

Registry's translation, the French text alone being authoritative.

FIFTY-FOURTH ORDINARY SESSION

In re WASMER

Judgment No. 629

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the International Labour Organisation (ILO) by Mr. Lucien Wasmer on 15 December 1983 and corrected on 6 February 1984, the ILO's reply of 13 April, the complainant's rejoinder of 26 June and the ILO's surrejoinder of 24 July 1984;

Considering Article II, paragraph 1, of the Statute of the Tribunal and Articles 3.7 and 13.2 of the Staff Regulations of the International Labour Office;

Having examined the written evidence and disallowed the complainant's application for oral proceedings;

Considering that the material facts of the case are as follows:

A. The complainant, a Swiss citizen, has been an official of the ILO since 1947. He rose in the General Service category and was promoted to grade P.1. In 1967 he won a competition for a P.2/P.3 post in the staff training unit of the Personnel Development Branch, known as P/DEV. In 1975 he was put in charge of language courses. The post was graded P.3 in 1977. The P.4 official in charge of the unit, Mr. Hyde, was to retire, and early in 1980 the complainant sounded out Mr. Skerrett, the head of P/DEV, about his career prospects. In a minute of 15 May 1980 Mr. Skerrett replied that, if the money were found, he would like to provide a new full-time P.4 post for a staff training manager, which would be put up for competition and which the complainant stood a fair chance of getting. Failing that, he would take on Mr. Hyde's training duties besides his own, and six months later Mr. Skerrett would seek the regrading of his post at P.4. The complainant agreed. In July 1980 he inherited the extra duties from Mr. Hyde. As it happened no P.4 post was created. On 4 May 1981 Mr. Skerrett submitted a new description of his post, including the extra duties, to the Personnel Policy Branch (P/POL) for a grading review. On 28 January 1982 P/POL told him his post had made 1,475 grading points and the grade was confirmed at P.3, which runs from 1,320 to 1,669 points. He appealed on 4 February. In October 1982 a P.5 official, Mr. Mannaert was transferred to take charge of his unit. Although the Professional Grading Appeals Committee gave his post another 85 points it recommended rejecting his appeal and the Director-General did so on 6 June 1983. On 15 August he asked for information on the reasons for the Committee's recommendation, and he obtained it in a minute of 24 October from P/POL. Meanwhile, on 25 July, he had submitted an internal appeal under Article 13.2 of the Staff Regulations alleging breach of the terms of his appointment, unfair treatment and in particular breach of a promise by Mr. Skerrett but his claims were rejected, as either time-barred or devoid of merit, by a letter of 23 September 1983 from the chief of the Personnel Department. That is the decision impugned.

B. The complainant alleges that Mr. Skerrett led him to believe that, with Mr. Hyde's duties added, his post would be upgraded to P.4. Not only did Mr. Skerrett take more than the agreed six months to ask for the regrading, but he knew, or ought to have known, that the new job description would not warrant P.4, and he therefore misled the complainant. Scant account was taken in the grading exercise of the increase in his duties. He consented to that increase on the strength of the promise of a regrading; since it has not been kept he is being unfairly exploited. P/POL's delay in giving him the reasons for the Appeals Committee's recommendation debarred him from filing a complaint in time with the Tribunal. The transfer of Mr. Mannaert -- who, though less experienced in training, has taken over important duties from him -- has harmed his position. He should have been paid a special post allowance for P.4 under Article 3.7 of the Staff Regulations. He seeks "the regrading of the complainant" at P.4 with effect from 28 January 1982, when the grade of his post was confirmed at P.3. He adds that had he got P.4 he might have looked forward to pre-retirement promotion to P.5 and a larger pension.

C. In its reply the ILO observes that in his Article 13.2 appeal the complainant did not challenge the grading of his post but alleged unfair treatment by his supervisors. Because he failed to exhaust the internal means of redress as to the grading, his complaint is irreceivable. It is mistaken for him to object that the reasons for the Appeals Committee's recommendation were notified to him too late for him to challenge in time the decision of 6 June 1983

on the grading: he could have lodged a valid appeal under Article 13.2 even before knowing the reasons. He let over two months go by before even asking about the reasons. What in fact he claims is not the regrading of his post, but his own promotion to P.4 as compensation for the injury he alleges. His pleas on the merits are, in the ILO's view, unsound. (1) He says his duties warrant P.4, but not only is the matter now beyond appeal but the Tribunal will not normally replace the Director-General's evaluation of a post with its own. It will review the correctness of the procedure, but in this case there was no procedural defect. (2) Nor was there breach of a promise of P.4 by Mr. Skerrett. The complainant implies that there was some sort of private -- and therefore in any case unenforceable -- bargain between them. That is not how the ILO interprets Mr. Skerrett's minute of 15 May 1980, which was just a considerate request to a subordinate to take on extra duties and which merely suggested he might perhaps get promotion. Mr. Skerrett had nothing to gain from misleading him. The complainant had no right to a special post allowance for P.4 duties: a P.3 official, he agreed to take on some duties of another P.3 post. He has not been exploited. The appointment of Mr. Mannaert was at the Director-General's discretion, and in any event the complainant did not challenge it in time, as he could have done. The allocation of duties is also at the Director-General's discretion, not a matter for agreement between officials. Besides, keeping the duties he says Mr. Mannaert took over would have made little difference to the evaluation of his post. As for the amount of his pension, the Tribunal is not concerned with what may be opportune. The hearing of a witness would serve no purpose.

D. In his rejoinder the complainant objects that several allegations in the ILO's account of the facts are mistaken or misleading. He could not challenge the grading in his internal appeal because he did not then have information on the points awarded by the Appeals Committee. He did not seek that information at once because he was led to expect an offer of the post of director of an ILO field office. He was deceived by Mr. Skerrett, whose request to take on extra duties he agreed to only in return for the upgrading of his post. Mr. Skerrett could and should have ensured that the new job description would warrant P.4. To get no more money for doing more work is exploitation. The compensation he claims may take any form the Tribunal deems fit to bring him a better pension on retirement. He enlarges on his allegations of unfair treatment.

E. In its surrejoinder the ILO enlarges on the case put forward in its reply with regard to the nature and the receivability of the complainant's claims. It discusses several issues of fact and of law raised in his rejoinder. It denies his accusations against Mr. Skerrett, who never promised promotion to P.4 and indeed was not competent to do so, and who correctly exercised his discretionary authority. In particular, a chief need not consult a subordinate, let alone seek his consent, before giving him, as Mr. Skerrett did in this case, duties suited to his qualifications and within the ambit of his post description. Although the complainant is understandably disappointed at not being promoted, he has failed to show any breach of duty or any right to promotion, or any at which is unlawful or improperly caused him injury.

CONSIDERATIONS:

1. The complainant was 19 years old in 1947, when he joined the ILO staff at grade L.IV. He was promoted several times and by 1966 had reached grade P.1. In 1967 he won an internal competition for a post in the Personnel Department and his duties have since consisted in formulating and applying policy on staff training. The grading of his post was altered and, after an appeal by him, was determined at P.3 in 1977.

For some years the complainant has been trying, to no avail, to have his post upgraded. There is no need to recount in detail everything that happened: the upshot was that on 6 June 1983 the Chief of the Personnel Policy Branch told him that the Director-General had decided, on the recommendation of the Professional Grading Appeals Committee, to confirm the grading of his post at P.3.

2. The complainant wanted to know the Director-General's reasons for turning down his application for regrading, and in a separate letter submitted an appeal to him under Article 13.2 of the Staff Regulations. His claim read: "I have the honour to draw your kind attention to the fact that I am entitled to compensation for the injury I have suffered, and which has had and is still having a harmful effect on my morale and the state of my health." He concluded: "As a first step I invite you to order my summary transfer from the Personnel Department because I do not wish to become an object of ridicule or pity." The appeal was rejected by a decision of 23 September 1983 which observed that the complainant was not challenging the correctness of the grading and which answered the claims based on the treatment he alleged he had received.

In the present complaint, filed on 15 December 1983, the impugned decision is stated to be that of 23 September

1983. The actual claim is that the Tribunal should "order the complainant's regrading at P.4 as from 28 January 1982, the date on which the Personnel Policy Branch decided to confirm the grading of his post at P.3".

The complainant alters his claims in his rejoinder: he says that he is not challenging the decision on grading but seeking compensation for misrepresentation. He suggests that he be awarded additional salary, but acknowledges that the damages might take some other form, such as a compensatory allowance.

3. The Tribunal finds inconsistencies in what the complainant is saying. In the light of the explanations in his rejoinder it takes the view that he is no longer objecting to the grading. It will not entertain the original claims which have been surrendered, but will consider whether the ILO was at fault and is therefore liable. That is how the Organisation has construed the complaint in its reply, and so the parties have argued the issue.

4. The complainant alleges misrepresentation: he agreed to take on more work on the strength of a promise that he would be upgraded. For several years he believed he would get the regrading because his supervisor had promised it. He submits that the ILO's bad faith was also evident in 1979, and again in 1982: on each occasion a less experienced staff member was appointed over his head. Lastly, he contends that dilatory tactics prevented him from filing his internal appeal and his complaint to the Tribunal in time.

5. The complainant further submits that his supervisor committed an abuse of authority. On the evidence his supervisor's attitude was clear. He asked the complainant to take on additional work, and indeed that was a sign of confidence. All that the supervisor could do was suggest that those who were empowered to do so grant a higher grade, and indeed it seems that he did so. But the decision did not lie with him. The plea of misrepresentation therefore fails.

6. The complainant alleges that his supervisor ought to have had him paid the special post allowance prescribed in the Staff Regulations. His plea is unsound because there was no vacant post in a higher grade.

7. He objects to the appointment of two other staff members to take over from him, neither of whom had any professional experience or training. He did not challenge those appointments and in any event the Tribunal will not substitute its own opinion on such a matter for the Director-General's.

8. The Tribunal concludes that, although the evidence shows the complainant to be a fine staff member who has perhaps not fared as well towards the end of his career as he might reasonably have expected, that does not mean the ILO has been in any way at fault.

Lastly, the Tribunal believes no purpose would be served by hearing evidence from the grading expert the complainant wishes to call.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this Judgment by Mr. André Grisel, President of the Tribunal, Mr. Jacques Ducoux, Vice-President, and the Right Honourable Lord Devlin, Judge, the aforementioned have hereunto subscribed their signatures, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 5 December 1984.

(Signed)

André Grisel

Jacques Ducoux

Devlin

A.B. Gardner

