

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

B.

v.

IFAD

123rd Session

Judgment No. 3739

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr F. B. against the International Fund for Agricultural Development (IFAD) on 15 May 2014, IFAD's reply of 24 July, the complainant's rejoinder of 3 November, corrected on 17 November 2014, and IFAD's surrejoinder of 9 February 2015;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

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

The complainant challenges changes to the IFAD General Service (GS) Staff salary scale as a result of the implementation of recommendations contained in an International Civil Service Commission (ICSC) report in 2012 on local employment conditions in Rome.

The complainant began employment with IFAD in 1996 in Rome and at the time of the complaint held a G6 position in a continuing appointment. The ICSC is an independent expert body established by the United Nations General Assembly with a mandate to regulate and coordinate the conditions of service of staff in the United Nations common system, while promoting and maintaining high standards in the international civil service. While IFAD is a common system member it has not accepted the statute of the ICSC and is an observer member.

In 2012 the ICSC conducted a salary survey in relation to Rome-based agencies which followed a 2011 revised methodology for such surveys and published a report entitled “Survey of the best prevailing conditions of employment in Rome (including service differential)”. The President of IFAD implemented the relevant recommendations by way of a President’s Bulletin dated 31 January 2013 and the relevant provisions established “a new (secondary) salary-scale [with] effect from 1 February 2015 for General Service Staff appointed on or after 1 February 2013”. It also provided for adjustment of that new scale through “applicable interim adjustment procedures” at the same time as stating that there would be no adjustment to the existing “primary” scale, set in 2010, “until such time as the secondary scale reaches the level of the primary scale”. The new scale, applicable only to staff appointed on or after 1 February 2013, contains salaries set at a lower level than those on the “primary” scale.

The complainant challenges the implementation by the President of IFAD of the recommendations contained in the ICSC report and alleges that the decision to apply these provisions to his salary is unlawful due to flaws in the methodology adopted for the salary survey. He claims it has the impact of a pay freeze with regard to his salary. On 26 April 2013 he submitted a request for facilitation to the President who waived this requirement allowing the complainant to file an appeal with the Joint Appeals Board, which issued a Report recommending dismissal of his appeal. The President’s final decision of 14 February 2014 confirming the parallel salary scales and the freeze on interim adjustments to the primary scale is the impugned decision.

The complainant requests the Tribunal to quash the decision of the IFAD President confirming the introduction of a double salary scale and the imposition of a freeze on interim adjustments to the primary salary scale as reflected in the February 2013 payroll and subsequent payrolls determining the complainant’s salaries. He also asks it to order IFAD to re-determine the same salaries on the basis of the primary salary scale and interim adjustments applicable to IFAD GS staff prior to the adoption of the President’s bulletin PB/2013/02 and to pay any sums due to the complainant as a consequence of the re-determination along with

reimbursement of his legal fees for the proceedings before the Tribunal and the internal processes.

IFAD requests the Tribunal to dismiss the complaint and deny all the relief sought.

CONSIDERATIONS

1. This complaint arises from changes IFAD made to the GS staff salary scale as a result of its implementation of the recommendations contained in the 2012 ICSC Report on local employment conditions in Rome. The decision indicating the changes was communicated to the staff members in the 31 January 2013 President's Bulletin. In April 2013, the complainant lodged an internal appeal against the application of the President's implementation decision to him as reflected in the "payroll" for February 2013. The complainant claimed that it was unlawful because it was based on the ICSC's recommendations which were "tainted with illegality". He maintained that he was adversely affected by the challenged decision. On 14 February 2014, the President accepted the recommendation of the JAB and dismissed the appeal. This is the impugned decision.

2. The complainant submits that the 31 January 2013 decision is "unlawful because it is based on recommendations deriv[ed] from a flawed salary survey" and that its "application to IFAD's payroll and to the complainant's salaries is, therefore, also unlawful".

3. At this juncture, some additional background to the 31 January 2013 President's Bulletin is necessary. In its August 2012 Report, the ICSC took several decisions, two of which are relevant for the purposes of the present discussion. They are:

(h) To recommend, as of the date of promulgation by the organizations, the revised salary scale for the General Service category of the Rome-based organizations, which is set out in annex VII.A to the present report;

(i) To recommend, as of the date of promulgation by the organizations, the revised levels of dependency allowances, as set out in annex VII.B to the present report."

4. Under the December 1977 agreement between the UN and IFAD establishing the latter, the IFAD President is the head of the staff and responsible for conducting IFAD's business. Pursuant to IFAD's Staff Rule 3.1(a), a President's Bulletin establishes the "[t]he grades and salary scales corresponding to each grade, as well as any periodic adjustments to such scales". The contested 31 January 2013 President's Bulletin states that it is issued pursuant to this Staff Rule and informs staff members as follows:

"1. [...] IFAD will follow the recommendations of the [ICSC] to apply a secondary salary scale for [GS] staff in Rome, based on the 2012 local salary survey and [a]s of 1 February 2013, the salary scale for [GS] staff will be revised as below.

2. The current (primary) salary scale, effective 1 November 2010, will remain in effect for all [GS] staff appointed prior to 1 February 2013.

3. A new (secondary) salary scale will be implemented with effect from 1 February 2013 for [GS] staff appointed on or after 1 February 2013.

4. The secondary salary scale will be adjusted through applicable interim adjustment procedures. No adjustment will be made to the primary salary scale until such time as the secondary scale reaches the level of the primary scale."

5. Turning to the question of receivability, it is not disputed that the complainant exhausted the internal means of redress and respected the relevant time limits. However, IFAD submits that the Tribunal lacks the requisite competence to deal with the complaint. IFAD argues that its decisions can only be challenged if they cause injury to the complainant or if the complainant has an otherwise legitimate interest in ensuring her or his argument is taken into account. IFAD maintains that the complainant has been paid at all times the salary to which he was entitled under the terms of his appointment and has suffered no loss due to the decision contained in the President's Bulletin.

6. The complainant takes the position that the President's decision is unlawful as it is based on recommendations stemming from a flawed salary survey and points out that the evaluation of a salary survey is within the Tribunal's competence. The complainant adds that he has suffered losses because he is prevented from receiving interim adjustments on the primary salary scale and as a result of the salary freeze.

7. Neither of the asserted foundations for the parties' respective positions is entirely accurate. At the outset, it must be observed that, according to the documents that have been presented to the Tribunal, the recommendations in the relevant ICSC decisions were limited to and only established two things: a revised salary scale for the GS category in Rome and revised levels for dependency allowances, the latter not being in issue in this proceeding. The revised salary scale recommendation was silent with respect to all of the other matters dealt with in the 31 January 2013 President's Bulletin. In particular, it did not deal with setting an implementation date; the application of the revised salary scale to only certain staff members; or the freezing of interim adjustments for staff appointed prior to 1 February 2013. As the record shows, none of these measures were explicitly mandated by the revised ICSC salary scale recommendation. Out of several possible options for the implementation of the recommendation, these are the measures IFAD decided to adopt. Thus, it cannot be concluded that the interim adjustment freeze was derived from the ICSC's allegedly illegal decision and that it was not a measure that IFAD decided to adopt from among options for implementation of the ICSC recommendation.

8. It is clear from the pleadings that the complainant challenged the 31 January 2013 President's Bulletin. It is also evident that the complainant viewed the President's Bulletin as a single decision. The Tribunal notes that the revised salary scale was not applied to the complainant and did not adversely and directly affect him. However, as of 1 February 2013 up to the date at which the secondary salary scale reached the level of the primary salary scale applicable to the complainant, the complainant would not be paid any interim salary adjustments, that is, his salary was frozen. Although the February payroll therefore did not reflect any change in his salary, nor would any change be reflected in subsequent payrolls while the freeze was in effect, at that point in time it was evident that the salary freeze was liable to cause him financial injury. As the Tribunal explained in Judgment 3168, under 9, for there to be a cause of action a complainant must demonstrate that the contested administrative action caused injury to the complainant's health, finances

or otherwise or that it is liable to cause injury. Accordingly, the complaint is receivable.

9. This does not end the matter. The difficulty lies in the position taken by the complainant. In his internal appeal and in his submissions before the Tribunal, he challenged the lawfulness of the 31 January 2013 decision solely on the ground that it was based on the ICSC's August 2012 allegedly unlawful decision which in turn was based on an illegal survey and underlying illegal methodology which were discussed at length. These submissions and arguments are irrelevant in the circumstances given that the ICSC's revised salary scale recommendation had no bearing on the complainant's position as the new salary scale was not applied to him.

10. The further difficulty is that the complainant did not advance any submissions or arguments regarding the legality of the salary freeze, which appears to be an internal decision of IFAD whose scope was beyond the implementation of ICSC recommendations. Instead, he only referenced the salary freeze for the purpose of establishing harm. As a result, there is no information or argumentation before the Tribunal, either in the complainant's submissions or in the documents included in the file, regarding the decision to impose the salary freeze that affected the complainant. Moreover, there is no argument in the submissions calling into question the lawfulness of that measure. Accordingly, the Tribunal is left with no option but to dismiss the complaint.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 3 November 2016, Mr Giuseppe Barbagallo, Vice-President of the Tribunal, Ms Dolores M. Hansen, Judge, and Mr Michael F. Moore, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 8 February 2017.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

MICHAEL F. MOORE

DRAŽEN PETROVIĆ