

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

105th Session

Judgment No. 2723

The Administrative Tribunal,

Considering the complaint filed by Ms C. C.-F. against the International Labour Organization (ILO) on 20 March 2007, the Organization's reply of 25 June, the complainant's rejoinder of 24 July and the ILO's surrejoinder of 27 August 2007;

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, a French national born in 1969, joined the International Labour Office, the Organization's secretariat, in 1991. From 1999 she was assigned as a grade G.4 secretary to the InFocus Programme on Promoting the Declaration, which had just been set up. On 18 May 2001, following the entry into force of the Collective Agreement on Arrangements for the Establishment of a Baseline Classification and Grading, the post held by the complainant was classified at grade G.5 in the Conference Assistants/Secretaries job family. The complainant's job title was "Conference/Relations Assistant / Senior Secretary".

By a minute of 3 March 2003, the Director of the above-mentioned programme requested reclassification of the complainant's post at grade G.6. After a technical review conducted by the Human Resources Development Department, the Head of the Human Resources Policy and Administration Branch notified the complainant on 1 October 2003 that it had been recommended that the G.5 grading should be confirmed. He explained that in 2001 the complainant's post had been put in the wrong job family, since her work consisted mainly of secretarial duties. On 6 October 2003 the complainant filed a grading appeal with the Independent Review Group (IRG), which noted on 18 January 2006 a "classification of duties split between two job families", namely that of secretaries and that of conference/relations assistants. It recommended that the post should remain at grade G.5 on the grounds that only one category of the tasks carried out by the complainant matched the description of the duties of a G.6 administrative secretary. The complainant was informed by a minute of 31 January that this recommendation had been endorsed by the Director-General.

The complainant filed a grievance with the Joint Advisory Appeals Board on 24 February. A month later she accepted the proposal of the Human Resources Development Department to resubmit her request for reclassification to the IRG and she withdrew her grievance. The Group again recommended classification at grade G.5. On 26 June the complainant again filed a grievance with the Joint Advisory Appeals Board in which she challenged the Director-General's "tacit decision" to endorse the latter IRG recommendation. In its report of 8 December 2006, the Board stated that it "ha[d] found no evidence to support the various arguments put forward by the complainant". Nevertheless, as the IRG considered that the post in question did not fall into a single job family, the Board felt that point factors classification standards should have been applied in accordance with the provisions of Circular No. 639, Series 6, of 11 June 2003 concerning the job grading procedure. It therefore recommended that the Director-General should "reverse his implicit decision to endorse the [said] recommendation of the IRG [...] with a view to having that body re-examine the appellant's case".

By a letter of 7 February 2007, which constitutes the impugned decision, the Executive Director of the Management and Administration Sector informed the complainant that the Director-General had decided to refer her request to the Human Resources Development Department for a fresh examination of her duties and responsibilities, in which the point factors classification standards would be applied. It was also explained that she would retain her right to appeal to the IRG and that this decision was final within the meaning of Article 13.3.4 of

the Staff Regulations.

By a minute of 9 March, the complainant was informed that the above-mentioned department, having conducted a point rating of her duties and responsibilities, had confirmed her post's classification at grade G.5. On 20 March 2007 she submitted a new grading appeal to the IRG and filed a complaint with the Tribunal.

B. Noting that the Organization requested classification of her position by points since it considered that she held a "job straddling two families", the complainant provides examples to support her contention that she holds the job of conference/relations assistant and that her request for reclassification should have been reviewed solely by reference to this job family. She also holds that the IRG committed an error of law in comparing her tasks with those of an administrative secretary, and that the duties pertaining to that job should not be used to justify keeping her at grade G.5.

Moreover, the complainant endeavours to show that the Human Resources Development Department dismissed her request for reclassification on the basis of "factors which were unlawful, wrong or extraneous to the matrix" corresponding to the job of conference/relations assistant. The IRG for its part committed obvious errors of judgement and disregarded some "fundamental factors", namely three of the "core" tasks she carries out. According to the matrix, similar tasks correspond to grade G.6.

The complainant lastly contends that, contrary to the provisions of Circular No. 639, Series 6, her request for reclassification was not processed within a reasonable time.

She requests the Tribunal to quash the impugned decision and to order that her request for reclassification be referred to "the competent body" and examined by reference to the appropriate job family. She requests the payment of the difference in salary between grades G.5 and G.6 as from March 2003 for material injury. She also claims 10,000 Swiss francs in compensation for the moral injury suffered and 5,000 francs in costs "to be paid to the ILO Staff Union".

C. In its reply the Organization argues that even if the author of the letter of 7 February 2007 stated that it constituted a final decision, the internal means of redress can hardly be deemed to have been exhausted "with respect to the whole of the case", because the request for reclassification has been referred back to the Administration for re-examination and has given rise to the submission of a further appeal to the IRG.

On the merits the Organization, referring to the Tribunal's case law, observes that decisions in respect of post classification are at the Administration's discretion and can only be set aside on limited grounds, and it submits that the complainant has not proved the existence of any of them. The Organization argues that the decision of 1 October 2003 was properly substantiated and shows no flaw. In reply to the allegation that the IRG ignored certain fundamental factors, the ILO states that the Group enjoys discretionary authority. It adds that although the tasks in question may appear in similar terms in the generic job description of a grade G.5 senior secretary and in that of a grade G.6 conference/relations assistant, they are actually different.

The ILO considers that the complainant's post undoubtedly belongs to two job families. In this respect it emphasises that the determination of the relevant job family for the purpose of classifying a post forms an integral part of the classification decision, which is made at the discretion of the Director-General. It contends that to date the complainant has suffered no material injury, nor has she proved that she has suffered any moral injury.

D. In her rejoinder the complainant submits that her complaint is receivable since it is directed against a final administrative decision, as required by the Statute of the Tribunal.

On the merits she acknowledges that classification is at the discretion of the Director-General, but claims that he should have examined her request from the point of view of the duties she was carrying out and in the light of the matrixes. In her view, the impugned decision is tainted with an error of fact and she provides further documentary evidence to support the view that she does in fact hold the post of conference/relations assistant. She questions the Organization's good faith on the grounds that it "divided" her job between two job families in order to keep it at grade G.5. She adds that the IRG based its recommendation on a "factor extraneous to the matrix".

The complainant deplors the fact that the classification procedure has lasted for more than four years and that the IRG has declined to consider her most recent appeal. She holds that these "dilatatory measures" have clearly caused her moral and material injury in that they have damaged her career prospects. She says that she does not know

what progress has been made on her request for reclassification.

E. In its surrejoinder the ILO maintains its position. In its opinion, the Director-General exercised his discretion correctly. It explains that when the complainant filed her last appeal with the IRG, it emerged that none of the members of the Group had been trained in the use of the point factors classification standards, and that steps were then taken to ensure that they would receive the requisite training, which will be supplied “soon”.

CONSIDERATIONS

1. The complainant joined the ILO in 1991 as a General Service category official. In 2001 her post was classified at grade G.5 in the Conference Assistants / Secretaries job family with the following job title: “Conference/Relations Assistant / Senior Secretary”.

2. On 3 March 2003 the complainant’s line manager submitted a request for reclassification of her post. When the Human Resources Development Department confirmed the grading of her post at G.5, the complainant had recourse to the IRG, the advisory body responsible for undertaking an impartial examination of job grading appeals filed by officials. On 18 January 2006 the IRG recommended confirmation of the grading at G.5. The Director-General endorsed the recommendation.

3. On 24 February the complainant filed a grievance with the Joint Advisory Appeals Board. On 24 March the Human Resources Development Department proposed resubmitting her request for reclassification to the IRG for a fresh examination on condition that she withdrew her grievance. The complainant accepted this proposal.

On 25 May the Administration informed her of the IRG’s recommendation that the grading of her post at G.5 should be confirmed. On 26 June 2006 she filed a fresh grievance with the Board in which she challenged the Director-General’s “tacit decision” to endorse that recommendation.

In its report of 8 December 2006 the Board recommended that the Director-General should “reverse his implicit decision to endorse the [said] recommendation of the IRG [...] with a view to having that body re-examine the appellant’s case”. Its recommendation was based, in particular, on non-compliance with the procedure applicable to cases where the job concerned corresponds to more than one family.

On 7 February 2007 the Executive Director of the Management and Administration Sector informed the complainant of the Director-General’s decision. The latter, while noting that the Board had not detected any breach of the principles of impartiality and fairness, referred the case “to the [Human Resources Development Department], in accordance with paragraphs 10 and 11 of Circular No. 6/639, for a fresh examination of the duties and responsibilities attaching to [the complainant’s] post using point factors classification standards”. The decision stated that the complainant would “retain [her] right to appeal to the IRG in accordance with paragraph 16 of that Circular” and that “[t]his decision [was] a final decision within the meaning of Article 13.3, paragraph 4, of the Staff Regulations”. This is the decision impugned in the complaint filed with the Tribunal on 20 March 2007.

4. In the meantime, the Human Resources Development Department had undertaken a fresh examination of the complainant’s duties and responsibilities, using the point rating system. She was notified of the results of this examination, which confirmed the grading of her position at G.5, on 9 March 2007. The complainant filed a second grading appeal with the IRG on 20 March 2007.

5. The complainant’s claims are set out under B above.

6. The ILO queries the receivability of the complaint. It wonders how the impugned decision can constitute a final decision given that the case was referred back to the Administration for re-examination of the grading of the job concerned, with the clarification that a further internal appeal would be possible, and indeed the complainant has since availed herself of that possibility. The ILO finds it difficult to conclude that internal means of redress have been exhausted with respect to the case as a whole.

On the merits of the case, it submits that the only aspect of the decision that seems final is the fact that point factors classification standards must be applied in any fresh examination of the duties and responsibilities attached to the complainant’s post.

7. The Tribunal notes that the letter of 7 February 2007, which constitutes the impugned decision, states that it is a final decision within the meaning of Article 13.3.4 of the Staff Regulations. Moreover, according to Article 13.5 of the same Regulations, an official shall be entitled to file a complaint against an express or implied decision under Article 13.3.4 with the Tribunal.

It follows that the complainant was entitled in any case to challenge the decision of 7 February 2007 before the Tribunal, which was taken after an administrative procedure during which all stages foreseen in the existing rules were observed.

The ILO's other arguments on receivability actually relate, as it notes itself, to the merits of the case.

8. The complainant requests that the decision of 7 February 2007 be quashed and that her request for reclassification be referred to "the competent body".

The Tribunal notes that, as indicated above, the Joint Advisory Appeals Board had recommended to the Director-General in its report of 8 December 2006, after establishing that the procedure envisaged in cases where the job concerned corresponds to more than one family had not been followed, that he reverse his implicit decision to endorse the recommendation of the IRG with a view to having that body re-examine the appellant's case.

It is clear from the decision of 7 February 2007 that the Director-General endorsed the first part of the recommendation but felt it necessary, with respect to the second part, to refer the case back for re-examination to the Human Resources Development Department in lieu of the IRG, as recommended by the Joint Advisory Appeals Board.

9. The Tribunal does not consider that the Director-General, by pursuing that course of action, breached his obligation not to disregard the Board's recommendation without cause, since in doing so he complied with paragraphs 10 and 11 of Circular No. 639, Series 6.

10. As the Tribunal cannot, in the circumstances, give a ruling on the other heads of claim, the complaint must be dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 2 May 2008, Mr Seydou Ba, President of the Tribunal, Mr Claude Rouiller, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 9 July 2008.

Seydou Ba

Claude Rouiller

Patrick Frydman

