

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

C.

v.

IFAD

133rd Session

Judgment No. 4451

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms T. C. against the International Fund for Agricultural Development (IFAD) on 28 June 2017 and corrected on 21 August, IFAD's reply of 27 December 2017, the complainant's rejoinder of 18 May 2018 and IFAD's surrejoinder of 3 September 2018;

Considering Articles II, paragraph 5, 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 impugns the decision concerning her management-driven transfer.

In November 2013 the complainant, who was in the professional category and held the grade P-3 position of Travel Manager in the Administrative Services Division of the Corporate Services Department at IFAD headquarters in Rome, was made responsible for visa management and thus became Travel and Visa Manager.

By email of 18 April 2016, the complainant's supervisor, the Director of the Administrative Services Division, confirmed to the complainant that, as they had just discussed, a management-driven transfer to a post in the Human Resources Division (HRD) was

envisaged, at the request of the Associate Vice President responsible for the Corporate Services Department.

By email of 20 April 2016, the complainant pointed out to her supervisor that she had never requested a transfer to another job and asked to be provided with clear information specifying the terms of the transfer, the position to which she was to be transferred and what IFAD's potential interest in the transfer was.

On 26 April 2016 her supervisor confirmed to the complainant that, as had been agreed at a meeting held the previous day between himself, the Director of HRD and the complainant, she would be transferred as of 9 May 2016 and the job description for her new position would be provided to her shortly.

In an email dated 26 April 2016, the Director of HRD acknowledged that he may not have responded to all the complainant's questions at the aforementioned meeting, but he had answered the one she considered most important, namely the reason for her transfer. He reminded her that it was in IFAD's interests to have staff members who were constantly developing their knowledge and regularly exposed to new challenges.

On 27 April 2016 the Director of HRD provided the complainant with a generic description of the new position she had been assigned in HRD. On the same day, the complainant replied that she did not see how her skills and qualifications would fit in with that job.

By letter of 4 May 2016, an HRD official, acting on behalf of the director of that division, confirmed to the complainant that she was being transferred to HRD, with effect from 9 May, to a post of human resources specialist. She was asked to confirm acceptance of this transfer.

Also on 4 May 2016, the complainant was informed by an HRD official of the tasks and responsibilities of her new position.

On 6 May the complainant signed the letter of 4 May 2016 but crossed out the words "I accept this offer under the terms and conditions set forth in this letter". She added the following sentence to the end of the letter: "I acknowledge the decision of the transfer and take on the

new duties as HR Specialist effective 9 May 2016 as requested by this letter.”

The complainant was placed on sick leave on 12 May 2016.

On 15 June 2016 the complainant submitted a request for facilitation. On 15 July 2016 she was authorised to submit an appeal directly to the Joint Appeals Board, which she did on 12 August 2016. In particular, she requested that the decision to transfer her be withdrawn and that she be awarded compensation. She also stated that she would consider negotiating an early separation package as an alternative.

The complainant returned to work on 7 October 2016.

In its report of 3 March 2017, the Joint Appeals Board found that, while the Human Resources Implementing Procedures had been fully complied with, the provisions of IFAD’s Human Resources Policy had been disregarded since the complainant had not been consulted prior to her transfer and neither, it would seem, had the two directors affected. In this connection, the Board noted a discrepancy between two of the statutory texts applicable in this area, which it suggested should be corrected for the future. It also considered, in view of the differences between the descriptions of the two jobs in question – despite their relative similarity at first sight – that the complainant’s transfer could be potentially detrimental to her career prospects (potential promotion from grade P-3 to grade P-4 in the initial job), constituted unfair treatment and a breach of the duty of care and entailed a loss of responsibility and prestige. Lastly, the Board noted that the complainant was informed of the reasons for the decision only after she had repeatedly requested them. In conclusion, the Board took the view that the transfer did not fully comply with the provisions of the Human Resources Policy and was not compatible with IFAD’s duty of care. It recommended that “the case not be dismissed” and that the complainant’s grievances and complaints in respect of the decision to transfer her should be taken into consideration. However, given her complaints of a hostile working environment, it did not recommend reinstating the complainant in her former position but instead transferring her to another position at the same level.

By letter of 30 March 2017, the President of IFAD notified the complainant that he had decided to dismiss her appeal on the grounds that her transfer complied with the applicable rules and procedures, as the Joint Appeals Board had acknowledged. The President added: “As communicated to you, this transfer was a mobility opportunity for you to acquire new knowledge and skills and to further contribute to the work of IFAD as it is in the interest of the Fund to have a workforce that constantly develops and learns new skills.”

In a letter of 5 May 2017, the members of the Board who had dealt with the complainant’s appeal informed the President of IFAD that the statement of reasons contained in his letter of 30 March 2017 did not correctly represent either the Board’s conclusions or its recommendations.

The complainant resigned on 6 April 2017.

Before the Tribunal, the complainant seeks the setting aside of the decision of the President of 30 March 2017 and the “initial decisions” relating to that transfer, full compensation for injury and an award of 8,000 euros in costs.

IFAD submits that the complaint should be dismissed as unfounded.

CONSIDERATIONS

1. The complainant impugns the decision of the President of IFAD of 30 March 2017 dismissing her internal appeal against the decision on her management-driven transfer. She also seeks the setting aside of the “initial decisions”, full compensation for the injury she considers she has suffered and an award of 8,000 euros in costs.

2. Before considering the complainant’s various pleas in support of her complaint, the Tribunal must address several procedural questions raised by the parties.

3. In the introduction to her complaint, the complainant appears to complain that the texts governing the conditions of service of IFAD officials, or “at least the main texts”, namely the Staff Rules and the Human Resources Implementing Procedures, are not available to those

officials in the Tribunal's two working languages and that they were sent to the Tribunal in English alone.

The Tribunal observes that under Article 8(2)(b) of the Rules of the Tribunal, a defendant organisation before the Tribunal is only required to provide a translation into the language chosen for the proceedings by a complainant for "any text which is not in English or French". Since the documents at issue are in English, IFAD cannot be required to produce a French version (see Judgment 4063, consideration 3).

The Tribunal further notes that the complainant was recruited by IFAD as a bilingual Italian/English clerk-typist, that English was used by both parties during the administrative procedure of management-driven transfer and that the complainant herself lodged her internal appeal with the Joint Appeals Board using English. The Tribunal therefore fails to see how the submission of statutory texts in English could have actually been detrimental to the complainant.

There is therefore no need to take account of the complainant's comment, which also renders IFAD's considerations in its regard irrelevant.

4. In its reply, IFAD requests the Tribunal to disregard a letter sent by the members of the Joint Appeals Board to the President of IFAD on 5 May 2017.

The Tribunal notes that, contrary to what IFAD contends, the letter in question, which made no mention of the confidential nature of its contents, was not confidential and there is nothing to prove that the complainant came to possess it improperly. There is therefore no reason for the Tribunal to disregard this item of evidence.

5. In summary, the complainant pleads:

- (1) an insufficient statement of reasons for the President's decision of 30 March 2017;
- (2) a breach of the adversarial principle in the internal appeal proceedings before the Joint Appeals Board;

- (3) formal defects in the letter of 4 May 2016 which made the management-driven transfer procedure official;
- (4) a breach of paragraph 5.2.4 of the Human Resources Implementing Procedures;
- (5) a breach of paragraph 5.2.4(iii) of those procedures, which implies a breach of the right to be heard;
- (6) a lack of specific consideration of the circumstances of the case and failure to take account of essential facts;
- (7) an affront to the complainant's dignity and a breach of the principle of mutual trust, the duty of care and the duty to treat her fairly;
- (8) bad faith and bias in decision-making;
- (9) errors of fact in IFAD's defence before the Tribunal.

6. In respect of its consideration of the various pleas, the Tribunal wishes to begin by pointing out that, with regard to decisions to transfer, appoint, reassign or promote an international civil servant or to refuse to select her or him for a vacant post, it considers, in accordance with established case law, that such decisions lie within the discretion of the competent authority of the organisation concerned and are subject to only limited review by the Tribunal. Thus, such a decision may be set aside only if it was taken without authority or in breach of a rule of form or of procedure, or if it was based on a mistake of fact or of law, or if some material fact was overlooked, or if there was abuse of authority, or if a clearly wrong conclusion was drawn from the evidence. Moreover, the Tribunal will be especially wary in reviewing a transfer since it may not replace the employer's rating of the official with its own (see, *inter alia*, Judgments 1556, consideration 5, and 4408, consideration 2).

7. As regards the first plea, alleging an inadequate statement of reasons for the President's decision of 30 March 2017 dismissing her internal appeal to the Joint Appeals Board, the complainant submits that the President did not set out in a clear and convincing manner the reason(s) for which he decided, *inter alia*, to maintain his decision

concerning her management-driven transfer, despite the Board's recommendation to the contrary on that point. In the complainant's view, the President should also have indicated in his decision of 30 March 2017 why he considered the other points made in the Board's opinion, which were favourable to the complainant, to be incorrect and so departed from the Board's recommendations, to her detriment.

The Tribunal takes the view that, however brief, the statement of reasons in the decision of 30 March 2017 is sufficient to inform the complainant of the reasons why the President decided to depart from the Board's opinion (see, for a comparable case, Judgment 4437, consideration 19) and to maintain the decision to transfer her, without it being necessary to respond explicitly to all the Board's recommendations. The President's decision of 30 March 2017 states that the Board concluded that the decision to transfer the complainant in IFAD's interests had been taken in compliance with the applicable rules and procedures and reminds her that the management-driven transfer decision had been taken in the interests of the service and should offer her new opportunities to acquire new knowledge and skills and to further contribute to IFAD's work, and so appears to contain an adequate and sufficient statement of reasons. The first plea is therefore unfounded.

8. In support of her second plea, alleging a breach of the adversarial principle in the proceedings before the Joint Appeals Board, the complainant, while acknowledging that particular evidence, affidavits and testimonies were produced at her request, submits that the Board gathered many of these in the course of the proceedings but did not make them available to her, which may have caused her injury.

The Tribunal notes in this respect that most of the testimonies and affidavits to which the complainant appears to be referring were appended by IFAD to the reply and surrejoinder that it submitted to the Board. Although the complainant argues that several documents which she had requested be produced before the Board were not sent to her, the evidence shows that she had already seen the documents in question. Consequently, the second plea must be dismissed.

9. In the first part of her third plea, alleging formal defects which taint the initial decision to transfer her, the complainant submits that the letter of 4 May 2016, which preceded notification of that decision, does not make it possible to identify the author of that decision. In her view, the transfer decision was hence taken either without authority or in breach of a rule of form, which renders it unlawful in any event.

The Tribunal observes that the transfer decision was taken by the authority on its own initiative. In this case, paragraph 5.2.4(iii)(b)iii of the Human Resources Implementing Procedures provides that “[r]equests for management driven transfers are approved by the [Associate Vice President responsible for the Corporate Services Department] (for staff in the Professional and higher categories and National Professional Officers) the Division Director, HRD (for General Service staff) upon endorsement by the hiring and releasing Heads of Department [...]”. It follows from these provisions that, in view of the category of officials to which the complainant belonged, the decision in question fell within the competence of the Associate Vice President responsible for the Corporate Services Department. An email sent to the complainant by the Director of the Administrative Services Division on 18 April 2016 shows that the envisaged transfer to HRD had, in fact, been requested by the Associate Vice President. The transfer at issue was therefore made by the competent authority. It follows from all of the above that the first part of the third plea is unfounded.

10. In the second part of the third plea, the complainant submits that the transfer decision is unlawful, since the letter of 4 May 2016 appears to be both a “transfer decision” and a “transfer offer”, which is contradictory and ambiguous.

The Tribunal considers that the complainant evidently could not have been misled as to the exact meaning of the letter of 4 May 2016, namely that she was expressly invited to inform the authority whether or not she agreed with her management-driven transfer. The second part of the third plea is also unfounded.

11. In the third part of the third plea, the complainant alleges a procedural defect in the initial transfer decision in that, first, the letter of 4 May 2016 does not contain any statement of reasons to justify the transfer, while the statement of reasons with which she was provided on 26 April 2016 is too vague. She submits that this statement of reasons scarcely put her in a position to understand why, for the sake of developing her skills, it was justifiable to remove her from her duties, which she performed with success and commitment and which had been significantly expanded in November 2013, in order to take up a role in the area of human resource management, in which she was neither experienced nor qualified.

The Tribunal considers that a transfer decision satisfies the requirements laid down in its case law concerning the statement of reasons when, in particular, the staff member was given explanations enabling her or him to comment on the new duties in detail and in full knowledge of the facts before the decision was taken (see Judgment 3662, consideration 5, and the case law cited therein). The Tribunal considers that, just as the requisite statement of reasons may be contained in the notification informing the staff member of the decision or any other document, the reasons may also be provided in prior proceedings, or orally (see, *inter alia*, Judgments 1590, consideration 7, 1757, consideration 5, and 4397, consideration 15), or may even be conveyed in response to a subsequent challenge (see Judgments 1590, consideration 7, and 3316, consideration 7).

In this case, the complainant was informed by an email of 18 April 2016 that her transfer to a job in HRD was “envisaged”. By email of 26 April 2016, the Director of HRD informed the complainant that the reason for her transfer lay in IFAD’s interest in having staff members who constantly develop their knowledge and are regularly exposed to new challenges. A generic profile of the job was sent to the complainant by email of 27 April 2016, and she was further informed of the actual tasks and responsibilities involved in her new position during a meeting with an HRD official on 4 May 2016. In these circumstances, the Tribunal finds that the initial decision to transfer the complainant was accompanied by a statement of reasons that was sufficient to enable her

to understand why she was transferred in the interests of the service. It follows that the third part of the third plea is unfounded.

12. In her fourth plea, alleging infringement of paragraph 5.2.4 of the Human Resources Implementing Procedures, the complainant submits that the two-week period which must elapse between an official's notification of her or his transfer and the date on which that transfer takes effect was not complied with, since the complainant was informed by a letter of 4 May 2016 from HRD that the transfer to that division would concern a post of human resources specialist in the unit responsible for staff development, while the transfer took effect on 9 May 2016.

On this point, the Tribunal observes that paragraph 5.2.4(iii)(b)i of the Human Resources Implementing Procedures provides that: "The staff member must be notified both orally and in writing by HRD when they are being considered for a transfer to another position at the same duty station. Normally, this notice should be given at least two weeks in advance of the transfer." In this case, the complainant was informed by an email of 18 April 2016 that her transfer to a position in HRD, still in Rome, was envisaged, and the reason for that transfer was confirmed in writing by the Director of HRD on 26 April 2016. The letter of 4 May 2016 to which the complainant refers therefore merely confirmed the date on which her transfer would take effect and informed the complainant of the exact nature of her new job. Besides the fact that the two-week time-limit specified in the aforementioned provision applies only as a general rule, it follows that the complainant was notified within the prescribed time-limit of her proposed transfer. The complaint's fourth plea is therefore unfounded.

13. In support of her fifth plea, alleging breach of her right to be heard arising from non-compliance with paragraph 5.2.4(iii) of the Implementing Procedures, the complainant submits in essence that she should have been able to submit her comments before the decision to transfer her was taken.

In this case, the evidence makes plain in any event that the complainant was informed of her forthcoming transfer before it was even made official and that she had the opportunity to state to both the Director of HRD and the Director of the Administrative Services Division, orally and in writing, why she was opposed to this transfer, especially on personal grounds. The fifth plea is therefore unfounded.

14. In her sixth plea, the complainant submits that an individual examination of the circumstances of the case did not take place, that essential facts were omitted when assessing the decision to transfer her, that this decision was taken “lightly” and that it was not preceded by a proper enquiry. More specifically, the complainant submits that the actions of the Associate Vice President responsible for the Corporate Services Department “took by surprise” both the complainant and the two directors concerned by her transfer; that no account was taken either of her responsibilities in the post which she held, which had been further expanded in November 2013, or of the proposal at the time to reclassify her post at grade P-4; and that her lack of the qualifications and experience required for a post of human resources specialist was also ignored.

The Tribunal wishes to reiterate first of all that, as stated in consideration 4, above, the lawfulness of a transfer decision is subject to only limited review. In the light of the statement of facts, the documents submitted by the parties and the consideration of the other complainant’s other pleas, the Tribunal considers that this sixth plea is unfounded, since it is based on a number of allegations for which there is insufficient evidence. As has already been stated several times, the complainant had the opportunity to state her views both orally and in writing before the transfer procedure was even made official. As to the contention that the complainant’s post was undergoing reclassification at the time when she was transferred, the evidence shows that, although two proposals to reclassify that post had been made, in any event neither had come to anything by the time the complainant resigned from the Organisation. The sixth plea must therefore be dismissed.

15. The seventh plea is based on a simultaneous breach of the duty to respect the complainant's dignity, the principle of mutual trust, the duty of care and the duty to treat all officials equally.

With regard to the duty to respect the complainant's dignity and the duty of care, the complainant in essence submits that her transfer did not provide her with work at the same level as that which she previously performed and that she did not have either the skills or the experience to carry out her new duties.

Admittedly, the evidence shows that owing to the very nature of the areas which it concerned, the job to which the complainant was transferred entailed less responsibility since it no longer involved supervisory duties or, it would appear, individual decision-making power. However, the comparison of duties that was carried out by the Joint Appeals Board shows that the level of the complainant's new job can be considered similar, from an objective point of view, to that of her previous position, since, in particular, the new job allowed her to be involved in IFAD's human resources management strategy. Furthermore, there is insufficient evidence to substantiate the complainant's assertion that she had neither the skills nor the experience required to carry out her new duties, particularly in view of the fact that the Director of HRD confirmed that the complainant performed her new role satisfactorily in the few months for which she held it. The circumstance, put forward by the complainant, that she did not have the qualifications necessary to hold an administrator post at grade P-3 in HRD according to the generic job profile for such posts in any event does not establish that, by assigning her such a post, IFAD affronted her dignity or failed in its duty of care towards her.

The contention that the complainant was not treated fairly is also unfounded. The complainant fails to establish in what specific way she was unfairly treated compared to other officials who were subject to similar management-driven transfer procedures in IFAD's interests around the same time. The Tribunal observes in that regard that IFAD submits, without real contradiction by the complainant, that no fewer than 21 decisions in respect of management-driven transfers were taken

as part of the IFAD mobility programme in 2016, 19 of which related to the professional category, to which the complainant belonged.

It follows that the seventh plea is unfounded.

16. The complainant bases her eighth plea on the various IFAD authorities' bad faith and lack of impartiality throughout the procedure. She also complains that the Associate Vice President responsible for the Corporate Services Department behaved maliciously towards her and the President was biased, as shown by his public statements.

However, the Tribunal points out that bad faith and bias may not be presumed and the burden of proof is on the party that pleads it (see Judgments 4067, consideration 11, and 4408, consideration 22). Although the relationship between the complainant and the Associate Vice President responsible for the Corporate Services Department was relatively antagonistic, there is insufficient evidence in this case to convince the Tribunal either that the complainant was a victim of bad faith or bias on the part of the Vice President or the President, or that her transfer to another position at the same level occurred against that background.

The eighth plea is therefore unfounded.

17. In support of her ninth plea, which she raises in her rejoinder, the complainant alleges errors of fact which do not in reality concern either the initial decision to transfer her or the internal appeal proceedings brought against that decision, but rather IFAD's defence in the proceedings before the Tribunal.

The Tribunal therefore fails to see how, even if these errors were proven – which is, in any event, not the case in the light of the submissions and documents filed by the parties – they could establish that the transfer at issue was unlawful.

The ninth plea must also be dismissed.

18. It follows from the foregoing that the complaint must be dismissed in its entirety.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 2 November 2021, Mr Patrick Frydman, Vice-President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 27 January 2022 by video recording posted on the Tribunal's Internet page.

(Signed)

PATRICK FRYDMAN JACQUES JAUMOTTE CLÉMENT GASCON

DRAŽEN PETROVIĆ