

The Joint Advisory Appeals Board (JAAB)
to the
Joint Negotiating Committee (JNC)

ACTIVITY REPORT FOR THE PERIOD 1 JANUARY TO 31 DECEMBER 2012

I. General overview

1. In 2012, the number of grievances filed with the Board continued to fall, to 23 from 24 in 2011, 33 in 2010 and 31 in 2009. Three of the grievances were filed by officials in their capacity as members of the Staff Union Committee. A description of the grievances is to be found in sections III and IV of this report.
2. Since its 2008 activity report, the Board has listed in its report the recommendations of a general nature it made to the Director-General pursuant to its consideration of a grievance. This year, the Board made recommendations:
 - expressing the wish that the means be found of ensuring better protection for women whose fixed-term contracts expire during their pregnancy;
 - noting that Annex II to the Staff Regulations, which governs compensation in the event of illness, injury or death attributable to the performance of official duties, contains no definition of the term “commuting accident”;
 - drawing attention to the need for greater transparency, consistency and equity in the Office’s rules and practices relating to the continued service of officials beyond the retirement age established in Article 11.3 of the Staff Regulations and to double-dipping (drawing an ILO salary and a pension from United Nations Joint Staff Pension Fund); in his decision on this case, the new Director-General indicated that he shared the Board’s concerns about the current policy on employment beyond the statutory age of retirement and intended to take appropriate measures shortly; he also indicated that he intended at the same time to prompt reflection on double-dipping involving an ILO salary and income from external sources.
3. The Board also submitted recommendations of a general nature on the following subjects, which it had raised in previous years as well:
 - the rules and practices applying to contracts funded by extra-budgetary resources (the Board was shocked to observe that one person had been employed on technical cooperation projects for over 12 consecutive years on *Special Service Agreements*, which are tantamount to external collaboration contracts);
 - the mobility policy (the Board considered that the Joint Negotiating Committee should clarify whether the requirement that officials in the Professional category have to have served outside Geneva to be eligible for personal promotion remains still in force or not);

- the job grading appeal procedure (the Board again noted dysfunctions in the system, in particular unacceptable delays);
 - the selection and recruitment procedures (in one case, the Board recommended that clear rules be drawn up on the conditions in which a competition can be declared unsuccessful; in another, it stressed the need for absolute equity in treatment of internal candidates; in a third case, it asked that selection panel members be shielded from all external influences and that candidates be allowed to raise legitimate objections to an independent member, and it considered that the language qualifications required should be re-examined in the light of needs).
4. The Board noted that some of the recommendations of a general nature that it had made in previous years had been given effect. For example, the complete minutes of the Reports Board are now sent to the official concerned when the Board's recommendations have potentially serious consequences, such as non-renewal of the employment contract. Likewise, the composition of the Independent Review Group panel dealing with a job grading appeal is now communicated to the official concerned. Lastly, the ambiguity has been removed from the rules for calculating the length of service to be eligible for a personal promotion under Article 6.8.2 of the Staff Regulations, and the Office's practice in this regard has been rendered more consistent by the publication of IGDS Office Procedure Number 125 (Version 1) of 22 October 2009.
 5. The Board notes that the new Director-General has embarked on a process of human resources management reform. It trusts that the process will serve to resolve some of the difficulties it has had occasion to raise in the past and thereby to reduce the number of appeals filed with the Board and the ILO Administrative Tribunal (ILOAT)¹.
 6. Indeed, the Board notes that in other important areas, measures remain to be taken. Such is the case for re-examination of all the rules and practices pertaining to technical cooperation contracts and/or contracts funded from extra-budgetary resources, in respect of which the Board was informed in December 2010 that the matter was among those that were to be the subject of mediation between the Administration and the Staff Union, or for the establishment of a procedure for investigating allegations of harassment. In this regard, the Board recalls the comments it made in its previous report in the light of the ILOAT judgments sanctioning the ILO in several harassment cases.
 7. With regard to the recruitment procedure (Annex I of the Staff Regulations) and the filling of posts (Article 4.2 of the Staff Regulations), areas in respect of which the Board received the highest number of grievances and had been given the Office's assurances that its many recommendations would be taken into account in discussions with the Staff Union on the revision of the Collective Agreement on a procedure for recruitment and selection, the Board notes that the partial reform measures introduced in 2012 following negotiations between the Director-General and the Staff Union Committee remain to be confirmed. It trusts that it will be possible in the near future

¹ See the very critical comments made by Professor D. Ruzié in his 2011 analysis of the ILOAT's case law, with regard to the fact that in 2011 ILO represented the Tribunal's second-highest caseload, i.e. 18 cases, 12 of which it lost (*Annuaire français de droit international*, 2011, Paris, CNRS Editions, p. 274).

to reach agreement on reform of the selection and recruitment system, enabling the Office to retain staff of the highest competence, efficiency and integrity, and that enjoys the confidence of staff.

II. The Board's membership and functioning

8. Coordinating chairperson: pursuant to paragraph 1 of the Working Methods of the Board, the chairpersons appoint one from among their number each year as coordinating chairperson. In 2012, that role fell to Mr Larry Kohler.
9. Completion of term of office: Ms Gabriele Stoikov completed her term of office as co-chairperson on 30 April 2012.
10. Appointments: Ms Carmen Sottas was appointed co-chairperson of the Board as of 1 May 2012.
11. At the time of the adoption of this report, the Board comprised three co-chairpersons, eight members appointed by the Administration and ten members appointed by the Staff Union.

III. Number of grievances filed in 2012 and details of the appellants

12. Twenty-three grievances were filed with the Board by 18 appellants, some of whom filed several grievances during the year.
13. Of the 18 appellants, 11 were serving officials and seven were no longer employed by the ILO. Of the 11 serving officials, eight had a contract without limit of time financed from the regular budget and three had a fixed-term contract; of the latter, two were financed from the regular budget and one from extra-budgetary funds. Of the seven appellants no longer employed by the Organization, five had had a fixed-term contract financed from extra-budgetary funds and two had had a contract without limit of time financed from the regular budget.
14. Seven grievances were filed by staff from field offices, in six cases by persons who were no longer employed by the Organization and in only one case by a serving official.
15. Sixteen grievances were filed by women and seven by men.
16. Sixteen grievances were filed by officials in the Professional category, 10 by women and six by men. Five grievances were filed by officials in the General Services category, four by women and one by a man. Two grievances were filed by female officials in the National Professional Officer category.

IV. Types of grievance filed in 2012 and processing time

17. The breakdown of grievances filed in 2012 pursuant to the provisions below is as follows:

Article 13.3.2 of the Staff Regulations (treatment incompatible with the terms and conditions of employment)	17 (21 in 2011) (see details below)
Annex I to the Staff Regulations (recruitment procedure)	5 (1 in 2011)
Circular No. 6/639 (Rev.2), paragraph 22, of 31 August 2005, on the procedure for job classification	1 (0 in 2011)

18. The 17 grievances lodged under Article 13.3.2 of the Staff Regulations in 2012 were filed for the following reasons:

Non-renewal of contract	6
Personal promotion	2
Filling of vacancies	1
Harassment	1
Post suppression	1 (withdrawn)
Application of a disciplinary measure	1
Performance appraisal	1
Titularization exercise	1
Continued service after retirement age / mandatory end of service; payment of salary and pension (double-dipping)	1
Treatment incompatible with terms and conditions of employment	1
Use of external collaborator contracts	1 (suspended)

19. One grievance was withdrawn in 2012.

20. During 2012, 20 recommendations were submitted to the Director-General, one concerning a grievance filed in 2010 (suspended and subsequently reactivated at the end of 2011), three concerning grievances filed during the second half of 2011 and 16 concerning grievances filed in 2012 (including one relating to three cases filed jointly). Three cases were pending at 31 December 2012 and another had been suspended.

Processing time for recommendations issued in 2012

21. In 2012, the Board issued its recommendations on average within one-and-a-half months of the reception of the last written submission by the parties. The statutory deadline for submitting recommendations to the Director-General is three months from the deadline for written submissions by the parties.

V Nature of the Board's recommendations

22. Of the 20 recommendations issued by the Board in 2012:

- 14 recommended that the grievance should be dismissed, in three cases as irreceivable, in the others as groundless;
- two concluded that the grievance should be dismissed but recommended payment of compensation;
- four recommended that the impugned decision should be set aside, *i.e.* the Board found in the appellant's favour.

VI. Action on the Board's recommendations

23. At the time of the adoption of this report, the Director-General had issued final decisions on 19 of the recommendations submitted by the Board in 2012.

- He followed the Board's 14 recommendations that the grievance should be dismissed, but nevertheless decided to award compensation to one appellant.
- Concerning the two recommendations that the grievance should be dismissed but requesting payment of compensation, he followed the Board's recommendation in one case and rejected the other case.
- Concerning the four recommendations that the impugned decision should be set aside, he followed the Board's recommendation in one case but did not do so in two others; the decision concerning the fourth case is expected in February 2013.

24. At the time of the adoption of this report, the Board had issued 183 recommendations since its establishment. Of these 183 recommendations:

- 115 recommended that the grievance should be dismissed;
- 52 recommended that the impugned decision should be set aside;
- 12 recommended that the grievance should be dismissed in part;
- three recommended that an investigation should be conducted;
- one recommended that the matter should be submitted to the medical advisor for an opinion.

25. At the time of the adoption of this report, the Director-General had issued a final decision on 182 recommendations.

- He followed the Board's recommendation in 114 of the 115 recommendations to dismiss the grievance, but did not follow it in one such recommendation;
- He followed the Board's recommendation entirely in 24 of the 52 recommendations that an impugned decision should be set aside, in part in six

cases and not at all in 21 cases, with one decision expected only in February 2013.

- He followed the Board's recommendation in eight of the 12 recommendations that a grievance should be dismissed in part, and dismissed the grievance in its entirety in four cases.
- He followed the Board's recommendation in three cases in which it had recommended that an investigation should be carried out.
- He did not follow the Board's recommendation that one case should be re-examined by the medical advisor.

VII. Cases followed by an appeal to the ILO Administrative Tribunal

26. At the time of the adoption of this report, the Tribunal had ruled on 51 complaints concerning 56 cases brought by ILO staff members to contest a decision made by the Director-General pursuant to proceedings before the Board since the latter's establishment in 2004. Of those 56 complaints:

- 33 were dismissed;
- in five cases, the Tribunal ruled partly in the complainant's favour;
- in 18 cases it set aside the impugned decision.

27. In rendering the above judgments, the Tribunal:

- followed the Board's recommendation in 32 cases;
- partly followed the Board's recommendation in four cases;
- did not follow the Board's recommendation in 16 cases;
- followed the dissenting opinion of the chairperson of the panel in one case;
- dismissed the remainder of the complaint in one case, the complainant having withdrawn his conclusion that the disputed appointment should be set aside;
- sanctioned the Organization for the delay and procedural flaws in the conduct of the investigation in two cases in which the Board had recommended that an investigation be conducted.

28. The Board wishes to pay tribute to Ms. Gabriele Stoikov, who had served as co-chairperson since June 2006 and who left the Board this year. It also wishes to thank its secretariat – Ms Annika Talvik, its executive secretary, and Ms Susan Piazza, its administrative secretary – whose efficiency and unfailing devotion to duty enabled it to discharge its mandate again this year.

Geneva, 21 January 2013

Hông-Trang Perret-Nguyên
Co-Chairperson

Carmen Sottas
Co-Chairperson

Larry Kohler
Co-Chairperson