

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

C., D. and M.

v.

ILO

129th Session

Judgment No. 4249

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaints filed by Mrs K. C., Mrs J. D. and Mrs A. M. against the International Labour Organization (ILO) on 26 January 2018 and corrected on 9 April, the ILO's single reply of 7 June, corrected on 18 June, the complainants' rejoinder of 22 August, corrected on 5 September, and the ILO's surrejoinder of 18 October 2018;

Considering Articles II, paragraph 1, and VII of the Statute of the Tribunal and Article 13 of its Rules;

Considering the applications to intervene filed by the following interveners on 18 February 2019 and the ILO's comments thereon of 21 February 2019:

Mrs S. B.

Mr R. L. G.

Mrs B. B.

Mr S. K.

Ms D. C.

Mr A. M.

Mr P. C.

Mrs M. M.

Mrs S. C.

Mrs V. M.

Mrs A. C.

Ms C. P.

Mr B. D.

Mrs P. S.

Mr M. G.

Mrs P. S. S.

Ms S. G. P.

Mrs K. S.

Ms S. S.	Mr S. T.
Mrs M. S.	Mr Y. T.
Mr D. S.	Mr Y. U.
Ms V. S.	Mrs D. V.

Having examined the written submissions and decided not to hold oral proceedings, for which none of the parties has applied;

Considering that the facts of the case may be summed up as follows:

The complainants contest the implementation of the 2013 comprehensive local salary survey for New Delhi, India.

In 2013 a comprehensive local salary survey was conducted in New Delhi in order to determine the salary scales of locally recruited staff in the United Nations (UN) common system, including the ILO.

By email of 30 October 2014 ILO staff members based in New Delhi were forwarded the email of 29 October from the Deputy Country Director/Operations of the United Nations Development Programme informing heads of UN agencies, including the ILO, that the comprehensive salary survey conducted in New Delhi showed that UN salaries for the General Service (GS) and National Officer (NO) categories were above the labour market. A new salary scale for these categories was issued payable to staff recruited on or after 1 November 2014. The revised net salaries reflected a downward adjustment. For staff members belonging to these two categories, who joined before 1 November 2014, the salary scales were amended to reflect revised allowances only.

On 24 March 2015 the complainants, ILO staff members in the GS category who were posted in New Delhi, lodged a grievance with the Human Resources Development Department (HRD) challenging the decision to implement the results of the 2013 salary survey, as communicated to them on 30 October 2014. They alleged that the salary survey was flawed. They requested that the ILO should not implement the results of the survey and claimed compensation for the material and moral damages caused by the contested decision. They also sought an “adequate retro[active] increase for the last two years in accordance

with the labour market trends at the country level". Their grievances were rejected on 7 September 2015.

Shortly after, the complainants lodged a grievance with the Joint Advisory Appeals Board (JAAB). The JAAB, with the agreement of the complainants, joined the grievances and issued a single report on 31 August 2017. It concluded that the 2013 salary survey was not properly conducted and was flawed at some points. Given the time that had elapsed since the promulgation of the survey results, it recommended that the material and moral damages suffered by the complainants, and any other staff members placed in an identical situation, be compensated by the award of an appropriate amount of money. The Director-General should compensate the complainants in the same manner as indicated by the Tribunal in consideration 26 of Judgment 3883.

By letter of 30 October 2017 the complainants were informed that the Director-General had decided to accept the JAAB's recommendations that they be compensated for moral and material damages in the same manner as indicated by the Tribunal in Judgment 3883. A copy of the judgment was attached to the letter. They were also informed that the Director-General was not in a position to determine the extent of any material damages until such time the Tribunal had rendered its decision on the ILO's application for interpretation of Judgment 3883. He therefore had instructed HRD to keep them duly informed of the outcome of the proceedings and ensure that any compensation due be calculated and paid to them promptly thereafter. Pending the Tribunal's decision the Director-General decided to pay the complainants moral damages in the amount of 100 euros each. The complainants impugn that decision before the Tribunal.

In their complaint form, the complainants ask the Tribunal to quash the ILO's decision to implement the results of the 2013 salary survey for New Delhi, and to award them compensation for all material damages resulting from the impugned decision, including but not limited to the payment of retroactive reimbursement of all salary increase in accordance with the labour market trends at the country level. They also seek moral damages and costs. In addition to the claims made in the complaint form, in the brief the complainants ask the Tribunal to compensate all

ILO staff in New Delhi who are in the same situation as them and to declare the results of the 2013 salary survey null and void.

The ILO asks the Tribunal to dismiss the complaints as irreceivable for failure to exhaust internal means of redress and for lack of a cause of action as the complainants have obtained satisfaction on the core issue of the non-implementation of the salary survey results. The Tribunal lacks jurisdiction insofar as the complainants ask it to declare the results of the salary survey null and void. Subsidiarily, it asks the Tribunal to dismiss the complaints as devoid of merit.

CONSIDERATIONS

1. On 26 January 2018 Mrs C., Mrs D. and Mrs M. each filed a complaint with the Tribunal. They are in almost identical terms and should be joined so that one judgment can be rendered. Each of the complainants was, at relevant times, a member of the staff of the ILO in the GS category stationed in New Delhi. The genesis of their complaints was a decision on or about 30 October 2014 to implement the results of a 2013 local salary survey with the result that a new salary scale was adopted for, amongst others, ILO staff recruited on or after 1 November 2014. For ILO staff recruited before then, they would, under a new salary scale, continue to be paid the rate in the pre-existing salary scale. However, those salaries would be frozen.

2. The complainants were part of a group of staff members who challenged the October 2014 decision to implement the results of the survey in the way just discussed. It is unnecessary to detail the early history of this challenge. Suffice it to say it was initially unsuccessful but ultimately successful in that, in an internal appeal, the JAAB concluded there had been flaws in the survey and there had been no consultation with the Joint Negotiating Committee as required by the Staff Regulations, resulting in two overarching conclusions founding one recommendation. One of the conclusions was that the survey was flawed. The other conclusion was that: “Due to the time elapsed following the promulgation of the flawed salary survey results, the [JAAB] considers that the usual recommendation to set aside the challenged decision and

declare the salary scales as null and void, would not be advisable.” The recommendation was: “that the material and moral damages suffered by the [complainants] and any other staff placed in an identical situation, should be compensated by the award of an appropriate amount of money, as stated above.” This last element was a reference to an opinion expressed in paragraph 150 of its report, namely that the Director-General should compensate all the complainants appropriately, in the same manner as the Tribunal did under consideration 26 of Judgment 3883.

3. Each of the individual decisions of the Director-General impugned in these proceedings was communicated to the complainants in a letter dated 30 October 2017, which was, in part, to accept in relation to each complainant the recommendations of the JAAB which would have resulted in the payment of material damages to each of them in the way determined by the Tribunal in Judgment 3883. As events unfolded, the Director-General appears to have concluded it was necessary or at least desirable to obtain clarification from the Tribunal concerning the manner or mode of payment flowing from Judgment 3883. In the result, the Tribunal delivered Judgment 3985 dealing with an application for execution by three members of staff and an application for interpretation by the ILO. Central to both Judgment 3883 and Judgment 3985 is what the Tribunal said in consideration 26 of the former judgment:

“The Tribunal is satisfied that, in these circumstances, it is not advisable to set aside the decisions applying the salary freeze to the complainants. However they are entitled to compensation. That will have two elements. One is the loss sustained by operation of the freeze that sounds in material damages. The other is moral damages. The Tribunal is not in a position to quantify the former in relation to each complainant. The ILO shall determine annual adjustments for the complainants’ salaries in the same way as they would have been calculated had the new salary arrangements not been introduced, commencing with the salary on 1 March 2012 and thereafter on the anniversary of 1 March 2012, but only for the period in which each complainant continues working for the ILO. The ILO’s future obligation to make these payments ceases at the time the frozen pay scales applicable to the complainants are no longer frozen or when a lawful decision involving consultation with the [Joint Negotiating Committee] is made by the Director-General to freeze existing salaries. The Tribunal assesses the moral damages in the sum of 100 euros for each complainant. The complainants should be paid, collectively, 2,000 euros costs.”

4. In these proceedings there are a multiplicity of procedural and jurisdictional arguments and arguments about the methodology and associated issues attending the 2013 survey. But at base, the complainants' position is that they were and are entitled to a determination by the Director-General of whether the 2013 survey was flawed and, if so, what those flaws were. They argue that, if the survey was flawed, that has legal consequences on the relief that should be granted. Similarly they appear to believe they are entitled to such a determination by the Tribunal.

5. It is unnecessary for the Tribunal to address all the arguments raised by the parties or to embark on an analysis of the methodology and associated issues attending the 2013 survey. That is because the complainants, in substance, succeeded in their challenge to the decision taken on or about 30 October 2014 to implement the results of the 2013 local salary survey with the result that a new salary scale was adopted for staff recruited on or after 1 November 2014 and that staff recruited before then would continue to be paid in the manner discussed in consideration 1, above.

6. The true issue is whether it was open to the Director-General to adopt the approach he did to address the consequences of his acceptance that, following the report of the JAAB, it was necessary to nullify the effect of the decision taken on or about 30 October 2014 referred to at the conclusion of the preceding consideration. The complainants do not point to, in the pleas, any right to have those consequences dealt with in a particular way. Nor do they establish any material prejudice flowing to them by the Director-General adopting the approach he did, rather than an approach of the character they advocate in these proceedings, which includes a declaration that the results of the 2013 survey are null and void. Rather, it is tolerably clear, they wish to have the Tribunal review the methodology of the 2013 survey and associated matters and, if they are successful, for the Tribunal to deprecate it.

7. If the Director-General was not bound to follow a particular course in order to nullify the effect of the decision taken on or about

30 October 2014 referred to at the conclusion of consideration 5, then he had a confined discretion about how he would achieve that result as long as it was legally effective. He followed a course identified by the Tribunal in Judgment 3883 arising from the adoption of contested salary scales in the Bangkok office of the ILO. For him to have done so was unexceptionable.

8. As the complainants have failed to demonstrate any error on the part of the Director-General in each of the individual decisions embodied in the letter of 30 October 2017, these complaints should be dismissed.

A number of individuals applied to intervene in these proceedings. As the proceedings have been unsuccessful, the applications to intervene should be dismissed.

DECISION

For the above reasons,

The complaints are dismissed, as are the applications to intervene.

In witness of this judgment, adopted on 31 October 2019, Ms Dolores M. Hansen, Vice-President of the Tribunal, Mr Michael F. Moore, Judge, and Mr Yves Kreins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 10 February 2020.

DOLORES M. HANSEN

MICHAEL F. MOORE

YVES KREINS

DRAŽEN PETROVIĆ