

**P. (No. 2)**

**v.**

**ILO**

**130th Session**

**Judgment No. 4314**

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mrs S. P. against the International Labour Organization (ILO) on 27 May 2019 and corrected on 28 June, the ILO's reply of 22 July, the complainant's rejoinder of 23 August and the ILO's surrejoinder of 25 September 2019;

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 rejection of her request for the reclassification of her post.

Facts relevant to this case are to be found in Judgment 4040 on the complainant's first complaint, delivered in public on 26 June 2018. Suffice it to recall that in November 2014 the complainant, who was employed at the International Training Centre of the ILO in Turin, Italy, sought the reclassification of her post which, at that time, was at grade G.4. The external classifier who reviewed the grade of that post issued a desk audit report in which she recommended maintaining the post at the same level. The complainant lodged an appeal with the Grading Appeals Committee (GAC), which recommended that her post be reclassified at grade G.5. On 7 October 2015 she was notified

that the Director of the Centre did not accept that recommendation. On 19 November 2015 she submitted an internal complaint to the Director in which she sought, among other things, the reclassification of her post in accordance with the GAC's recommendation. On 11 April 2016, in the absence of a final decision on her internal complaint, she filed her first complaint with the Tribunal. On 18 April 2016 she was informed that the new Director of the Centre had decided to dismiss her internal complaint on the grounds that there was no evidence that the classification process was flawed or conducted in breach of the applicable procedures, or that the decision of 7 October 2015 was flawed. This express final decision, taken in the course of proceedings, became the impugned decision in her first complaint.

In Judgment 4040, the Tribunal considered that the Director of the Centre erred in identifying mistake on the part of the GAC in the decision of 7 October 2015. Accordingly, it set aside both this and the impugned decision and remitted the matter to the ILO for the Director of the Centre to reconsider the report of the GAC and make a new decision. It also awarded moral damages and costs.

Following the delivery of Judgment 4040, the damages and costs were promptly paid to the complainant. Between November 2018 and February 2019, she and the Staff Union Committee (acting on her behalf) inquired various times about the execution of Judgment 4040 regarding the reconsideration of the GAC's report and the adoption of a new decision. By a letter dated 26 February 2019, which constitutes the impugned decision, the complainant was informed that the Director of the Centre could not accept the reclassification of her post at grade G.5 and that, if she decided to pursue the matter, she could file a complaint directly before the Tribunal. This waiver was confirmed on 30 April 2019.

The complainant asks the Tribunal to quash the impugned decision, confirm that her post is at level G.5 "with all legal consequences that this entails, considering the failure of the Director of the Centre to enforce [Judgment 4040]" and, subsidiarily, if it does not reclassify her post, it should reiterate its decision that the case be remitted to the ILO for the Director of the Centre to make a new decision. She also seeks moral damages in the amount of 10,000 euros, as well as costs.

The ILO asks the Tribunal to dismiss the complaint in its entirety as devoid of merit. In the event that the Tribunal would set aside the impugned decision, it also seeks that the case be remitted to the Centre for a new decision.

### CONSIDERATIONS

1. This complaint challenges the decision of 26 February 2019 in which the Director of the Centre (“the Director”) rejected the complainant’s request to reclassify the G.4 post which she held at the material time at the G.5 level. Her first complaint was ultimately directed against the 18 April 2016 decision by the Director rejecting her request for the reclassification of the said post to the G.5 grade level. The Director had, in making that decision, accepted the recommendation of the external classifier that the post was properly classified at the G.4 level. In so doing, the Director rejected the recommendation which the GAC made on the complainant’s appeal against the external classifier’s desk audit report, that the post be reclassified at the G.5 level.

2. In Judgment 4040, which determined the complainant’s first complaint, the Tribunal explained the process for reclassifying posts. In particular, it explained the respective purviews of the classifier and the GAC in that process pursuant to Circular No. 98/27 of 24 June 1998 regarding the classification of jobs in the Professional and General Service categories at the Turin Centre (“the Circular”). The Tribunal noted in consideration 6 that, in her initial decision of 7 October 2015, the former Director of the Centre had not accepted the GAC’s recommendation to reclassify the subject post at the G.5 level because, in her view, the GAC had exceeded its purview to examine the classification criteria established to ensure that the external classifier had correctly applied those criteria. The Tribunal determined that the former Director’s approach was incorrect. In so doing, it found that the GAC had acted within its purview under Paragraphs 17 and 18 of the Circular to make its own assessment to ascertain whether the external classifier had correctly applied the classification criteria. The Tribunal concluded that the GAC did not act outside of its purview under the Circular when its assessment demonstrated, by necessary implication, that it believed that the

classifier did not apply the stipulated criteria correctly. This, it stated, was because of the material difference between its own overall assessment and the overall assessment of the classifier (see particularly consideration 14 of Judgment 4040). The Tribunal set aside the impugned decision, which was based on the above-mentioned decision of 7 October 2015, and remitted the case to the ILO for the Director to reconsider the report of the GAC and make a new decision.

3. The power which Paragraph 18 of the Circular confers upon the Director to make a “decision on the basis of the [GAC]’s recommendation” does not require the Director merely to rubberstamp the GAC’s recommendation. Neither does it require the Director to accept the recommendation of the external classifier who conducted the initial review. However, as the Tribunal observed in consideration 6 of Judgment 4040, if the Director decided not to accept the GAC’s recommendation to reclassify the post at the G.5 level, she or he had to properly motivate that decision.

4. The Tribunal has consistently stated, usually in the context of internal appeal proceedings, that it is necessary for an ultimate decision-making authority to motivate or explain the reasons for not accepting a prior review and motivated recommendation. Having regard to its rationale, which the Tribunal recalled in Judgment 3208, consideration 11, this requirement is equally applicable in this case, which concerns the final decision taken on a recommendation as to the classification of a post. According to that reasoning, if the ultimate decision-maker (the Director in this case) rejected the conclusions and recommendations of the body which was charged with making the prior review and motivated recommendation (the GAC in this case), the Director was obliged to provide adequate reasons for so doing. The Tribunal has stated that the value of this safeguard enjoyed by international civil servants would be significantly eroded if the ultimate decision-making authority could reject conclusions and recommendations of the body that made the prior review and motivated recommendation without explaining why. It additionally stated that, if adequate reasons were not required, then room would emerge for arbitrary, unprincipled or even irrational decision-making.

5. In the impugned decision of February 2019, having not accepted the GAC's recommendation, the Director sought to motivate or explain that decision. He stated that, having carefully reviewed the GAC's report, he agreed with the GAC's conclusions regarding the rating of factors II (Impact of work on other functions or on the work of others), V (Work relationships) and VI (Use and maintenance of manual and automated information systems), but did not "share its considerations" as regards factors I (Difficulty of work), III (Direction and support received), IV (Co-ordination, control or supervision of job activities and performance and training and briefing of other staff) and VII (Knowledge, experience and language). He ultimately agreed with the ratings which the external classifier had awarded for these four factors and confirmed that the subject post should be classified as a G.4 post.

6. Consistent precedent has it that the process of classifying posts in international organisations constitutes an act of technical evaluation, and, accordingly, it is not for the Tribunal to weigh, compare and/or determine the relative merits of ratings which are thereby accorded. The Tribunal has consistently stated, for example in Judgment 3589, consideration 4, that the grounds for reviewing the classification of a post are limited and ordinarily a classification decision would only be set aside if it was taken without authority, had been made in breach of the rules of form or procedure, was based on an error of fact or law, was made having overlooked an essential fact, was tainted with abuse of authority or if a truly mistaken conclusion had been drawn from the facts. This is because the classification of posts involves the exercise of value judgements as to the nature and extent of the duties and responsibilities of the posts and it is not the Tribunal's role to undertake this process of evaluation. The grading of posts is a matter within the discretion of the executive head of the organisation, or the person acting on her or his behalf (see also Judgments 4024, consideration 3, 4164, consideration 4, 4186, consideration 6, and 4193, consideration 2).

7. The complainant requests that the impugned decision be set aside on the ground that the Director rated some of the assessment factors wrongly. That request fails to the extent that it may be intended to invite the Tribunal itself to assess those factors and to accord points

of its own as it is not within its purview to embark upon the process to rate the complainant's post. However, there is a second aspect: the plea could succeed if, for example, the complainant shows that a clearly mistaken conclusion had been drawn from the facts, that is to say if the rating that the Director arrived at was totally implausible or involved an obvious mathematical error. Accordingly, the Tribunal must examine whether the Director's decision is tainted by any reviewable error articulated in consideration 6 above.

8. The complainant's plea that the impugned decision is vitiated by a procedural flaw because the Director did not "reconsider" the GAC's recommendation as the Tribunal had ordered also fails. She centrally argues that the Director undertook a comprehensive re-assessment of the technical work which the GAC did, thereby breaching the provisions of the Circular which states that the Director's decision was to be "based on the GAC[']s recommendations", which the Personnel Office has then to communicate to the responsible chief and the subject official. It would be wrong if the Director was precluded from reconsidering the GAC's recommendation. The Tribunal finds that the Director considered the GAC's reasons before taking his decision; explained why he agreed with the ratings which it recommended awarding for three assessment factors but disagreed with its reasons and ratings for the other four factors. The Director provided his own reasons for disagreeing with the GAC's proposed ratings for these four factors notwithstanding that he ultimately agreed with the ratings which the external classifier accorded for each of them.

9. Essentially, the complainant challenges the reasons which the Director gave for disagreeing with the GAC's final ratings on two main bases. She contends that the Director made unsubstantiated comments in his explanation. She further contends that the Director overlooked essential facts concerning the duties which she performed. This last statement mirrors a misconception that is entwined into the complainant's submissions which do not always distinguish between evaluating the duties that she alleges she performed and the requirements of Paragraph 3 of the Circular that "[i]ndividual reviews of duties and responsibilities attached to the jobs will be undertaken by the Personnel Office". This blurring is also apparent in statements which the GAC and the Director made.

10. It is helpful to note that, for the purpose of G grade level post classification, the Centre applies the FAO's Post Classification Standard for posts in the General Service Category for Clerical and Secretarial Posts ("the FAO Master Standard"). According to the FAO Master Standard, factor I is concerned with the difficulty of the work and is intended to measure the variety and complexity of the tasks attached to a post. The Director, as did the external classifier, rated this factor for the subject post at level C with 200 points. The FAO Master Standard states in part that the description of assignments at that level "include[s] a variety of standard tasks involving diverse work processes and methods which require limited analys[i]s of subject matter and choice of action from several accepted alternatives". The GAC proposed a level D with 275 points rating for this factor primarily because it considered that the complainant's tasks of organizing large multi-lingual and often blended events required an ability to coordinate complex processes and activities and that the smooth organization of such events entailed global large-scale promotional initiatives, detailed logistical planning and coordination with software developers and/or IT colleagues. In this context, the GAC referred to the "(range of tasks, pace and volume) and related complexity (individual contribution)". However, individual contribution is irrelevant under Paragraph 3 of the Circular. Moreover, as the Director correctly observed in the impugned decision, the description of assignments at level D with 275 points under the FAO Master Standard involves "specialized tasks of moderate scope or depth of treatment which require considerable interpretation of subject matter and selection of [a] course of action from many different and unrelated alternatives". The Tribunal discerns nothing in the GAC's reasoning that shows that it considered whether the tasks attached to the complainant's post were specialized. Since the GAC overlooked this essential fact, the Director, in the impugned decision, correctly disregarded the GAC's assessment.

11. Regarding factor III, which relates to "Direction and support received", the GAC had proposed revising upward the external classifier's D level rating with 110 points to level E with 140 points. In the FAO Master Standard, the description for D level posts states in part that: "[a]dministrative guidelines and project plans are received for identifying work priorities and approaches; guidance received from supervisor in developing alternative solutions to anticipated

problems; work controlled by supervisor or users for meeting expected results and conformity to policy and procedures”. Level E description refers to “[o]perational objectives and resource allocations received for organising and providing job and products and services; guidance received from supervisor in developing general operating priorities and guidelines for problem resolution; work controlled by supervisor or users from an overall standpoint in terms of meeting objectives and conforming to policy”.

In proposing a level E rating for factor III, the GAC stated that the complainant received guidance from a supervisor who confirmed that she served as the primary focal point for the preparation of large events; that she worked in full autonomy and took decisions on work priorities, but that she sought clarification beforehand from the supervisor when facing unusual complex cases. The GAC then referred to the existence of guidelines and stated that maturity of judgement and an ability to interpret them was required when facing challenges in service/logistical provisions while at the same time taking into consideration clients’ requirements, as well as budgetary and procedural constraints. A reading of the GAC’s reasoning related to factor III leads the Tribunal to conclude that, while the GAC focussed more closely on the tasks which the complainant was asked to perform, the Director’s reasons more closely focussed upon the duties which were attached to the post. He stated that, in the FAO Master Standard, level E was only recognized for two G.7 posts and that, at all other grades, the maximum level documented for factor III was D.

12. The GAC accorded a level A-2 rating with 30 points while the Director, as did the external classifier, accorded a level A-1 rating with 15 points for factor IV. This factor relates to co-ordination, control or supervision of job activities and performance and training and briefing of other staff. While the GAC focussed on the duties which the complainant performed or was asked to perform, in the impugned decision, the Director correctly considered, among other things, the duties which Programme Secretaries at G.4 level undertook. He stated that the post did not encompass any formal and/or structured responsibilities for instructing, training, controlling or evaluating the work of others. It is noteworthy that he suggested that the complainant’s occasional assistance with office training of new or more junior staff was not to be computed beyond 15 points since it was part of the

normal collaborative and team-oriented attitude that is expected of all staff. The Tribunal's perspective on this issue is no further advanced by the complainant's submissions that mainly focus on the tasks she personally performed rather than on the tasks required by the subject post. She states, for example, that, when necessary, she provides guidance to professional level staff within the same unit on new policies and procedures and on the preparation of work requests requiring administrative support.

13. The complainant's plea with respect to factor VII, which relates to knowledge, experience and language, is clearly unmeritorious. The description provided in the relevant table contained in the FAO Master Standard indicates that this factor measures the knowledge, skills, experience and training required to perform the work. In according a rating of level C3/2 with 220 points for this factor, the external classifier had correctly noted that the job description for the post specified that it required a "working knowledge of English, French or Spanish and limited knowledge of one of the others". In proposing to increase the rating to level C3/3 with 240 points, the GAC irrelevantly focussed on the main aspects of the work the complainant performed rather than on the actual requirements of the post revealed in the job description. The GAC stated, among other things, that the academies which she organized "have normally two or three linguistic tracks which necessitate the knowledge of three working languages". While it was unnecessary for the Director to refer to the complainant's perceived proficiency in French, he correctly observed that, under the FAO Master Standard, when a "job requires that the incumbent have a working knowledge of one language (level C) and a limited knowledge of a second language (level B)", the middle score in the above-mentioned table applies. According to the table, the highest score applies where the job requires the holder of the post to have a working knowledge of two or more languages. The Tribunal emphasises that the relevant question was not whether the complainant had a working knowledge of two or more languages but whether the job description for the post required two or more languages. In this case, it did not as it required a working knowledge of one language and a limited knowledge of a second language. The Director correctly rated factor VII by adopting the middle score in the table, which is 220 points, and not the 240 highest score which the GAC proposed.

14. In the foregoing premises, the complainant's request to set aside the impugned decision on the basis that, in making it, the Director wrongly rated some of the assessment factors to determine the final grade of her post by overlooking essential facts and making unsubstantiated comments is rejected. The complaint is accordingly unfounded and will be dismissed.

#### DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 1 July 2020, Ms Dolores M. Hansen, Vice-President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 24 July 2020 by video recording posted on the Tribunal's Internet page.

DOLORES M. HANSEN

GIUSEPPE BARBAGALLO

HUGH A. RAWLINS

DRAŽEN PETROVIĆ