

The Administrative Tribunal,

Considering the complaint filed by Mr M.H. against the International Labour Organization (ILO) on 25 April 2005 and corrected on 27 June, the Organization's reply of 31 August, the complainant's rejoinder of 7 November and the ILO's surrejoinder of 14 December 2005;

Considering Articles II, paragraph 1, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

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

A. The complainant, an Algerian national born in 1955, joined the International Labour Office, the secretariat of the ILO, in 1991. After a series of various types of contract, all for short periods, the complainant was selected for a G.6 post of assistant database administrator in the Bureau of Statistics, to which he was appointed at grade G.5 with effect from 1 June 1994. In February 1998 he was assigned to another unit within that Bureau as statistical assistant. He was promoted to grade G.6 on 1 July 1999 and assigned again, on 9 June 2000, to another unit. Following the entry into force, on 14 March 2001, of the Collective Agreement on Arrangements for the Establishment of a Baseline Classification and Grading, the Director of the Bureau of Statistics, the complainant's line manager, notified the complainant that his post was graded G.6. The complainant, who considered that he performed the duties of a P.4 post, appealed against that decision on 14 May 2001. The Director confirmed the grading and the matter was referred to the Independent Review Group (IRG). After a lengthy procedure, the complainant was informed on 5 September 2003 that the IRG recommended maintaining his position as statistical assistant at the G.6 level. The Joint Panel, to which the complainant had submitted his case on 7 October 2003, recalled in its report dated 19 January 2004 that its role was not to substitute itself for the IRG, which was technically competent for all grading matters. Noting "the absence of any procedural flaw or sign of unfair treatment", it recommended that the decision be maintained, while drawing the complainant's attention to the fact that he was entitled to request a review of the grading of his post in accordance with the job grading procedure. By letter of 27 February 2004 the Director of the Office of the Director-General informed the complainant that the Director-General had approved the Joint Panel's recommendation.

By a minute of 11 March 2004, the complainant appealed in accordance with the "procedure for the resolution of grievances", provided for in Chapter XIII of the Staff Regulations. He said that since 1 February 1998 he had been treated "in an unjustified and unfair manner [which was] incompatible" with several provisions of the Staff Regulations. On 15 March the Director of the Bureau of Statistics replied that his minute could not be considered as "the start of a conflict", partly because Article 3.7 of the Staff Regulations he had relied on could not be applied since there was no vacant post at the professional level in the Bureau of Statistics, and partly because the IRG had already informed him of its decision. On 25 May the complainant referred his grievance to the Ombudsperson. On 17 June the Director sent him a "work plan" covering the activities he was expected to perform for the time being. In her report dated 9 August 2004 the Ombudsperson commented as follows:

"Without prejudice to earlier decisions, and for work of a professional nature, it would appear that an external independent evaluation of the work performed and the mental input provided by [the complainant] would be justified at this stage. The purpose of such an evaluation would be to determine objectively and once and for all the standard of technical know-how required for the projects concerned and the time needed to complete them. A neutral statistical expert independent of the parties and of the ILO would be appointed by the Office of the Ombudsperson, which will notify the parties of the expert's evaluation."

After the complainant's line manager had refused on 25 August 2004 that an independent expert be appointed, the complainant referred his grievance to the Joint Panel on 24 September, asking to be provided with an accurate job description. The Panel issued its report on 17 December 2004. Noting that independent job evaluations had already

been conducted in previous cases, it recommended that the Ombudsperson's proposal for resolution be implemented, with the proviso that the independent expert should as far as possible be accepted by both parties. By letter of 26 January 2005 the Executive Director of Management and Administration notified the complainant that the Director-General had decided to reject his grievance. That is the impugned decision.

B. The complainant contends that his administrative situation since his transfer in February 1998 has been unlawful because he has not been notified of his new post and new duties. According to him, the IRG made an error of reasoning insofar as it based its considerations not on his actual duties but on those included in a list of work assignments which he had received in June 2000. What is really needed, in his view, is a definition of the post he was occupying and the corresponding list of work assignments. It would be pointless to approach the IRG without those documents, which are essential for any reclassification procedure.

The complainant considers that the "work plan" he was sent by the Director of the Bureau of Statistics on 17 June 2004 is inaccurate. In his view, the work he did from February 1998 to October 2003 was extremely important, not only for the Bureau of Statistics but also for the Organization as a whole (whose reputation was at stake in the publications he was working on); it entailed major responsibilities and required a very high standard of ability. In this respect, the ILO overlooked essential facts and/or drew obviously mistaken conclusions from the dossier. The said work plan in fact amounted to disguised reassignment, representing such "a step backwards in [his] professional development [...] and [such] a depreciation of his abilities" that it constituted a disguised sanction.

As for the impugned decision, he contends that it was not sufficiently substantiated, and that the Director-General appears to have misunderstood the Joint Panel's recommendation and merely endorsed the Office's position in general terms without giving his own analysis of the case, which is contrary to the Tribunal's case law (see Judgment 2339, under 5). He recalls that both the Ombudsperson and the Joint Panel concluded that an independent evaluation of his work was needed, thereby implicitly recognising that it was incorrectly evaluated.

The complainant asks the Tribunal to set aside the impugned decision, to order the ILO to draw up a description of duties that truly reflects the tasks he performed from February 1998 to June 2004, and to give a ruling on the Organization's attitude and the amount of time it took to settle his administrative situation, on his "right [...] to retroactive payment of the salary and allowances of his correctly graded post" and on the reconstitution of his career as from June 2004. He also claims damages for alleged moral and material injury.

C. In its reply the Organization, referring to several statements by the complainant, contends that the complaint is in fact directed against the Director-General's decision of 27 February 2004 confirming the G.6 grading of his post. As the complaint was filed on 25 April 2005, it is time-barred and therefore irreceivable. The defendant suspects that the complainant is trying "by indirect means" to pursue the request for regrading of his post that he had submitted as far back as May 2001. As he has not followed the proper job grading procedure, however, he has not exhausted all internal remedies.

On the merits the ILO denies that it committed any mistake of law. The complainant was in fact appointed as a statistical assistant from February 1998 with a corresponding job description. As far as the work plan is concerned, it points out that the plan must be drawn up on the basis of the requirements of the post and not the abilities of the incumbent. The allegation that the plan might amount to a disguised sanction reflects a misconceived view of the plan itself and of what form a sanction can take. In its view, there is no evidence in the file to suggest that the complainant's contribution to the Organization's work was undervalued. As for the impugned decision, this is "fully and adequately" substantiated. As the Ombudsperson and the Joint Panel were proposing a procedure which departed from the normal rules, the Director-General refused to set a precedent which could only have undermined the credibility of the existing statutory procedures. The ILO concludes by suggesting that the complainant has a tendency to overestimate his work while overlooking the hierarchical framework in which it is performed. It points out that, while no one doubts the value of the complainant's contribution to the work of the Bureau of Statistics, at his level of responsibility, he is wrong in believing that he deserves all the credit.

D. In his rejoinder the complainant makes it clear that the present complaint is not directed against the decision of 27 February 2004, but that he filed an internal appeal against that decision within the time limit. He admits that in that appeal he did not specify that he was challenging that decision, although in his view his intention was clear from the context. Since the defendant acceded to his request for review, it cannot at this stage plead that the complaint is irreceivable.

On the merits the complainant contends that the ILO has not proved that it informed him of his new duties at the time of his assignment in February 1998 and his reassignment in June 2000. He rejects the view that work plans must be drawn up on the basis of the requirements of the post and not the abilities of the incumbent, and points out that the Joint Panel emphasised the Tribunal's insistence on accurate and up-to-date job descriptions. A sanction did arise insofar as the duties listed in the work plan are at a far lower level than those he performed earlier. Maintaining that he is the only person who can claim the authorship of and therefore the credit for the jobs he mentioned, he reiterates that his work was undervalued. Lastly, he submits that independent evaluations have been made before, a fact which the Joint Panel noted in its report.

E. In its surrejoinder the ILO rejects the complainant's argument that the appeal he filed on 11 March 2004 was in fact directed against the decision of 27 February 2004. It contends that the complainant chose to file a further appeal against that decision alleging unjustified and unfair treatment on the part of his line manager in order to obtain a regrading of his post. The Organization therefore reiterates that the complaint is irreceivable and presses its pleas on the merits.

CONSIDERATIONS

1. The complainant is a statistical assistant at grade G.6. On 9 June 2000 the Director of the Bureau of Statistics sent him a description of his work assignments.

Referring to the Collective Agreement on Arrangements for the Establishment of a Baseline Classification and Grading, which entered into force on 14 March 2001, the Director informed the complainant that his post of statistical assistant was classified at grade G.6. The complainant challenged that decision on 14 May 2001.

After the Director had confirmed the grading of the post, the complainant requested a review of that grading by the IRG. In its report, which was sent to the complainant on 5 September 2003, the IRG recommended maintaining the complainant's post at grade G.6.

The Joint Panel, to which the complainant had referred his case on 7 October 2003, recommended in its report of 19 January 2004 that in the absence of "any procedural flaw or sign of unfair treatment justifying a review of the IRG's decision", that decision was confirmed. It drew the complainant's attention to the fact that he was "entitled to request a review of the grading of his post in accordance with the job grading procedure, as provided for in [Human Resources Development Department] Circular No. 639 (series 6) dated 11 June 2003".

On 27 February 2004 the Director of the Office of the Director-General notified the complainant of the Director-General's decision to endorse the Joint Panel's recommendation. The complainant did not appeal against that decision.

By a minute of 11 March the complainant appealed in accordance with the "procedure for the resolution of grievances" provided for in Chapter XIII of the Staff Regulations, requesting a review of his case "in accordance with the Staff Regulations" on the grounds that he was being treated "in an unjustified and unfair manner [which was] incompatible" with several articles of the Staff Regulations.

On 15 March his line manager informed him that his minute could not be considered as the start of a conflict for two reasons: firstly, there was no vacant post at the professional level in the Bureau of Statistics, and secondly the IRG had already informed the complainant of its decision.

On 25 May 2004 the complainant referred his grievance to the Ombudsperson in accordance with Chapter XIII of the Staff Regulations.

On 17 June the Director of the Bureau of Statistics supplied a "work plan" to the complainant.

In her report dated 9 August 2004, the Ombudsperson, after noting that the complainant had already "made use of the established specific procedures" and that the conclusions reached earlier by the internal bodies (Reports Board, IRG and Joint Panel) were not at issue in the grievance, put forward the following proposals for resolution of the dispute:

"Regarding the request for clarification of his assignment (Articles 2.2, 2.3 and 2.4 of the Staff Regulations), and in

the course of the facilitation process [the complainant] received a minute from [Mr Y., i.e. the Director of the Bureau of Statistics] on 17 June 2004, together with a detailed work plan explaining his duties as statistical assistant and giving the names of his line managers. If the parties so wish, the Office of the Ombudsperson is prepared to facilitate exchanges regarding this document.

With regard to the request for specific recognition (Article 3.7 of the Staff Regulations), there is at present no vacant P.4 post [in the Bureau of Statistics], so that Article 3.7 does not apply. For the sake of arriving at a quick and lasting settlement, however, the following options are proposed:

Without prejudice to earlier decisions, and for work of a professional nature, it would appear that an external independent evaluation of the work performed and the mental input provided by [the complainant] would be justified at this stage. The purpose of such an evaluation would be to determine objectively and once and for all the standard of technical know-how required for the projects concerned and the time needed to complete them. A neutral statistical expert independent of the parties and of the ILO would be appointed by the Office of the Ombudsperson, which will notify the parties of the expert's evaluation.

In the light of that evaluation [Mr Y.] could consider the various options offered by the Staff Regulations or the ILO's current practices, such as:

- assisting [the complainant] to continue to develop his skills and to manage his career,
- recognising the work accomplished using the means provided by the Staff Regulations (performance appraisal, merit increment, special leave, oral or written public thanks ...).

This proposal would entail all the works completed by [the complainant] being handed over to his technical supervisor or to [Mr Y.].”

Considering that these proposals by the Office of the Ombudsperson had not been implemented, the complainant lodged a grievance with the Joint Panel on 24 September 2004. In its report dated 17 December 2004, the Joint Panel recommended that the Ombudsperson's proposal for resolution should be implemented, with the proviso that the independent expert should be accepted by both parties.

The Joint Panel added that, on the basis of the independent evaluation, the complainant and his line manager should “be allowed reasonable opportunities for dialogue in order to determine the best approach in furthering the complainant's professional development”.

By letter of 26 January 2005 the complainant was informed that the Director-General had decided not to follow the Joint Panel's recommendation. That is the impugned decision.

2. The complainant asks the Tribunal to set aside the Director-General's decision of 26 January 2005, to order the defendant to draw up a description of functions and attributions that truly reflect the tasks he performed from February 1998 to June 2004 and determine the relevant consequences, and to order the Organization to pay him damages for moral and material injury.

He contends that the Organization committed mistakes of law insofar as “it refused to undertake the requested research, [namely] the review of [his] administrative situation”, and did not fulfil its legal obligation to supply “a description [of his] functions and attributions”, overlooked essential facts and/or drew obviously mistaken conclusions from the file, failed in “the duty any international organisation owes its staff to treat them with respect for their dignity and good name”, and did not fully and adequately substantiate its refusal to follow the recommendations of the internal appeal bodies, which in his view is contrary to the Tribunal's case law.

3. The defendant contends that the complaint is irreceivable on the grounds that, as the complainant has himself admitted, it really amounts to an appeal against the Director-General's decision of 27 February 2004. As the complaint was filed with the Tribunal's Registry on 25 April 2005, in other words more than a year after the final decision of 27 February 2004, this decision has become final and can no longer be challenged.

It argues moreover that by using the unusual expression of “description of functions and attributions”, the complainant is pursuing “by indirect means” his initial request for his post to be regraded at P.4 level, which he made in May 2001. But in order to obtain “the redefinition of his post on the basis of the functions and attributions

he actually performed [which] would give him [...] a higher grade than his current G.6 grade”, the complainant can avail himself of a procedure provided for under Circular No. 639, Series 6, concerning the job grading procedure, according to which “the grades [...] correspond to the duties and responsibilities assigned to [...] and [...] actually performed by the incumbents”.

It contends that the complainant, because he did not follow the normal job grading procedure, has not exhausted internal remedies and that his appeal is therefore premature and, as such, irreceivable.

4. The Tribunal will not rule on the objection to receivability based on the contention that the complaint is in fact directed against the decision of 27 February 2004, since the complainant made it clear in his complaint form and confirmed in his rejoinder that it is directed against the decision of 26 January 2005. The Tribunal will consider irreceivable, however, any claim aimed at contesting the findings of the internal bodies which were endorsed by the decision of 27 February 2004.

Concerning the second objection to receivability, the Tribunal notes that the complaint does not merely seek the grading of the complainant’s post but also puts forward other claims. The complaint must therefore be examined on the merits in order to decide whether and to what extent the complainant’s claims are admissible.

*With regard to setting aside the
Director-General’s decision*

5. The complainant bases his claim to set aside the decision of 26 January 2005 on several pleas:

(a) He accuses the Organization of having committed mistakes of law insofar as “it refused to undertake the requested research [namely] the review of [his] administrative situation” and did not fulfil its legal obligation to supply “a description [of his] functions and attributions”.

As indicated above, the Tribunal will not call into question the findings of the internal bodies endorsed by the decision of 27 February 2004, against which no appeal was filed, namely, that the complainant occupied a post of statistical assistant graded G.6 and that he had already received the job description corresponding to that post’s functions and attributions. After 27 February 2004, when the complainant asked – in March 2004 – to be told what his duties were, he was given a work plan.

It may be ascertained from the above that the complainant was assigned to a post of statistical assistant at grade G.6 with the corresponding job description and the Tribunal finds no mistake of law subsequent to 27 February 2004.

(b) The complainant accuses the Organization of having overlooked essential facts and/or having drawn obviously mistaken conclusions from the dossier insofar as, when drawing up the work plan, it “failed to take account either of [his] file (his qualifications, experience and abilities), or of his key quantifiable (and visible) results, or of his contributions to the realisation of objectives not only of the Bureau of Statistics but also of the Organization as a whole [...], or of the level of responsibilities he assumed”. On this point the defendant replies that a work plan for a post must be drawn up on the basis of the requirements of the post and not the real or alleged abilities of the incumbent.

The Tribunal is of the opinion, like the defendant, that the level of a post must be determined not according to the abilities of the incumbent but rather to what the post is supposed to offer a programme, a service, a department or even the Organization as a whole.

This plea therefore fails.

(c) The defendant is also accused of a breach of “the duty any international organisation owes its staff to treat them with respect for their dignity and good name”.

According to the complainant, the functions and attributions determined by the tasks described in the work plan are “of a nature and level of responsibility inferior to those inherent in the activities he has performed previously”. He considers that the tasks listed in the work plan depreciate his abilities and in fact constitute reprisals for the fact that he complained that he was treated unfairly. He considers that the work plan is a disguised sanction because the tasks are of such an inferior nature that it must be concluded that the defendant obviously intended to penalise him

even though he was not guilty of any misconduct.

The Tribunal deduces from the submissions that the 2004 work plan, though differing in some respects from the list of work assignments drawn up in 2000, is a true reflection of the work required for the post of statistical assistant occupied by the complainant. Simply by comparing the list of assignments drawn up in 2000 with that of the 2004 work plan, it is not possible to ascertain what the complainant considers to be a depreciation of his abilities or whether the assigned activity is substantially different from his earlier duties.

The Tribunal cannot therefore conclude that the complainant was not treated with respect for his dignity or good name. There is no evidence in the file that points to a disguised sanction.

(d) The complainant lastly accuses the defendant of not fully and adequately substantiating its refusal to follow the recommendations of the Organization's internal appeal bodies, which concluded that in order to settle the dispute between him and the defendant it was necessary to undertake an independent evaluation of the tasks he performed. According to him, the defendant thus failed to comply with the Tribunal's case law (see in particular Judgment 2339, under 5).

Having examined the letter of 26 January 2005, the Tribunal finds that the Organization, represented by the Executive Director of Management and Administration, substantiated its decision properly and correctly. In that letter, after analysing the Ombudsperson's proposals and the Joint Panel's recommendations, the Executive Director wrote the following:

“The Director-General observes that there is no procedure providing for the establishment of a post's job description by a third person independent of the Office. It is the head of a service who is responsible for drawing up a job description. The hierarchical chief of a service is in particular responsible for establishing the work plan for that service and, on the basis of that analysis, for distributing the tasks required to complete the work among the staff of the service. In the event, the Director-General notes that, in connection with the procedure before the Ombudsperson, your line manager took the initiative of supplying you with a new list of assignments.

The Director-General notes further that the tasks pertaining to your post as statistical assistant have already been considered by the IRG as part of the job grading exercise conducted pursuant to the Collective Agreement, and that at the time you were given the opportunity to submit whatever information you considered appropriate regarding the tasks assigned to your post. That procedure is now closed. Nevertheless, if you feel that the conditions established in paragraph 3 of the circular apply, you may submit a substantiated request for a grading review in accordance with Circular 6/639.

In the light of the above, and taking account of all the circumstances of your case and the Office's operating rules, the Director-General considers that an independent evaluation of your tasks and work would not be justified.”

It is clear that in the event the Director-General did not merely state that he did not find the Joint Panel's recommendation convincing or simply refer in general terms to the arguments put forward by the Office in proceedings before the appeal bodies (see Judgment 2339), but gave the real reasons underlying his decision of 26 January 2005.

This plea therefore also fails.

Since it appears from the above that none of the complainant's pleas is well founded, the impugned decision cannot be set aside.

6. The complainant asks the Tribunal, in the event that the impugned decision were to be set aside, to order the defendant to establish a description of duties which truly reflects the tasks he performed from February 1998 to June 2004.

Since the decision cannot be set aside as requested, this request becomes without purpose and must be rejected. Similarly, the claims for damages must be rejected.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 17 May 2006, Mr Michel Gentot, President of the Tribunal, Mr Seydou Ba, Judge, and Mr Claude Rouiller, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 12 July 2006.

Michel Gentot

Seydou Ba

Claude Rouiller

Catherine Comtet