

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

**L.-K. (No. 7)**

**v.**

**ILO**

**123rd Session**

**Judgment No. 3775**

THE ADMINISTRATIVE TRIBUNAL,

Considering the seventh complaint filed by Mr C. L.-K. against the International Labour Organization (ILO) on 8 August 2014 and corrected on 1 September, the ILO's reply of 19 December 2014 and the complainant's email of 15 April 2015 informing the Registrar of the Tribunal that he would not file a rejoinder;

Considering the additional documents submitted by the complainant on 9 June 2016 pursuant to the Tribunal's request of 7 June 2016;

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 challenges the lawfulness of the Office Procedure on "Rental and car advances for internationally-recruited officials", Internal Governance Document System (IGDS) No. 297 (version 1) (hereinafter "IGDS No. 297"), on the grounds that the Staff Union was not consulted before it was issued.

On 1 August 2012 the Treasurer and Financial Comptroller issued IGDS No. 297 under the authority granted to him by Financial Rule 1.50.

On 30 January 2013 the complainant, acting in his personal capacity as an official of the International Labour Office – the ILO’s secretariat – and in his capacity as Chairperson of the Staff Union Committee, submitted a grievance to the Human Resources Development Department (HRD) under Article 13.2, paragraph 1, of the Staff Regulations, challenging IGDS No. 297 on the grounds that no consultation or negotiation had taken place with the Staff Union before it was issued. The Director of HRD rejected his grievance on 30 April 2013 as irreceivable and devoid of merit. He considered that as the main issue raised in the grievance was whether the IGDS in question was subject to collective bargaining, the complainant should have initiated the collective dispute settlement procedure established by the Recognition and Procedural Agreement between the Office and the Staff Union (hereinafter “the Recognition and Procedural Agreement”), instead of the individual grievance mechanism set out in Article 13.2 of the Staff Regulations. He also pointed out that the IGDS No. 297 had been issued under the authority granted exclusively to the Treasurer and Financial Comptroller in accordance with Financial Rule 1.50, and that since the advances granted to officials under the contested IGDS were not an “entitlement” but a “facility” offered by the ILO to accommodate certain personal needs, they were not part of an official’s terms and conditions of employment or general living conditions.

On 31 May 2013 the complainant, acting in his capacity as Chairperson of the Staff Union Committee and in his personal capacity, filed a grievance with the Joint Advisory Appeals Board (JAAB) under Article 13.3, paragraph 2, of the Staff Regulations. In its report of 14 March 2014 the JAAB unanimously found that the complainant had failed to show a cause of action. Referring to Judgment 3118, under 4, it considered that the fact that the contested IGDS was issued prior to consulting the Staff Union was not “liable to violate the rights or safeguards that international civil servants enjoy under the rules and regulations applicable to them or the terms of their employment contract”. According to the JAAB, the provision of rental and car advances did not constitute a condition of employment, nor a statutory entitlement of ILO staff.

By a letter of 13 May 2014 the complainant was informed that the Director-General had decided to endorse the JAAB's conclusion that he had failed to show a cause of action and hence rejected his grievance as irreceivable. The complainant impugns that decision before the Tribunal.

The complainant asks the Tribunal to set aside the impugned decision, to revoke the contested IGDS and to revert to the conditions in place prior to its publication. He also asks to be compensated for the damage suffered and that the ILO be ordered to pay the Staff Union 2,000 Swiss francs in costs or, if that is not possible, to award him that amount in related costs.

The ILO asks the Tribunal to dismiss the complaint as irreceivable and, subsidiarily, devoid of merit.

### CONSIDERATIONS

1. The complainant bases his complaint on the grounds that the ILO was required by Article 10.1(c) of the Staff Regulations to consult the Staff Union prior to the publication of IGDS No. 297 on 1 August 2012. He also cites Article 2(1) of the Recognition and Procedural Agreement, which defines collective bargaining. The complainant is mistaken.

2. Article 10.1 of the Staff Regulations provides in relevant part:

*“Staff relations*

(a) The interests of the staff shall be represented in the Office by the Staff Union of the International Labour Office.

(b) The Staff Union shall be entitled to make proposals for the improvement of the situation of officials, both as regards their conditions of employment and their general living conditions.

(c) Conditions of employment, including the general living conditions, of officials **may** be jointly determined by the Director-General or his or her designated representative(s) and the Staff Union through social dialogue, information, consultation and collective bargaining. The Director-General shall have authority to bargain collectively with the Staff Union, with a view to the conclusion of collective agreements. Collective agreements so concluded shall be attached to these Regulations.” (Emphasis added.)

3. Article 2 of the Recognition and Procedural Agreement reads as follows:

*“Recognition*

1. Collective bargaining within the Office is defined as negotiations in good faith with the objective of reaching collective agreement between the Parties on:

- (a) so far as the Office has the authority to do so, policies, procedures and practices to give effect, in the Office, to common system terms and conditions of employment;
- (b) common system terms and conditions of employment that the Parties agree they will jointly endeavour to change through the established mechanisms;
- (c) policies, procedures and practices on terms and conditions of employment in the Office which are not covered by the common system;
- (d) issues affecting a group of staff members arising from day-to-day management and administration in the Office, without prejudice to arrangements governing individual grievances.

2. The Office recognizes the Union as the representative of the interests of its members within the Office for the purposes of social dialogue, information, consultation and collective bargaining.

3. The Union recognizes the rights and responsibilities of the Office to manage and vest its Management to do so, who shall at all times be solely responsible therefor.”

4. The complainant relies on his capacity as the Chairperson of the Staff Union Committee at the material time. He invokes the right to be consulted. However, in this case no norms providing for the consultation of the Staff Union Committee have been violated. Article 10.1 of the Staff Regulations and Article 2(1) of the Recognition and Procedural Agreement merely provide the procedures for concluding dialogue between the Office and the Staff Union in specific fields through negotiations which should lead to an agreement. The expression “conditions of employment” in Article 10.1(c) of the Staff Regulations is intended to relate to matters of significance concerning the employment of staff which may ultimately be reflected in a collective agreement. The provision of car and rental expenses is not of this character. Moreover, it should be noted that Financial Rule 1.50 sets out the competence of the Treasurer and Financial Comptroller. The Financial

Rules are not subordinate to the Staff Regulations; they are merely a parallel set of norms which focus on the financial management of the Office, and there is no provision which required the Treasurer and Financial Comptroller to consult the Staff Union prior to issuing IGDS No. 297. In fact, the Memorandum of 2001 that was superseded and replaced by IGDS No. 297 likewise did not result from collective bargaining. It should also be noted that Article 2(3) of the Recognition and Procedural Agreement recognises the rights and responsibilities of the Office to manage.

5. Within the scope of that provision, Financial Rule 1.50 regarding the competence of the Treasurer and Financial Comptroller provides:

“1.50 ADDITIONAL INSTRUCTIONS TO BE ISSUED BY THE TREASURER

- (a) Within the framework of the Financial Regulations and these Rules the Treasurer may issue such additional instructions or establish such procedures as shall be necessary to ensure effective internal financial control, sound administration of funds, and the exercise of economy. No changes in such instructions or procedures shall be made without the approval of the Treasurer.
- (b) The Treasurer may determine the extent to which these Rules shall apply to external offices, to the offices of Chief Technical Advisers and to officials on individual assignments away from headquarters. He may establish separate financial rules, instructions and procedures for such offices and officials taking into consideration their special conditions and requirements. The separate rules, instructions and procedures thus established shall normally be incorporated in comprehensive manuals of financial and administrative practices and procedures drawn up for the use of offices away from headquarters. No changes in such rules, instructions or procedures shall be made without the approval of the Treasurer. The authorities given to officials away from headquarters under the present Financial Rules shall be exercised in conformity with all relevant rules, instructions and procedures approved by the Treasurer. In matters for which no separate rules or instructions have been thus established the present Financial Rules shall apply.”

6. Considering the above, the Tribunal finds that the lack of consultation with the Staff Union prior to the publication of IGDS No. 297 did not violate any norms. Two of the complainant’s earlier cases, leading to Judgments 3449 and 3544, differ from the present

complaint in that, in those cases, the Tribunal found that specific norms which required the consultation of the Staff Union, of which the complainant was Chairperson (see Judgment 3449, under 7), or the consultation of the Joint Negotiating Committee, of which the complainant was Joint Chairperson (see Judgment 3544, under 8), had been violated. In this case, in the absence of any violation of a right conferred on the complainant by the relevant provisions, he has no cause of action (see Judgment 3642, under 14).

7. The complainant also initiated his grievance in his capacity as an official. However, Article 10.1 of the Staff Regulations and Article 2(1) of the Recognition and Procedural Agreement, which relate to collective bargaining, do not confer any individual rights on staff members. Therefore, the complaint must be dismissed in its entirety.

The Tribunal also finds it convenient to note that the amendments introduced by IGDS No. 297 on rental and car advances for internationally-recruited officials resulted in more beneficial conditions for eligible staff than under the previous version.

#### DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 2 November 2016, Mr Giuseppe Barbagallo, Vice-President of the Tribunal, Mr Patrick Frydman, Judge, and Mr Michael F. Moore, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 8 February 2017.

GIUSEPPE BARBAGALLO

PATRICK FRYDMAN

MICHAEL F. MOORE

DRAŽEN PETROVIĆ