Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

A.

v.

ILO

123rd Session **Judgment No. 3771**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms K. A. against the International Labour Organization (ILO) on 8 August 2014 and corrected on 19 September 2014, the ILO's reply of 15 January 2015, the complainant's rejoinder of 12 March and the ILO's surrejoinder of 7 April 2015;

Considering Article II, paragraph 1, 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 contends that the ILO misled her concerning the personal promotion system.

On 22 October 2009 the International Labour Office (the ILO's secretariat, hereinafter "the Office") published Office Procedure IGDS No. 125 (Version 1) governing the personal promotions system. The system allows a change in grade within a category which can follow one of two possible tracks. Under paragraph 7 of IGDS No. 125, officials who have completed 13 years of service for the Office in the same grade are eligible for a personal promotion following the first track. Furthermore, when calculating years of service in the same grade, an accelerated rate of accumulation may be applicable. Thus, paragraph 7(a)

provides that the last six years of service before the mandatory age of retirement count at one-and-a-half times the normal rate of accumulation. Paragraph 8 stipulates that to be eligible under the second track, officials must have completed 25 years of service at the Office, including at least 13 years in their current grade.

The complainant, who started work at the Office on 1 March 1981, was promoted to grade G.5 with effect from 1 June 1998. By a minute dated 27 January 2011, her responsible chief drew the attention of the Human Resources Development Department (HRD) to the fact that the complainant had completed 29 years of service at the Office, of which 12 and a half years had been spent in the same grade, and that she would reach the mandatory retirement age in six years' time. Considering that the accelerated rate of accumulation under paragraph 7(a) of IGDS No. 125 was hence applicable, her responsible chief asked HRD to confirm whether the complainant was eligible for a personal promotion with effect from January 2011 and, if so, to "take the necessary steps". On 4 July the complainant sent an e-mail to remind the Administration of that request, attaching a copy of the abovementioned minute. By an e-mail of 5 July 2011, HRD informed her that she would be entitled to a personal promotion as from 31 January 2011.

Having requested an agreed termination on 21 June 2012, the complainant received an agreement on 4 December 2012 which she signed the following day, providing inter alia that her appointment would end on 31 May 2013.

On 2 May 2013 HRD informed the complainant that she was eligible for promotion under both the first and second tracks in the 2011 personal promotion exercise. She was advised that since a quota applied to the first track, the number of promotions awarded thereunder would be restricted, and she was asked to specify whether she wished to be considered under the first track and, failing that, the second track, or under the second track only. That same day, the complainant replied that, as she had already stated in an e-mail of 24 April, she wished to be considered under the second track. On 8 August 2013 she was informed that the Director-General had decided to grant her a personal promotion to grade G.6 under the second track, with retroactive effect from 1 July 2011.

In a grievance filed on 24 September 2013, the complainant contended that the e-mail of 5 July 2011 had "confirm[ed]" that she was entitled to personal promotion with effect from January 2011 but had omitted to mention that the accelerated accumulation rate would apply only if she chose the first track. She added that the e-mail's "lack of clarity" had had "adverse consequences" for her retirement pension since it would be "much lower" than she had expected, and that she would have opted for the first track had it not been for the e-mail in question. She requested compensation for the injury which she considered she had suffered.

On 25 November 2013 the Director of HRD explained to the complainant that, in accordance with IGDS No. 125, under the first track she was entitled to a personal promotion with effect from 31 January 2011, but under the second track her entitlement did not begin until 1 July 2011. He acknowledged that the e-mail of 5 July 2011 had not explicitly stated that the date mentioned therein for the beginning of her entitlement referred to the first track, but he considered that this was "self-evident" given that it was "simple" to calculate her date of entitlement under the second track. He concluded that there was no reason to change the date on which the complainant's personal promotion had taken effect.

On 12 December 2013 the complainant referred the matter to the Joint Advisory Appeals Board (JAAB). In a report dated 17 March 2014, the JAAB recognized that the e-mail of 5 July 2011 "lacked precision" but considered that it was an "indicative internal communication" only and that it would not have been unduly difficult for the complainant to check IGDS No. 125, to which she had had access. The JAAB further noted that the complainant had twice stated that she wished to be considered under the second track, which implied she was aware that two tracks existed. The JAAB hence recommended that her grievance should be dismissed as unfounded, though it stressed "the particular importance of clear communication by human resource officials so as to avoid misunderstandings and prevent similar cases in future". The complainant was informed by a letter dated 13 May 2014 that the Director-General had decided to dismiss her grievance on the basis of that report. That is the impugned decision.

The complainant seeks the setting aside of the said decision, compensation for the injury she considers she has suffered and an award of costs.

The ILO submits that the complaint should be dismissed as unfounded.

CONSIDERATIONS

1. The complainant contends that the ILO misled her concerning the personal promotion system. In support of her complaint, she submits that the lack of clarity of the e-mail from HRD dated 5 July 2011 on which she based her decision to have her case examined under the second track had "adverse consequences" for the level of her retirement pension.

2. The Organization considers the impugned decision to be perfectly lawful. In its view, the complainant's argument that the e-mail of 5 July 2011 misled her is untenable, given that full information on the personal promotion system had been available to her since May 2012, that is, before she applied for agreed termination. The ILO adds that the e-mail of 5 July 2011 did not confer on the complainant the right to be awarded a personal promotion with effect from 1 January 2011.

3. The Tribunal observes that HRD's e-mail of 5 July 2011 was a reply to the question by the complainant's responsible chief as to the date from which she would be eligible for a personal promotion under the first track. The e-mail hence correctly stated that the complainant "[would] be eligible for the [personal promotion] exercise as from 31 January 2011". It follows that, contrary to the complainant's submission, the fact that this e-mail did not mention the date on which she would become eligible for a promotion under the second track did not constitute a flaw such as to mislead her on this point.

4. The Tribunal further notes that on 18 May 2012 HRD sent an e-mail to all of the Office's officials inviting anyone who believed they fulfilled the criteria for personal promotion or who wished to check

their eligibility to contact that department. The complainant was hence given a further opportunity to ascertain on what date she would become eligible under the second track, and she alone is responsible for her failure to take advantage of it.

5. It ensues from the foregoing that the complaint must be dismissed in its entirety.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 8 November 2016, Mr Claude Rouiller, President of the Tribunal, Mr Patrick Frydman, Judge, and Ms Fatoumata Diakité, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 8 February 2017.

(Signed)

CLAUDE ROUILLER PATRICK FRYDMAN FATOUMATA DIAKITÉ

DRAŽEN PETROVIĆ