

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

R.
v.
ILO

123rd Session

Judgment No. 3776

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms K. R. against the International Labour Organization (ILO) on 30 April 2014, the ILO's reply of 1 August, corrected on 28 August 2014, and the letter of 9 September 2014 by which the complainant informed the Registry that she did not wish to submit a rejoinder;

Considering Article II, paragraph 1, 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 contests the decision preventing her from receiving a merit-based increment.

The complainant is an official of the ILO who has worked for the Organization since 1987. At the time of the complaint she had been employed at the G.6 level since April 2001, and at step 12 of that grade since January 2010.

In December 2012 she learnt that she had been recommended for a merit increment to step 13 under Article 6.5 of the Staff Regulations. Such recommendations are referred to the Reports Board, but before the Reports Board had the opportunity to consider the recommendation the complainant's name was removed from the list on the ground that

step 12 is the last step for her grade and a further increment was not permitted by the terms of Staff Regulations 6.5 and 6.6. She submitted a grievance to the Human Resources Development Department (HRD) on 7 March 2013 arguing that the unilateral decision to remove her name was a violation of her conditions of employment as there was a longstanding practice of permitting awards up to step 13, and when this was rejected she submitted a grievance to the Joint Advisory Appeals Board (JAAB) on 5 July 2013. The JAAB found that she could not be offered a merit increment but recommended that she be awarded 10,000 Swiss francs compensation as a result of the lack of transparency and moral prejudice relating to the “abrupt termination [...] of a practice that had been in place for 17 years”. By a letter dated 6 February 2014 she was informed that the Director-General agreed with the JAAB’s finding concerning the merit-based increment but did not accept the recommendation that she be paid compensation. That is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision and to order the ILO to award her an additional merit increment under Article 6.6.2 of the Staff Regulations. She also claims damages and costs.

The ILO submits that the complaint is unfounded and asks the Tribunal to dismiss it.

CONSIDERATIONS

1. In seeking to set aside the impugned decision of 6 February 2014 and an award of damages, the complainant asks the Tribunal “to order the ILO [t]o consider [her] for the award of an additional increment in conformity with Article 6.6.2 of the Staff Regulations and the common practice that has been implemented until now”. The complainant contends that the impugned decision has caused her to suffer prejudice in her career advancement “as a result of the wrongful application of the rules and regulations as well as the related material benefits”. She makes four pleas, “namely the legitimate expectation of career advancement, the breach of due process, the ultimate test of reasonableness and the principle of Staff bias in situations where the rules at issue are clearly ambiguous”.

2. However, it is necessary to detail the actual context of the case which the complainant pleads in her complaint. It is stated as follows:

“2. In accordance with the existing rules, regulations and prevailing practice related to additional increments, I had a legitimate expectation to receive a merit increment to step 13, especially since I learned in December 2012 that, based on a list of eligible officials proposed to managers by HRD for the ‘Salary increments for merit and long service 2012 exercise’, my responsible chief had recommended that I be granted the award of an additional increment for meritorious performance under Article 6.5 of the Staff Regulations.

3. However before such a recommendation was endorsed by the Reports Board, my name was withdrawn from the list. This was done, I was told, on the grounds that I was on step 12 of the general service salary scale and therefore ineligible for a special merit increment; The reason being that step 12 is the last one of my grade and that [the] terms of Articles 6.5 and 6.6 do not authorize a second such increment and that step 12 is the maximum salary as published in Article 3.1 of the Staff Regulations.”

3. Article 6.5 of the Staff Regulations is the only applicable provision on which to determine this case since the recommendation for the award of an additional increment for meritorious performance was made under it.

4. Article 6.5 provides for “Special merit increments” and states as follows:

“1. The responsible chief may recommend the grant of an additional increment to officials whose performance during the period under review has been appraised pursuant to article 6.7 as being especially meritorious and who are not in receipt of the maximum salary attaching to their grade.

2. The responsible chief’s recommendation shall be reviewed by the official to whom the responsible chief reports who, if in agreement, shall refer the recommendation to the Reports Board for decision. The grant of a second special merit increment during the period before the next performance appraisal is due is subject to the provisions of article 6.7(4).

3. The timing of special merit increments as well as the number of recommendations which may be made each year will be subject to limitations defined by the Director-General after consulting the Joint Negotiating Committee.”

5. There is no ambiguity in this provision. In its application to the recommendation of the additional increment for the complainant for

meritorious performance in the 2012 exercise, the complainant is clearly not entitled to the award by virtue of Article 6.5.1 of the Staff Regulations. The complainant entered the service of the ILO in October 1987 at grade G.2 and reached step 11 of grade G.6 in October 2004. She received no further annual increment, but was awarded a special increment to step 12 with effect from 1 January 2010. The ILO states that this was in compliance with the General Service salary scales published in Article 3.1 of the Staff Regulations, which shows that step 11 was the top of GS grade posts.

6. In support of her plea of ambiguity, the complainant contends that paragraphs 1 and 2 of Article 6.6 are contradictory. However it is not necessary to consider this question as Article 6.6 is not relevant to this case.

7. The complainant provides documents, which show April 2011 salary scales for the General Service category used by the Finance Department and HRD showing provision for steps 12 and 13. On examination, however, the main document shows that step 11 is at the top of the scale for General Service category staff in the Geneva office. Steps 12 and 13 are demarcated and are captioned "SUPPLEMENTARY STEPS (Long service/merit)" with an added note that: "These steps are only to be applied upon instruction from HQ (HRD). Under no circumstances should an official be automatically placed on either step."

8. The ILO notes that the salary scale which the complainant provides is used internally for administrative purposes and correctly reflects step 12 as it remains possible under Article 6.6 for officials in service on or prior to 31 December 1994 to accede to it, while officials who were on step 12 prior to January 1995 could accede to step 13 by virtue of the interim measure. The Tribunal observes that the complainant could not have acceded to step 13 as she was not on step 12 prior to the latter date.

In turn, the ILO provides the published official salary scale for General Service category staff, which was effective at 1 April 2011. It shows step 12 with the footnote: "Officials are entitled to accede to step 12 on completion of more than 20 years of service, including more than 10 years in their current grade."

9. The complainant submits, further, that by established practice the ILO awarded step 13 increases for meritorious performance for about seventeen years because the Administration interpreted Article 6.6 as permitting a step 13 merit award with the result that many staff members had benefitted, as she should, from it.

10. The Tribunal determines that the complainant has no legal claim to the award of the additional increment which she seeks as it cannot be claimed pursuant to Article 6.5 of the Staff Regulations under which it was recommended. In fact, Article 6.5.1 forbids it. The claim cannot be based on Article 6.6, since, as was stated earlier, this provision is not relevant to the present case.

By extension, the complainant cannot rely on the practice by which the ILO mistakenly awarded step 13 increases to a number of staff members for meritorious performance for some years. Indeed, the Tribunal recalls its consistent statement, in Judgment 3601, for example, that:

“[A]lthough the OPCW points out that, in the past, it has already promoted P-3 inspectors to P-5 Team Leaders, the Tribunal has consistently held that a practice cannot become legally binding if it contravenes a written rule that is already in force (see, for example, Judgments 2959, under 7, or 3544, under 14). The fact that the practice relied on in the instant case conflicts with the stipulations of directive AD/PER/43 is therefore sufficient reason to reject this submission.”

11. Similarly, since no legitimate expectation can arise in contravention of a written rule, that plea also fails. The plea of breach of due process also fails as the complainant has failed to show that there was a stipulated process which was contravened.

12. For the foregoing reasons, the complaint is unfounded and will be dismissed.

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 Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 8 February 2017.

GIUSEPPE BARBAGALLO

PATRICK FRYDMAN

HUGH A. RAWLINS

DRAŽEN PETROVIĆ