

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

107th Session

Judgment No. 2824

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms C. C.-T. against the International Labour Organization (ILO) on 7 April 2008, the ILO's reply of 9 June, the complainant's rejoinder of 10 July and the Organization's surrejoinder of 18 August 2008;

Considering Article II, paragraph 1, 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, joined the International Labour Office, the Organization's secretariat, in 1987. She is currently an established official and is employed as a library and information management assistant, at grade G.6, in the Social Dialogue Sector.

During the general job grading exercise conducted in 2001 under the Collective Agreement on Arrangements for the Establishment of a Baseline Classification and Grading of 14 March 2001 (hereinafter referred to as the "Collective Agreement"), her post was classified at grade G.6 in the job family of library and information management

assistants. The Executive Director of the Social Dialogue Sector informed her of this decision on 18 April 2001.

By a minute of 14 May 2001 the complainant requested a review of the initial grading of her post in accordance with Article 4.1 of the Collective Agreement. The complainant and her director mutually agreed to suspend the procedure between July 2001 and July 2002. It was resumed on 30 July 2002 at the complainant's request. On 20 September 2002 she sent the secretariat of the Independent Review Group (IRG) a list of arguments in support of the reclassification of her post at grade P.3. On 29 November 2002 the Head of the Human Resources Policy and Administration Branch informed the complainant that her post remained classified at grade G.6. In its report of 30 January 2004 the IRG confirmed this grading. Pointing out that the IRG had made a mistake in respect of the period examined for grading purposes, the complainant requested on 22 March 2004 that the mistake should be corrected. The IRG took note of the above-mentioned mistake, corrected it and again confirmed the classification at grade G.6 in a report dated 27 April 2005. On 27 June 2005 the complainant referred the matter to the Joint Advisory Appeals Board under Article 8 of the Collective Agreement and Article 13.2 of the ILO Staff Regulations. In its report of 24 January 2006 the Board found that the procedure was flawed because the IRG had made an error of fact and it recommended that the Director-General cancel the IRG's decision of 27 April 2005 and instruct the Group to undertake another thorough review. By a letter of 23 March 2006 the complainant was informed that the Director-General had decided to refer the case back to the IRG, which again confirmed the G.6 grading on 22 August 2006.

On 12 October 2006 the complainant filed a second grievance with the Joint Advisory Appeals Board. In a report dated 14 November 2007 a majority of the Board's members recommended that the Director-General "cancel his implicit decision [...] based on the IRG's recommendation of 22 August 2006 with a view to having the applicant's case reviewed again in detail by a different panel of the IRG". By a letter of 14 January 2008, which constitutes the impugned

decision, the complainant was informed that the Director-General had rejected the Board's recommendation.

B. The complainant enters two pleas. First, she argues that her request was not examined objectively. She states that she found, on reading the IRG's second report, that it failed to mention the arguments and pleas she had presented during the procedure. She contends that the IRG should examine requests for reclassification filed with it as rigorously and objectively as possible, while at the same time respecting the Joint Advisory Appeals Board's recommendation. In this case, however, "the IRG did not weigh up all the pros and cons", as the Board recognised.

Secondly, the complainant criticises the second IRG report on the grounds that it does not indicate the Group's reasoning. In her opinion the Tribunal will find that the IRG merely matched her duties with the matrix factors corresponding to grade G.6 and took the view that other duties (corresponding to grade P.3) were not permanent and could not therefore be examined. She submits that the "one-off" nature of one of her professional category tasks (setting up a documentation centre over an eight-month period) did not justify the refusal to take it into account. Explaining that the grading exercise in fact amounted to a "snapshot" of an official's work at a given moment, she stresses that the above-mentioned task was just one example demonstrating that her work during the period covered by the exercise comprised professional category functions. Yet the IRG failed to explain why her duties did not correspond to grade P.3. None of its conclusions was supported by reference to the matrix factors, as required, according to the complainant, by paragraph 22 of the IRG's Terms of Reference.

The complainant asks the Tribunal to quash the impugned decision, to refer her initial request back to the IRG "for a rigorous, objective, adversarial and transparent review" and to award her compensation for the injury suffered as well as costs in the amount of 2,000 Swiss francs.

C. In its reply the ILO submits that the complainant's two pleas are essentially one and the same, namely the allegation that no reasoning

was provided in support of the IRG's report of 22 August 2006. It adds that the IRG undeniably presented its reasoning and that one finds, on closer inspection, that it is the substance of this reasoning which the complainant is challenging, i.e. the technical evaluation of her post's level of responsibility, an issue over which the Tribunal has only a limited power of review.

Responding in detail to the complainant's submissions, the Organization states that the IRG did mention her pleas and arguments in its report but did not draw the conclusions she would have wished. The IRG concluded that her arguments were premised on a fundamentally flawed understanding of job-grading principles and procedures. Indeed, the qualifications and experience to which she refers are not pertinent criteria for grading her post because her tasks and responsibilities did not call for all the qualifications and experience mentioned.

The Organization contends that the IRG quite rightly disregarded some tasks because they were temporary or one-off. According to an established grading principle, which is in fact a matter of common sense, temporary or one-off tasks cannot be taken into consideration for the purpose of determining a post's level of responsibility, as such tasks, being performed on an exceptional basis, are not typical of the post in question. It is normal, on the other hand, that tasks carried out by the complainant on an exceptional basis be mentioned in her performance appraisal report for the period in question.

Lastly, the Organization asserts that the IRG did take account of the matrix factors. It states that the IRG made at least four references in its report to the generic job description of a library and information management assistant at the G.6 level to which it matched the complainant's tasks. As the tasks of the complainant's job so clearly matched those of the generic job description, the requirements of paragraph 22 of the IRG's Terms of Reference were satisfied without the Group having to explain specifically why the complainant's tasks did not match those of a P.3 post.

D. In her rejoinder the complainant again asserts that the IRG did not comply with its Terms of Reference and therefore acted unlawfully. She takes issue with the Organization's attempt to describe duties related to information management as "exceptional". They were one-off insofar as they were not repeated, but they could not be termed "exceptional" since, although they were certainly all quite different, they were nevertheless normal and routine. In her opinion it was the sum of these one-off duties performed over a long period that justified her request for recognition that they should be graded at the professional level.

E. In its surrejoinder the Organization maintains its position.

CONSIDERATIONS

1. The complainant is employed at grade G.6 as a library and information management assistant in the Social Dialogue Sector of the International Labour Office.

2. On 14 March 2001 the Office and the ILO Staff Union concluded a Collective Agreement on Arrangements for the Establishment of a Baseline Classification and Grading. This agreement provided for a three-stage grading process.

After initial classification, all staff members were informed in writing of the generic job description applicable to their job and of the grade allocated to it. If they disagreed, they could request a review of this grading, indicating the generic job description and/or the grade which, in their view, best corresponded to their job. If they did not obtain satisfaction, they could request a re-examination by the IRG, which consisted of 14 staff members operating in teams of two and which had to give a reasoned decision on each request. An appeal against the IRG's decision could be filed with the Joint Panel (now the Joint Advisory Appeals Board), which was responsible for making a recommendation to the Director-General, who had the authority to take a final decision on the grading of the job concerned.

3. On 18 April 2001 the Executive Director of the Social Dialogue Sector informed the complainant that her position had been graded at the G.6 level in the job family of library and information management assistants.

On 14 May 2001 the complainant initiated the procedure for reviewing this initial grading, asking that her post be graded at the P.3 level. This procedure was suspended for a year by mutual agreement of the parties. It was resumed on 30 July 2002 at the complainant's request and was complicated by the existence of a factual error which was corrected.

4. In its report of 22 August 2006, the IRG confirmed that the post of library and information management assistant held by the complainant should be assigned grade G.6.

On 12 October 2006 the complainant referred the matter to the Joint Advisory Appeals Board, which recommended, by a majority decision, that the Director-General should instruct a new panel of the IRG to re-examine the matter in depth. Following a lengthy disquisition on a dispute regarding the issue of the anonymity of IRG members, which has now been settled, the Board found that the Group had examined the duties corresponding to a post in the General Service category, but that it had given insufficient reasons for its refusal to consider other duties which had been assigned to the complainant during the decisive period and on which she relied in requesting that her post be graded at the P.3 level.

In a dissenting opinion the Chairman of the Board recommended that the grievance be dismissed on the grounds that the IRG had objectively described the complainant's job and that her qualifications and experience should not be taken into account.

5. The complainant was informed in a letter of 14 January 2008 from the Executive Director of the Management and Administration Sector that the Director-General had decided to follow the dissenting opinion of the Chairman of the Joint Advisory Appeals Board and to reject her grievance. Emphasising the IRG's discretionary power, the

Director-General took the view that it had rightly taken into account the permanent and ongoing tasks associated with the complainant's post during the decisive period and that it had provided satisfactory reasons for its conclusion that these tasks corresponded to grade G.6 and not to grade P.3. That is the decision impugned before the Tribunal.

6. While the complainant does not dispute the Director-General's discretionary power to grade jobs, she submits that he could not simply endorse the IRG's report, because the Group had not, in her view, examined her request objectively and had not furnished sufficient reasons for its decision to maintain her job at grade G.6.

7. It has been established that the Director-General, in following the dissenting opinion of the Chairman of the Joint Advisory Appeals Board, merely relied on the IRG's report of 22 August 2006.

In this report the IRG recalled the principle that the grading of a post depends on the tasks and responsibilities assigned to its incumbent and not on that person's qualifications, educational background and experience. The IRG then listed the tasks and responsibilities pertaining to the complainant's post during the decisive period, i.e. 1 January 2000 to 30 September 2001. It concluded that the complainant had not provided evidence of permanent or ongoing changes in her tasks and responsibilities. It stated that the activities cited by the complainant as proof of a transformation of the nature of her duties did not warrant the reclassification of her post at grade P.3.

8. The complainant considers that this argument is not consonant with the requirements with respect to reasoning laid down in paragraph 22 of the 8 August 2003 version of the IRG's Terms of Reference, which provides as follows:

“The relevant [Review] Team's initial and final reports set out its findings, conclusions and decision in relation to an appeal. The reports will contain:

- (a) The findings and conclusions of the Team, including the reasoning supporting their conclusions as well as specific reasons for choosing one grade rather than another;
[...]"

According to the complainant, the rigorous, impartial and adversarial examination required by this provision implies that the IRG ought to have mentioned the pleas and arguments she had presented during the procedure; but the IRG merely matched her duties with tasks corresponding to grade G.6 and considered that the P.3 duties which, in her view, had been assigned to her could not be taken into account because they were not permanent. The IRG wrongly overlooked the fact that she had spent eight months setting up a documentation centre – a task which, in her opinion, matches the duties of a P.3 post – on the ground that it was a “one-off” assignment. She points out that it is impossible for an official to set up such a centre repeatedly within the same department.

9. This line of argument is devoid of merit.

The IRG found that the fact that the complainant engaged in this activity as a one-off exercise did not justify either rewriting her job description or reclassifying the post as that of a grade P.3 library and information management specialist.

As the Tribunal must acknowledge an international organisation’s discretionary power in the area of job classification, this position is not open to criticism.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 30 April 2009, 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 8 July 2009.

Seydou Ba
Claude Rouiller
Patrick Frydman
Catherine Comtet