

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

*Registry's translation,  
the French text alone  
being authoritative.*

**R. (No. 2)**

**v.**

**ILO**

**129th Session**

**Judgment No. 4252**

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr J.-M. R. against the International Labour Organization (ILO) on 22 September 2017 and corrected on 6 November, the ILO's reply of 8 December 2017, the complainant's rejoinder of 15 February 2018 and the ILO's surrejoinder of 5 March 2018;

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, a former official of the International Labour Office – the ILO's secretariat – challenges the decision not to award him a personal promotion in the 2011 exercise.

The complainant joined the ILO in the early 1980s and from 1988 held a grade P.3 post in the Information Technology and Communications Bureau (ITCOM). In June 2005 he was reassigned within ITCOM when his post was abolished. His performance appraisal reports for 2006-2007 and 2008-2009 were unsatisfactory and a performance improvement plan was put in place. In August 2010 the complainant challenged the aforementioned reports in a grievance. On 22 August 2011 the Director-General endorsed the recommendation of the Joint Advisory Appeals

Board (JAAB) to dismiss the grievance as time-barred insofar as it was directed against the performance appraisal report for 2006-2007 and to cancel the performance appraisal report for 2008-2009. The latter report was thus withdrawn from the complainant's personal file and replaced by a note stating that "[n]o inference may be drawn from the absence of this report, and [the complainant's] performance for this period may not be deemed satisfactory or unsatisfactory"\*. The ad hoc performance appraisal reports drawn up for 2010 and 2011 were also unsatisfactory. The complainant signed a separation agreement on 13 November 2013 and left the ILO on 30 November 2013.

In the meantime, the complainant had been found eligible for personal promotion in the 2011 exercise. Office Procedure IGDS No. 125 (Version 1) of 22 October 2009 (hereinafter "IGDS No. 125") governs the Office's personal promotion system. That system allows a change in grade within the same category following one of two possible tracks, the first being provided for under Article 6.8.2, paragraph 2, of the Staff Regulations and the second under paragraph 3 of the same article. IGDS No. 125 also stipulates that, having reviewed the files of officials eligible for personal promotion under the first or second track, a joint panel (hereinafter "the Joint Panel") must submit its report and recommendation concerning personal promotion to the Director-General.

In the report delivered on 20 November 2014, the Joint Panel recommended that given the complainant's performance, he should not be granted personal promotion under either track. On 19 February 2015 the complainant was advised that the Director-General had endorsed that recommendation. When the grievance which he filed against that decision was dismissed, he referred the matter to the JAAB requesting that the decision to dismiss his grievance and the 2011 personal promotion exercise be cancelled. Subsidiarily, he claimed compensation for the material and moral injury that he considered he had suffered.

In its report of 27 April 2017, the JAAB found that there were no grounds to dispute the Joint Panel's recommendation not to award the complainant a personal promotion under the first track. However, with

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\* Registry's translation.

regard to the second track, it considered that the Joint Panel had not taken into account the complainant's "particular circumstances". Noting that from 2006 the relationship between the complainant and his superiors had been "not very good", the JAAB considered that the Joint Panel should have "assessed the [complainant's] performance with a degree of circumspection". Moreover, the JAAB considered it regrettable that the Joint Panel had not emphasised the long period before 2005 when the complainant's performance had been "meritorious or particularly meritorious", and it could not see why, in the absence of a performance appraisal report, the complainant's performance for 2008-2009 had not been deemed satisfactory in accordance with the Organization's usual practice. Lastly, the JAAB considered that the Joint Panel's recommendation concerning the 2011 personal promotion exercise as a whole was procedurally flawed. The JAAB recommended, inter alia, that that exercise be cancelled, while ensuring that the officials promoted were shielded from any injury, and that 10,000 Swiss francs be awarded to the complainant in compensation for moral injury.

By a letter of 26 June 2017 the complainant was informed that the Director-General remained persuaded that the Joint Panel's recommendation was well-founded. In his view, the fact that the complainant had received several unsatisfactory performance appraisal reports during the period under review prevented him from being granted a personal promotion. That is the impugned decision.

In his complaint, the complainant requests the cancellation of that decision and the 2011 personal promotion exercise, and an award of 10,000 Swiss francs in compensation for the material and moral injury that he considers he has suffered. In his rejoinder, he states that the officials who received a personal promotion in the 2011 exercise must be shielded from any injury arising from the cancellation of that exercise, that his claim for 10,000 Swiss francs covers moral damages alone, and that he maintains his claim for material damages.

The ILO submits that the complaint is time-barred to the extent that it challenges the content of several of the complainant's performance appraisal reports from 2006 onwards. It considers that the complaint should be dismissed as partly irreceivable and as groundless.

## CONSIDERATIONS

1. The complainant impugns the decision of 26 June 2017 by which the Director-General confirmed the decision of 19 February 2015 endorsing the Joint Panel's recommendation not to award him a personal promotion in the 2011 exercise. He also requests the cancellation of the 2011 personal promotion exercise and compensation for the moral and material injury that he has suffered.

2. The ILO submits that the complaint should be dismissed as partly irreceivable, since the challenges to the performance appraisal reports for 2006-2007, 2010 and 2011 are, in its view, time-barred, and because it is groundless.

3. The complainant contends that the Director-General endorsed the Joint Panel's findings despite the fact that the Panel had not taken into account all aspects of his situation, and thus did not fully consider his file.

4. Under the Tribunal's case law, an organisation enjoys wide discretion with regard to staff promotion. For this reason, such decisions are subject to only limited review. However, the Tribunal must ascertain whether the decision was taken without authority, if it was based on an error of law or fact, a material fact was overlooked, or a plainly wrong conclusion was drawn from the facts, if it was taken in breach of a rule of form or procedure, or if there was an abuse of authority (see Judgments 2835, consideration 5, 3279, consideration 11, and 4066, consideration 3).

5. Under Article 6.8.2, paragraph 2, of the Staff Regulations, there are two tracks to personal promotion:

“1. Officials in the Professional category below the grade of P.5, officials in the National Professional Officers category below the grade of NO-D and officials in the General Service category who have not reached the top grade of their category shall, once only in the course of their entire service with the Office, be eligible for promotion in accordance with either paragraph 2 or paragraph 3 of this article [...].

2. Subject to the criteria, procedures and numerical limits determined by the Director-General after consulting the Joint Negotiating Committee, officials referred to in paragraph 1 shall be promoted to the next higher grade of their category if:

- (a) their conduct has been fully satisfactory and their performance of duties has been consistently superior to that normally associated with the level of responsibilities of their job; and
- (b) they have served or are deemed, in accordance with the criteria established, to have served at least 13 years in their present grade.

3. Officials referred to in paragraph 1 shall be promoted to the next higher grade of their category if:

- (a) their conduct and their performance of duties in their present grade have been satisfactory; and
- (b) they have served at least 25 years in the Office, the United Nations or another specialized agency with at least 13 years in their present grade.”

6. According to those provisions, personal promotion under the first track requires, among other criteria, performance that has been consistently superior to that normally expected from an official at the level of responsibility associated with their present job. In this case, it is clear that the complainant was not entitled to receive a promotion under the first track.

7. However, the same does not apply to the second track which, as paragraph 4(b) of IGDS No. 125 emphasises, “is intended to reward length of service” and only requires that the official’s performance has been “satisfactory”.

For the purposes of the second track, satisfactory performance is, under Article 6.8.2, paragraph 3, of the Staff Regulations, appraised in the light of the official’s overall performance in the grade.

However, the Joint Panel’s report shows that it assessed the complainant’s performance only on the basis of his last 13 years of service. The Joint Panel thus committed an error of law. In this case, the complainant had been in his grade since 1988, thus for 23 years in 2011. His performance had been assessed as meritorious or even particularly meritorious up to 2005, that is, over a period of 17 years.

As the JAAB correctly pointed out, his performance over the entire period was hence satisfactory overall.

8. Moreover, as the JAAB likewise correctly found, the Joint Panel's opinion contained a second error of law, namely the failure to take the period 2008-2009 into account. In Judgment 3321, consideration 11, the Tribunal noted that it is the ILO's practice "in the absence of a performance appraisal, to deem the services of the official in question to be satisfactory during the relevant year in order to ensure that this situation cannot adversely affect that person". In this case, the complainant's performance appraisal report for 2008-2009 was cancelled, and the Joint Panel was therefore wrong not to consider his performance as satisfactory in that period.

9. The Director-General's decision specifying the list of officials promoted that excluded the complainant, which was taken on the basis of the Joint Panel's recommendations, is consequently affected by the same errors of law.

10. Since the Tribunal's finding is unrelated to the challenge directed against the complainant's unsatisfactory performance appraisal reports, there is no need to consider the ILO's objection to the receivability of the complaint insofar as it contests the assessments contained in those reports.

11. It follows from the foregoing that the final decision of the Director-General of 26 June 2017, the decision of 19 February 2015, and also the personal promotion exercise for 2011 insofar as the complainant was excluded, must be cancelled without there being any need to examine the complainant's other pleas.

12. The existence of the errors of law identified above does not imply that the complainant would necessarily have been promoted had his performance been given due consideration.

13. At this stage in its findings, the Tribunal would hence normally remit the case to the Organization for the Director-General to take a new decision on the complainant's promotion.

However, in view of the time that has passed, the Tribunal will not remit the case to the ILO but will award compensation to the complainant for the injury caused by the contested decisions.

14. The fact that the Joint Panel incorrectly examined the complainant's situation deprived him of an opportunity to be promoted and also caused him moral injury. Having regard to the circumstances of the case, the Tribunal considers that the various injuries suffered by the complainant as a result of the unlawful decisions set aside will be fairly redressed by awarding him 10,000 Swiss francs in compensation under all heads.

#### DECISION

For the above reasons,

1. The decisions of the Director-General of 26 June 2017 and 19 February 2015 are set aside.
2. The personal promotion exercise for 2011 is cancelled insofar as the complainant was excluded from it.
3. The Organization shall pay the complainant 10,000 Swiss francs in compensation under all heads.

In witness of this judgment, adopted on 12 November 2019, Mr Patrick Frydman, President of the Tribunal, Ms Fatoumata Diakité, Judge, and Mr Yves Kreins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 10 February 2020.

*(Signed)*

PATRICK FRYDMAN

FATOUMATA DIAKITÉ

YVES KREINS

DRAŽEN PETROVIĆ