Organisation internationale du Travail
*Tribunal administratif*

International Labour Organization
*Administrative Tribunal*

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

**116th Session** **Judgment No. 3298**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaints filed by Ms V. A. and Ms C. A. against the International Labour Organization (ILO) on 1 July 2011 and corrected on 6 September, the ILO's replies of 16 December 2011, the rejoinders of Ms A. and Ms A. of 9 March 2012 and the ILO's surrejoinders of 11 June 2012;

Considering the complaint filed by Mr S. P. B. against the ILO on 12 July 2011 and corrected on 9 November, the ILO's reply of 20 December 2011, Mr B.'s rejoinder of 27 April 2012 and the ILO's surrejoinder of 22 June 2012;

Considering the application to intervene filed by Mr K. F. on 14 October 2013, the ILO's comments of 21 October on this application and the intervener's comments received on 30 October 2013;

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

Having examined the written submissions and decided not to hold oral proceedings, for which none of the parties has applied;

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

A. Before 2005 the complainants, two Ivorian nationals and one Ghanaian national, who were assigned to the ILO Regional Office for Africa based in Abidjan (Côte d'Ivoire) as members of the General Service staff, were classed as having been locally recruited.

The ILO Regional Office for Africa and the ILO Subregional Office for West Africa were headquartered in Abidjan until 2005. Owing to the difficult political situation in Côte d'Ivoire around that time, the Director-General decided temporarily to transfer the Regional Office to Addis Ababa (Ethiopia) and the Subregional Office to Dakar (Senegal). While all staff members in the Professional category were reassigned to other duty stations in Africa or to the Organization's Headquarters in Geneva, other solutions had to be found for General Service staff members because, in accordance with Article 4.3 of the Staff Regulations, as far as possible they were recruited locally and they could not normally be transferred to other duty stations. For this reason, out of the locally recruited staff complement in Abidjan, 16 officials stayed there, the appointments of 17 were terminated and the remainder, including the complainants, received a standard letter, dated 30 May 2005, containing an offer to reassign them in Africa with the status of a locally recruited member of staff, but specifying that travel, removal and installation expenses would be borne by the ILO. The letter also made it clear that if the officials in question refused the offer, their contract would be terminated. Three of the officials who accepted the offer were reassigned to the Regional Office in Addis Ababa, while the others, including the complainants, were relocated within West Africa, in the case of Ms A. and Ms A. to the Subregional Office in Dakar and in the case of Mr B. to the ILO Office for Nigeria, Ghana, Liberia and Sierra Leone in Abuja (Nigeria).

The three officials reassigned to Addis Ababa took up their duties on 15 September 2005. They immediately informed the Director-General that they were facing serious financial difficulties and were retroactively granted a "personal transitional allowance" for the duration of their reassignment, to compensate for the difference

between the salary they had received in Abidjan and their current salary. In September 2006, as they considered that their situation had worsened, they applied for a number of allowances to cover the cost of housing, security, education and travel expenses for home leave. The Regional Director was informed by the Headquarters' services in Geneva, in a minute dated 7 June 2007, that her request that these three officials should be given the status of non-local staff had been granted with retroactive effect from 1 October 2006.

By a letter of 12 March 2008 Mr B. asked the Regional Director to have his status aligned on that of the three officials reassigned to Addis Ababa. On 20 May 2008 the Regional Director asked the Human Resources Development Department to pay the officials reassigned within West Africa 30 days of daily subsistence allowance on the grounds that they were encountering considerable financial hardship. On 4 November 2008 Ms A., Ms A. and the intervener, who had also been reassigned to Dakar, sent the Chairperson of the Staff Union Committee a list of the allowances and benefits which they wished to receive. By a letter of 23 January 2009, addressed to the new Regional Director, the titular member for Africa on that committee asked on behalf of the officials reassigned within West Africa for the realignment of their salary on that which they would have received in Abidjan and the granting of "housing, education […] and security allowances" and "the diplomatic privileges of international civil servants".

As the ILO decided not to accede to these requests, each of the complainants filed a grievance which was dismissed on 17 June 2010. They then referred the matter to the Joint Advisory Appeals Board. On 8 February 2011 the Board issued three similar reports in which it concluded that "the Office [had] failed to substantiate sufficiently why the different treatment granted to officials reassigned to Addis Ababa [was] not arbitrary". It therefore recommended that the Director-General should grant the complainants equivalent conditions and advantages to those that had been given to the officials reassigned to Addis Ababa with retroactive effect. The complainants were informed

by letters of 8 April 2011, which constitute the impugned decisions, that the Director-General disagreed with the Board's opinion and had decided to reject their grievances.

B. Ms A. and Ms A., who had been recruited in Abidjan as local officials, submit that there is no valid reason why this status should be maintained in another duty station, especially when it is 1,800 kilometres from their initial duty station. They consider that they have not received equal treatment with their colleagues who were reassigned to Addis Ababa and who were given non-local status. They ask the Tribunal to set aside the impugned decisions, to order the ILO to restore their rights, in other words to regard them as non-locally recruited officials, and to award them compensation for the injury suffered as well as costs.

Mr B. endeavours to show that living conditions in Abuja are particularly tough and that he should therefore also receive the same advantages as his colleagues who were reassigned to Addis Ababa. He asks the Tribunal to conduct an independent investigation of the cost of living in Abuja. In the section of his complaint form concerning relief claimed he repeats some of his pleas.

C. In its reply the ILO submits that Mr B.'s complaint lacks clarity. Given that his sole "plea" appears to be that related to the holding of an investigation of the cost of living in Abuja, it asks the Tribunal to dismiss the complaint on the grounds that it has no competence to entertain it and, subsidiarily, because the internal means of redress have not been exhausted. Relying on Judgment 1532, it also requests subsidiarily that the Tribunal refrain from ruling on the claims set out in Mr B.'s complaint form, because they are so vague that it is impossible to determine what he wants.

Referring to the Tribunal's case law, the ILO argues that, since the complainants' situation was manifestly different in fact and in law to that of the three officials who had been reassigned to Addis Ababa, the principle of equal treatment has not been breached. It explains that whereas the latter had been identified as "staff essential" for the

smooth functioning of the Regional Office, the reassignment of their colleagues within West Africa was prompted solely by the wish to minimise the number of dismissals due to the transfer of the Regional and Subregional Offices. It also highlights the difference between the complainants' financial situation and that of the three officials reassigned to Addis Ababa. It points out that the latter lost more than 50 per cent of their salary, whereas Ms A. and Ms A. lost only about 20 per cent and Mr B. received a pay rise of 40 per cent when he was reassigned and another rise when he was promoted in 2007. It adds that the three officials reassigned to Addis Ababa have had access only to a housing market reserved for international civil servants – where rents are higher – because they are not Ethiopian. They have also had to enrol their children in private, French-speaking schools and bear "exorbitant" travel expenses when returning to their homes owing to the distance between Addis Ababa and Abidjan.

In its replies to the complaints of Ms A. and Ms A., the ILO also draws attention to the fact that General Service staff are normally recruited locally and it explains that, when this is not the case, under Article 3.5 of the Staff Regulations, non-local status is granted only if exceptional difficulties are encountered in recruiting and retaining staff. In the instant case, the conditions laid down in the aforementioned article were not met since, as stated above, the reassignment offer of 30 May 2005 was made for social reasons, namely to avoid the complainants' dismissal. It also emphasises that they accepted the offer without reservations.

The ILO requests the joinder of the three complaints presently before the Tribunal on the grounds that they raise identical issues of fact and law and seek the same redress.

D. In their rejoinders the three complainants enlarge on their pleas. In their opinion, the differences in living conditions between Addis Ababa, Dakar and Abuja cannot justify denying them non-local status. The three complainants maintain that, since the Governing Body did not authorise the abolition of posts covered by the regular budget,

there is no merit in the ILO's argument that the purpose of their reassignment was to avoid their dismissal.

E. In its surrejoinders the ILO reiterates its position. It cites the provisions of Article 8 of its Constitution in order to submit that the Director-General has discretionary authority with regard to restructuring decisions and may therefore abolish posts.

## CONSIDERATIONS

1. The complainants, Ms A. and Ms A., both Ivorian nationals, and Mr B., a Ghanaian national, used to work in the ILO Regional Office for Africa in Abidjan (Côte d'Ivoire) as locally recruited General Service officials.

2. In 2005, owing to political events in Côte d'Ivoire, the Director-General of the International Labour Office decided temporarily to transfer the headquarters of the ILO Regional Office for Africa to Addis Ababa (Ethiopia) and the ILO Subregional Office for West Africa to Dakar (Senegal). A core group of 16 officials was kept in Abidjan and the appointment of 17 officials was terminated. Some possibilities for temporarily reassigning a number of other General Service officials were found in other duty stations in Africa.

On 30 May 2005 reassignment offers were sent to 12 officials concerned. The letters containing the offer explained that these reassigned staff members would have the status of locally recruited officials in their respective new duty stations. The Organization also undertook to pay a lump sum designed to cover expenses related to reassignment and repatriation expenses on returning to Abidjan. These letters also made it clear that this offer of reassignment was the sole alternative to termination.

3. The complainants accepted this offer and were reassigned on 1 January 2006, Ms A. and Ms A. to the Subregional Office in Dakar

(Senegal) and Mr B. to the ILO Office for Nigeria, Ghana, Liberia and Sierra Leone in Abuja (Nigeria).

4. Three of the officials who were temporarily reassigned were transferred to the Regional Office for Africa in Addis Ababa on the same conditions as those given to the complainants, i.e. with the status of locally recruited officials. When the terms of employment of these three officials were reviewed in June 2007, it was decided that they should be granted the status of non-locally recruited officials with retroactive effect from 1 October 2006.

5. The position of the other reassigned officials – including the complainants – all of whom had the status of locally recruited officials in their new duty stations, was examined, at their request, in the context of the Office's field structure review in 2009.

At the end of this review the ILO decided that there was no reason to revise the terms of the agreement reached when the officials in question had been reassigned.

6. The complainants filed grievances requesting the revision of the terms and conditions of their reassignment, on the grounds that three of their colleagues had obtained the status of non-locally recruited officials after their reassignment.

7. As their grievances were dismissed, the complainants referred the matter to the Joint Advisory Appeals Board which, in similar reports dated 8 February 2011, recommended that the Director-General should "restore [their] rights by granting [them] [with retroactive effect] equivalent conditions and advantages to those that were given to [their] former colleagues of the Abidjan office reassigned to Addis Ababa".

8. The Director-General decided not to follow the Board's recommendation and rejected the complainants' grievances by decisions adopted on 8 April 2011.

9. On 1 July 2011 Ms A. and Ms A. filed complaints with the Tribunal, in which they requested the setting aside of these decisions, compensation for the injury which they allege they have suffered and restoration of their rights, in other words the status of non-locally recruited officials. They also claimed costs.

10. In a complaint filed on 12 July 2011 Mr B., like the two first complainants, asked for the same rights as those given to their colleagues who had been reassigned to Addis Ababa.

11. The ILO objects to the receivability of Mr B.'s complaint. It is therefore necessary to examine whether it is receivable and to consider its form.

The complaint form is accompanied by three documents: (1) submissions entitled "Brief: Narrative account"; (2) the impugned decision; and (3) the report of the Joint Advisory Appeals Board. Virtually the whole of the first document, which is a little over two pages long, is devoted to a description of the financial and other difficulties which Mr B. says that he has experienced while living in Nigeria. Immediately before the conclusion he says: "I am writing this memo believing that I would be accorded equal benefits as my colleagues relocated to Addis Ababa". The document ends with a paragraph headed "Conclusion" and worded as follows:

> "While it is true that monetary wise my salary seemed higher in Abuja, the gains are negligible and negative given the high costs of living in Abuja. I refer the Tribunal to make an independent investigation on the cost of living in Abuja which is higher than anywhere else in the world."

12. The first submission the ILO makes in its reply is that the request that the Tribunal undertake an independent investigation is not something that the Tribunal is competent to rule upon and in any event the complainant has not exhausted internal means of redress. In addition, the ILO considers that the claims are so vague that the Tribunal should not rule on them. The ILO refers in this connection to Judgment 1532 in which the Tribunal found in relation to one set of claims that the complainant had "failed to draft them plainly or

coherently enough for the Tribunal to determine what he wants. So it will deliver no formal ruling on them."

13. Complainants seeking redress in the Tribunal come from an extremely diverse range of backgrounds and have widely varying language and analytical skills. The Tribunal must accommodate these differences in its practices and procedures.

14. In the present case, Mr B.'s grievance has repeatedly been treated as a request that he be given non-local status and afforded equality of treatment with the three officials reassigned to Addis Ababa who have obtained that status. The complainant's request has been advanced this way and responded to on the same basis. In particular, the decision of 8 April 2011 that he challenges before the Tribunal was an express decision of the Director-General not to follow the recommendation of the Joint Advisory Appeals Board to grant the complainant non-local status. This decision expressly rejected the proposition that the way the complainant had been dealt with constituted unequal treatment.

15. While Mr B. has not articulated in his brief a remedy consonant with the claims he has been making before the Administration, in particular before the Joint Advisory Appeals Board, there is no reason to believe that his complaint filed on 12 July 2011 was not intended to achieve the same objective. Accordingly the Tribunal is prepared to treat the complaint as one in which Mr B. is seeking an order that he be granted non-local status in order to obtain equal treatment with his three former colleagues in Addis Ababa, for whom steps were taken to alleviate the financial hardship they experienced.

16. In adopting this approach, the Tribunal is not intending to suggest that any complaint cast in the vaguest of terms will be accepted as a complaint regularly filed and engaging the jurisdiction of the Tribunal. Apart from anything else, procedural fairness requires that a defendant organisation understands the case advanced by the

complainant in order to be able to meet it. It is possible to conceive of situations where the complaint is so vaguely expressed that a defendant organisation is simply unable to respond. This is not so in the present case. Apart from raising the point about the form of the complaint as a threshold issue, the ILO has presented its defence on what appears to be a clear understanding of the issues Mr B. raised and, implicitly, the relief he sought. For these reasons, the Tribunal rejects this aspect of the ILO's pleas. The complaint is receivable.

17. As the three complaints implicitly or explicitly raise the same issues of fact and of law and seek the same redress, it is convenient that they be joined to form the subject of a single judgment.

18. Another official who believes himself to be in the same situation as the complainants has submitted an application to intervene.

The Organization objects to this intervention, but in view of all the circumstances the Tribunal considers that this application is justified.

19. In substance, the complainants submit that they have been victims of a breach of the principle of equal treatment in that three of their former colleagues in Abidjan, who were initially reassigned to the Regional Office in Addis Ababa on the same conditions as them, were granted the status of non-locally recruited officials with retroactive effect from 1 October 2006, following a review of their terms of employment in 2007.

20. In reply to this plea, the ILO refers to the Tribunal's case law as recalled in Judgments 3029, under 14, and 2313, under 5, in order to contend that, as the complainants' situation was manifestly different in fact and in law from that of the three officials reassigned to Addis Ababa, they were not entitled to the same treatment as them.

The difference in situation, it says, is due to the fact that the three above-mentioned officials "had been identified as essential staff at the very first meetings held between the administration and the [Joint Negotiating Committee]"; it was therefore in the Organization's interest to continue employing them, whereas the complainants' reassignment had been motivated by the desire to keep to a minimum the number of dismissals engendered by the transfer of the offices from Abidjan.

It adds that, in purely material terms, the situation of the officials who had been reassigned to Addis Ababa was not comparable to that of the complainants who had been reassigned to Dakar.

21. According to the case law cited by the Organization, "[t]he principle of equality requires that persons in like situations be treated alike and that persons in relevantly different situations be treated differently. In most cases involving allegations of unequal treatment, the critical question is whether there is a relevant difference warranting the different treatment involved. Even where there is a relevant difference, different treatment may breach the principle of equality if the different treatment is not appropriate and adapted to the difference." (See Judgment 2313, under 5.)

22. As the Joint Advisory Appeals Board rightly noted, at the material time, the Staff Regulations did not permit the drawing of a distinction between an assignment for operational reasons and an assignment on social grounds. At all events, it has not been established that such a distinction was actually drawn at the time when the officials were reassigned to Addis Ababa, Abuja and Dakar. Indeed, the initial terms of employment were the same for all of them. It must be emphasised that, under the terms of Article 1.9(a) of the Staff Regulations, "[t]he Director General shall assign an official to his duties and his duty station subject to the terms of his appointment, account being taken of his qualifications". This text makes no reference whatsoever to assignment on social grounds. Moreover, all the reassigned officials had received a standard letter

dated 30 May 2005 which specified the conditions on which they would be reassigned, without any distinction as to the importance of their respective duties.

23. In order to justify its position the ILO also advances an argument resting chiefly on considerations regarding the geographical situation of the duty stations to which the officials were reassigned and the material difficulties associated with them.

The Tribunal considers that, in the instant case, this argument fails as a means of qualifying "relevantly different situations" within the meaning of the case law, given that the applicable internal rules provide for specific allowances where an official faces exceptional difficulties.

24. It follows from the foregoing that, by denying the complainants the status of non-locally recruited officials, whereas that status was granted to three officials reassigned to Addis Ababa in the same circumstances, the ILO breached the principle of equal treatment. The strategy followed by the ILO to deal with the extremely atypical situation arising from the context in Côte d'Ivoire and events thereafter created inequality among staff members who were basically in a similar situation.

25. The impugned decisions must therefore be set aside on these grounds without there being any need to rule on any other plea.

The complainants must be granted conditions and advantages equivalent to those granted to their former colleagues in the Abidjan office who were reassigned to Addis Ababa, with retroactive effect from 1 October 2006.

26. The complainants are entitled to relief for the moral injury suffered through the award to each of them of compensation in the amount of 2,000 Swiss francs.

27. They are entitled to costs, which the Tribunal sets at 1,500 francs for each complainant.

DECISION

For the above reasons,

1. The impugned decisions are set aside.
2. The rights of the complainants and the intervener shall be restored as indicated under 26 above.
3. The Organization shall pay the complainants and the intervener compensation in the amount of 2,000 Swiss francs for the moral injury suffered.
4. It shall also pay each complainant 1,500 Swiss francs in costs.

In witness of this judgment, adopted on 7 November 2013, Mr Claude Rouiller, Vice-President of the Tribunal, Mr Seydou Ba, Judge, and Mr Michael F. Moore, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 5 February 2014.

Claude Rouiller
Seydou Ba
Michael F. Moore
Catherine Comtet