impugns the decision of 25 August 2015 in which the Director General confirmed his earlier decision not to select him for the post of Head of the Caribbean Section. As these complaints raise different issues, they will not be joined.

2. The complainant applies for an oral hearing. The application will be dismissed as it provides no basis for a hearing. Moreover, in view of the abundant and sufficiently clear submissions and evidence provided by the parties, the Tribunal considers that it is fully informed about the case and does not therefore deem it necessary to hold an oral hearing.

3. The subject post had been classified at the P-2 level but the complainant, who had received a merit promotion, held grade P-3. In September 2010, following the creation of the Caribbean Unit of the LAC Bureau, the complainant's supervisor requested that a reclassification exercise be initiated for the newly-created post of Head of the Caribbean Unit to which the complainant had been assigned, in view of the new duties and functions then attached to it. The external classification expert, who conducted the desk audit of the post, recommended that it be reclassified at grade P-4. However, the Director General, in the impugned decision of 21 March 2014, accepted the subsequent recommendation of the Classification Committee to reclassify it as a grade P-3 post.

4. The complainant applies for an order setting aside the impugned decision mainly on the ground that the Administration failed to comply with the Staff Regulations and Rules when it decided not to reclassify the subject post at the P-4 level. He also seeks material and moral damages, as well as costs. It is necessary, however, to emphasize that although the complainant seems to raise a number of claims, this complaint is relevantly concerned only with the challenge to the decision not to reclassify the subject post at the P-4 level.

5. The complainant takes issue with the decision of 5 October 2012, which was made on his request for review of the initial decision not to classify the subject post at the P-4 level. WIPO withdrew that decision, which cannot therefore be the object of this complaint. It suffices to observe that the complainant states that he raised this issue only as background to show that the reclassification process lacked objectivity. However, he cannot, as he purports to do, challenge the decision to reorganize the Caribbean Unit of the LAC Bureau as that challenge would be irreceivable for failure to exhaust internal means of redress, as Article VII, paragraph 1, of the Tribunal's Statute requires. Neither can he challenge, in this complaint, the decisions to create the post of Head of the Caribbean Section and to appoint Ms S. as Head of that Section, because these are challenged in another complaint before the Tribunal.

The complainant relies on provisions in the Staff Regulations and Rules which are concerned with an incumbent's entitlement to promotion as a result of the reclassification of her or his post. This is, however, not a live issue in this complaint and would only have been so if the Director General had reclassified the subject post at the P-4 level and not retained him, as the incumbent, in it.

6. The complainant claims that he was subjected to unequal treatment in the reclassification exercise. However, he has not established that he was treated differently from any other staff member who was similarly situated in fact and in law (see, for example, Judgment 3912, under 15).

7. In Judgment 3589, in which the reclassification of a post was also challenged, the Tribunal stated the following, in 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).”

8. As to the main factors that are to be taken into account in a reclassification process, the Tribunal has relevantly stated as follows, in Judgment 3764, consideration 6:

“It is for the competent body and, ultimately, the Director-General to determine each staff member’s grade. Several criteria are used in this exercise. Thus, when a staff member’s duties attach to various grades, only the main ones are taken into account. Moreover, the classification body does not rely solely on the text of the Staff Regulations and Staff Rules and the job description but also considers the abilities and degree of responsibility required by each. In all cases grading a post requires detailed knowledge of the conditions in which the incumbent works.”

9. The classification of a post involves an evaluation of the nature and extent of the duties and responsibilities of the post based upon the job description. It is not concerned with the merits of the performance of the incumbent (see, for example, Judgment 591, under 2).

The complainant seems to invite the Tribunal to compare the duties and responsibilities of the subject post with those of other posts in WIPO. He alleges, for example, that the decision to reclassify the subject post at the P-3 level “violates the principle ‘*equal pay for equal work*’, as it places [the subject] post [...] on inequitable footing in comparison with similar posts”. However, these technical aspects of evaluation and assessment fall within the technical experience,

expertise and competence of those who carried out the assessment and are not within the Tribunal's remit. Neither is it within the Tribunal's remit to analyse the subject post against other posts in WIPO to determine whether the decision to reclassify the subject post at the P-3 level was flawed.

10. The complainant claims that the reclassification process was tainted by a number of procedural flaws which, according to him, suggests "a pattern which can only point to a possibly wilful discriminatory behaviour towards him". First, he speculates as to whether the Appeal Board's recommendation that the case be resubmitted to the Classification Committee within two months of the Director General's receipt of its conclusions was followed. The timelines however indicate that it was. He alleges that WIPO did not transmit the Classification Committee's report of 12 December 2013 to him with the report of the external classification expert, as recommended by the Appeal Board. However, the evidence shows that they were so transmitted to him. The claim that there were procedural violations on these grounds is therefore unfounded.

11. Substantively, the complainant challenges the impugned decision on the ground that the Classification Committee erred when it did not follow the external classification expert's finding that the subject post should be reclassified at the P-4 level. His view is that the external classification expert was more familiar with the WIPO context and possessed the necessary expertise and tools and that he reviewed relevant documents, which resulted in a professional and competent assessment. He insists that the Classification Committee lacked objectivity and committed errors of fact and law in its analysis.

12. With respect to professional category posts, WIPO's Staff Regulations and Rules confer the discretion upon the Director General to determine the duties and responsibilities attaching to posts and to classify them accordingly. Regulation 2.1(a) of the Staff Regulations and Rules, which were in force at the material time, relevantly stated that "[t]he importance of the duties and responsibilities attaching to each grade shall be determined by the Director General in the light of

the standards for staff in the Professional [...] categor[y] used by the other intergovernmental organizations of the United Nations common system [...] and after having sought the advice of a Classification Committee designated by him”. Under the applicable rules an external classification expert first carries out a desk audit to determine the level of a post based on the duties and responsibilities which attach to that post. This was done in the reclassification process for the subject post. The critical question is whether in carrying out its mandate to review the report of the external classification expert the Classification Committee erred in its analysis and thus wrongly recommended, in its report of 12 December 2013, that the subject post be reclassified at the P-3 level. The fact that one member had recently joined the Committee is not a ground upon which the Committee’s recommendation to reclassify the subject post at the P-3 level, and, by extension, the impugned decision, may be vitiated, as the complainant suggests.

13. In reviewing the external classification expert’s report the Classification Committee had to take account of the expert’s analysis, the points which the expert attributed to each of the relevant elements, and determine the recommended grade given the duties and responsibilities attached to the subject post. If the Committee considered that any of the elements was incorrect, it then had to provide its reason(s) for departing from the findings of the external classification expert and provide its own evaluation, and overall result and recommendation.

14. In their evaluations, the external classification expert and the Classification Committee both considered the main factors which are to be taken into account in a reclassification process, reproduced in consideration 8 above, as well as the requirements of the Professional Classification Standard. Concerning the nature of the work of the post, the external classification expert attributed 3 for focus and B for the scope of the work. The Classification Committee maintained the B for the scope of the work, but attributed 2 for focus. In the Tribunal’s view, the Committee provided sufficient reasons for departing from the 3 which the external classification expert had attributed.

Concerning the enabling environment, the external classification expert attributed 8 for organizational context and G for exposure/risk, while the Classification Committee attributed 7 and F, respectively. In the Tribunal's view, the Committee provided sufficient reasons for departing from the external classification expert's evaluation.

Concerning partnership, the external classification expert attributed 12 for engagement and K for communities of interest, while the Classification Committee attributed 11 and J, respectively, and, in the Tribunal's view, provided sufficient reasons for departing from the external classification expert's evaluation.

Concerning results, the external classification expert attributed 17 for impact and O for leadership role, while the Classification Committee attributed 16 and N, respectively. In the Tribunal's view, the Committee provided sufficient reasons for departing from the external classification expert's evaluation.

In the recommendation, the external classification expert stated that the post scored 2,095 points at the 80th percentile at the P-4 level. The Classification Committee recommended that in line with the Professional Classification Standard and based on the job description submitted by the Director of the LAC Bureau, the post should be classified at the P-3 level as the Committee gave a score of 1,480 points within the P-3 range of 1,265 – 1,705 points.

15. The Tribunal finds no vitiating errors in the Classification Committee's evaluation. It is therefore determined that the Director General did not err in accepting its recommendation to reclassify the subject post at the P-3 level pursuant to Regulation 2.1(a) of the Staff Regulations and Rules then in force. In the foregoing premises, the complaint is unfounded in its entirety and will be dismissed.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 14 May 2018, Mr Giuseppe Barbagallo, President of the Tribunal, Ms Dolores M. Hansen, 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

DOLORES M. HANSEN

HUGH A. RAWLINS

DRAŽEN PETROVIĆ