

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

**S.**  
**v.**  
**ICC**

**121st Session**

**Judgment No. 3600**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms S. S. against the International Criminal Court (ICC) on 22 December 2012 and corrected on 20 April 2013, the ICC's reply of 7 August and the complainant's e-mail of 21 August 2013 informing the Registrar of the Tribunal that she did not wish to enter a rejoinder;

Considering Article II, paragraph 5, 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 joined the ICC at a lower grade than she held previously at the United Nations Convention to Combat Desertification (UNCCD), an organisation applying the United Nations common system. She challenges the decision not to review the step within-grade as determined in the offer of appointment in order to match her previous salary at the UNCCD.

The complainant joined the ICC in May 2010 under a one-year fixed-term contract as Human Resources Assistant at grade G-5, step V. In July 2010 she requested the Human Resources Section (HRS) to revise her step within-grade as determined in the offer of appointment.

The HRS replied that the determination of her step was correct and that it would not be revised.

In April 2011 the complainant requested the HRS to re-calculate her relevant work experience which had been taken into account in assigning her to the step in question. Following meetings and discussions with the HRS, she was informed by an e-mail of 5 May that a re-evaluation of her step within-grade had been conducted based on the same set of documents presented by the complainant at the time of the offer of appointment. The re-evaluation revealed that there were several discrepancies in the initial calculation of her work experience. The new evaluation resulted in a total of 9 years and ten months of relevant work experience, which corresponded to an appointment at grade G-5, step IV, whereas the initial evaluation conducted in March 2010 had led to the offer of appointment at grade G-5, step V. She was further informed that the ICC did not have a policy of matching the previous salary level for staff members recruited externally. As the step determined by the HRS at the time of her recruitment was indicated in the offer of appointment, which she had accepted, it would not be reviewed.

On 13 May 2011 a meeting took place between the complainant and the Chief of the HRS. The complainant was then informed that the calculation of her work experience was based on the Guidelines for Determination of Grade and Step on Recruitment and Selection in the Professional and Higher and General Service Categories which entered into force on 2 November 2009 (hereinafter referred to as “the Guidelines”).

Between February and April 2012 the complainant contacted the Chief of the HRS several times seeking a final response on the determination of her step upon recruitment. As she did not receive a reply, she requested a review of the implicit decision to reject her request on 2 May, claiming that she should be placed at the appropriate step, namely the one which would match her previous salary at grade G-6, as from the date of her appointment.

The complainant’s request for review was rejected as unfounded on 30 May 2012 and in June 2012 she filed an appeal before the

Appeals Board. In its report the Appeals Board found that there was no specific rule applying to the complainant's situation, namely that of a staff member who joins the ICC at a lower grade than that previously held in another organisation applying the United Nations common system. It found that the Guidelines did not apply to the complainant's situation and that the Administration had therefore erred when it had determined the complainant's salary step pursuant to these Guidelines. The Appeals Board nevertheless referred to the exception provided for in Section 6 of the Guidelines, which provides that: "If an appointment is made from a lower to a higher grade [...] within the ICC or externally from an organisation applying the United Nations common system of salaries, allowances and benefits, steps may be granted in accordance with Staff Rule 103.9, by taking into account two additional steps at the current level and by matching the salary at the level of the new appointment." By analogy with that exception, it recommended that her salary be matched in her new appointment by granting her step VI.

The complainant was informed by a memorandum of 8 October 2012 that the Registrar had decided to reject the recommendation of the Appeals Board and to dismiss her appeal as unfounded. The reasons for rejecting the recommendation were that, as the Guidelines were expressly inapplicable to the complainant's situation, the exception contained therein could not be applied by analogy, as recommended by the Appeals Board. Further, at the time of her recruitment, she was not a staff member of the ICC. Therefore, Staff Rule 103.9 could not be applied. This notwithstanding, the Registrar noted that, in any case, Staff Rule 103.9 only applied to staff members who change to a different grade with a higher base salary, which was not the complainant's case. That is the impugned decision.

The complainant asks the Tribunal to order that she be placed at the correct step within the G-5 level, by matching her salary with the equivalent or higher salary at G-6, step IV in The Hague salary scale. Alternatively, she asks the Tribunal to order the ICC to match her salary to that which she received from her previous employer or to

grant her a higher entry level within the General Services category in The Hague. She claims costs in the amount of 3,000 euros.

The ICC submits that the complainant's claims are unfounded in their entirety.

### CONSIDERATIONS

1. The complainant challenges the decision by the Registrar of the ICC to dismiss her request to be placed at a level and step, or alternatively, to be given a salary commensurate to what she enjoyed at the time when she left her immediate previous employment with the UNCCD. The complainant was then at grade G-6, step III, earning an annual net salary of 43,971.00 euros. She states that she was due to reach step IV of that grade at the UNCCD in May 2010, the same month when she joined the ICC, and that this would have taken her annual net salary to 45,217.00 euros. She joined the ICC at grade G-5, step V, with an annual net salary of 43,124.00 euros.

2. The complainant asks the Tribunal to "advise and recommend" that she be placed at the correct step within-grade G-5 "by matching the equivalent or higher salary at the G-6 level, step IV, in The Hague salary scale". Alternatively, she seeks to be paid a salary matching that which she previously received at the UNCCD, or to be granted a higher entry level within the General Services category in The Hague.

3. The complainant contested the decision to recruit her at this level and salary notwithstanding that she had signed the offer of appointment with the ICC. In the normal course of things she would have been thereby bound by that term in her contract. However, as the Tribunal has stated in Judgment 2034, under 6, for example, a staff member who has accepted an appointment in good faith is entitled to redress for an organization's administrative mistake. In setting out its role in a matter such as this, the Tribunal has stated that it is not for it to appoint a staff member to the post that she or he has applied for or to a specific grade that the person requests (see, for example,

Judgment 2299, under 7). Firm principle also has it that in the area of post classification or determination of steps within-grades, the Tribunal leaves a considerable degree of discretion to organizations and cannot simply substitute its own assessment for theirs. Decisions taken in this area are subject to only limited review. They can be set aside only if taken without authority, show some formal or procedural flaw or a mistake of fact or of law, overlook some material fact, draw clearly mistaken conclusions from the facts or involve an abuse of authority (see, for example, Judgments 3273, under 6, and 3350, under 3).

4. The complainant contends that the ICC erred, and, in effect, did not follow its own Staff Rules and Guidelines when it determined her step within grade G-5. She insists that under its Staff Rules and Guidelines, the ICC should have matched her immediate previous salary at the UNCCD, but it miscalculated her previous years of relevant work experience. This, she said, was because its evaluation of her length of service in each previous employment consistently dropped one to two months, which resulted in an underestimation of her total years of relevant work experience for the purpose of determining her step within-grade. Moreover, she stated that the HRS erred when it did not match her previous salary given that the ICC conforms to the standards of the United Nations common system.

5. The record shows that a meeting was held on 3 May 2011 between the complainant and the HRS. A reference is made to it in the e-mail dated 5 May 2011 that was sent to the complainant. In that e-mail, the HRS acknowledged that there were several discrepancies in the calculation of the complainant's work experience which was made at the time of her recruitment. In effect, it was accepted that the initial evaluation of her step involved an administrative error. A new evaluation of the complainant's step was therefore done by the HRS. The complainant's previous relevant work experience was assessed based on the documents that the complainant had presented at the time of the offer of appointment. The new evaluation resulted in a total of nine years and ten months' experience, which, in accordance with the Guidelines for Determination of Grade and Step on Recruitment

and Selection in the Professional and Higher and General Service Categories (“the Guidelines”), corresponded to grade G-5, step IV. Since this was one step lower than the grade G-5, step V, at which she joined the ICC, the determination of her step was not changed. The complainant has not accepted this.

6. There is therefore no doubt that the Administration made an administrative error in the initial evaluation of the complainant’s experience, as the Appeals Board found. However, the Appeals Board also noted that neither the applicable Staff Rules nor the Guidelines that were in existence at the material time contained a provision that addressed the determination of the level of within-grade steps for situations like that of the complainant. There was in fact no written rule by which the step of a candidate who was recruited by the ICC at a lower grade even from another United Nations common system organization could have been determined.

7. On the other hand, however, Section 6 of the Guidelines provides for the determination of the level of within-grade step on appointment for a candidate who joins the ICC from a lower grade from an organization that applies the United Nations common system. The Section relevantly states as follows:

“If an appointment is made from a lower to a higher grade or from the General Service to the Professional category within the ICC or externally from an organisation applying the United Nations common system of salaries, allowances and benefits, steps may be granted in accordance with Staff Rule 103.9, by taking into account two additional steps at the current level and by matching the salary at the level of the new appointment.”

Staff Rule 103.9 provides as follows:

**“Rule 103.9: Change in grades or categories**

- (a) When a staff member changes to a different grade with a higher base salary, he or she shall be entitled to be placed at a step which results in an increase in base salary at least equal to the amount that he or she would have received by being placed at two higher steps at the lower grade.

[...]”

8. The Appeals Board recommended, in effect, that out of fairness the complainant should have been given the benefit of these provisions. The Appeals Board found that the failure by the ICC to have made a similar provision for candidates recruited from a higher to a lower grade, as the complainant was, signified that there was a deficiency in the ICC's Staff Rules and its Guidelines, which caused persons in her circumstances to be at a disadvantage. The Registrar rejected this recommendation for reasons that were stated.

9. In the Tribunal's view, the complainant's appeal against the Registrar's decision on the grounds stated in consideration 4 of this Judgment is unsustainable given that the ICC had, in the Introduction to the Guidelines, specifically exempted persons who were recruited into the ICC at a lower grade from a higher grade from an organization applying the United Nations common system. The provision in the Introduction to the Guidelines states as follows:

"The guidelines do not apply to: [...] Appointments of current staff or of staff who join ICC from an organisation applying the United Nations common system at a lower grade than they held previously, or from the Professional to the General Service categories."

10. Additionally, however, the complainant seeks to rely on a practice which, according to her, is favourable to her and is observed by another United Nations common system organization. She provides a communication from the Human Resources Section of the Special Tribunal for Lebanon. The complainant uses it to support her assertion that that organization has a practice of matching the salaries for persons who it recruits at a lower grade from another United Nations common system organization by putting them in a step level at which their salary corresponds with that which they received on recruitment from the other organization. However, the Guidelines of the ICC expressly provide, as consideration 9 of this Judgment shows, that a person in the position of the complainant who was recruited into the ICC at a lower grade than that person held previously in an organization applying the UN common system is exempted from the benefit which the complainant claims.

11. The foregoing grounds of the complaint are therefore unfounded and should accordingly be dismissed.

12. The complainant further contends, in her other ground of the complaint, that her salary should have been set at the nearest step at grade G-5 matching her previous salary at grade G-6 and should not have been lower than her previous salary at a United Nations common system organization. This plea is also unfounded and should be dismissed as there is no legal basis for it. The complainant relies on Staff Rule 103.2, which states as follows:

**“Rule 103.2: Salary of staff members in the General Service category**

The salary scales for staff members in the General Service category at each duty station of the Court shall set out for each grade and step the salary of such staff members, in conformity with the United Nations common system standards.”

It is clear from its terms that this provides the legal basis for salary scales within the ICC at each of its duty stations. It does not provide for the determination of steps on appointment by the ICC of a person from a higher to a lower grade from a United Nations common system organization.

13. In the foregoing premises, the complaint is unfounded on all grounds and should be dismissed on the merits.

## DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 20 October 2015, Mr Giuseppe Barbagallo, Vice-President of the Tribunal, Mr Michael F. Moore, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 3 February 2016.

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

HUGH A. RAWLINS

DRAŽEN PETROVIĆ