

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

D.
v.
CERN

130th Session

Judgment No. 4275

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr P. D. against the European Organization for Nuclear Research (CERN) on 24 August 2018 and corrected on 9 November 2018, CERN's reply of 13 March 2019, the complainant's rejoinder of 17 June, corrected on 2 July, CERN's surrejoinder of 14 October, the complainant's further submissions of 18 December 2019 and CERN's final comments of 5 February 2020;

Considering the additional documents produced by CERN on 16 and 23 April 2020 at the Tribunal's request;

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

Having examined the written submissions;

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

The complainant challenges his classification in the new career structure established following the 2015 five-yearly review.

Under the relevant provisions of the Staff Rules, the financial and social conditions of members of the personnel are subject to a five-yearly review to ensure that those conditions allow CERN to recruit and retain the staff members required for the execution of its mission from all its Member States. On 19 June 2014 the Council of CERN decided, on a proposal from Management, that the 2015 five-yearly review would focus on basic salaries for staff members and the career structure within the Organization. Following that review, the Director-General proposed to the Council that basic salaries be maintained at their current

level, the career structure streamlined and staff members better compensated for their performance by abolishing career paths and salary bands and replacing them with a new system comprising 10 grades, defined by a midpoint, minimum and maximum salary, within which a staff member could advance each year and by replacing the system of in-grade advancement in steps with a new system of merit recognition. On 17 December 2015 the Council approved those proposals, which were scheduled to enter into force on 1 January 2016 in respect of the non-adjustment of basic salaries and 1 September 2016 in respect of the measures relating to the career structure. In implementation of the latter measures, staff members were assigned to “benchmark jobs”, that is to say categories of jobs which covered a set of individual employment situations involving similar main activities and a common purpose. Those benchmark jobs were initially assigned on a provisional basis so that they could be checked later if need be. Thus, if staff members considered that they had been assigned to a benchmark job that did not match their functions, they could discuss the matter with their supervisors and the Administration. Benchmark jobs were to be definitively assigned to staff members by 1 May 2017, later postponed to 1 July 2017.

By a letter dated 18 August 2016, the complainant was advised of the benchmark job to which he was provisionally assigned and of the grade awarded to him as from 1 September, namely that of “mechanical craftsperson” at grade 2. His basic salary remained unchanged.

On 30 June 2017 the Head of the Human Resources Department confirmed the complainant’s definitive benchmark job, which was the same as he had been assigned on a provisional basis.

In the meantime, on 14 October 2016, the complainant had brought an internal appeal against the decision of the Council of CERN of 17 December 2015 – of which he states he was informed on 18 August 2016 – to “alter the career structure and the associated salary scale”. In his view, that alteration, and in particular his assignment to a new benchmark job and a new grade, significantly diminished his career prospects and was purely arbitrary in that it reinforced the salary disparity between staff members. He requested that the general decision of 17 December 2015 be set aside.

Several other staff members filed an appeal with the Joint Advisory Appeals Board against the same decision. In view of the similarities between some of those appeals, the Board decided to deal with the

alteration to the career structure jointly, and then consider the complainant's personal situation separately. In its opinion of 27 April 2018, delivered after having heard the complainant, the Board found that the 2015 five-yearly review was not procedurally flawed and that the Organization had acted transparently. With regard to the new career structure, the Board recommended that more detailed information be provided to supervisors on the opportunities afforded by the new system in terms of promotion and merit recognition. As to the complainant's personal situation, the Board considered that he had been classified in a clear and lawful manner and that his expertise could be recognised by offering him a promotion to grade 3 or a higher benchmark job. It therefore recommended that his supervisors be encouraged to carry out a career review as soon as possible and that the claims made in his internal appeal be dismissed.

By a letter dated 25 May 2018, the complainant was advised of the Director-General's decision to dismiss his appeal. With regard to the career review, the Director-General noted that the complainant had already requested a review in March 2018 and that it was under way. That is the impugned decision.

On 12 July 2018 the complainant was informed that after a thorough consideration of his career review, and on the basis of the recommendation of the Departmental Committee and the representative of the Human Resources Department, it was not possible to grant him a promotion or a change of benchmark job, as his functions and activities matched his classification.

On 24 August 2018 the complainant filed his complaint with the Tribunal, requesting it to set aside the impugned decision and the decisions of 17 December 2015, 18 August 2016 and 30 June 2017 and, subsidiarily, to cancel his classification in the new career structure. In addition, he claims costs in the amount of 20,000 euros.

CERN asks the Tribunal to dismiss the complaint in its entirety.

On 10 September 2018 the complainant filed an internal appeal against the decision of 12 July. The Joint Advisory Appeals Board recommended that this appeal be dismissed, and the Director-General followed that recommendation in a decision of 13 May 2019.

CONSIDERATIONS

1. The complainant seeks the setting aside of:

- the general decision of the Council of CERN of 17 December 2015 adopting Management’s proposals following the five-yearly review, which “alter[ed] the career structure and the associated salary scale”;
- the individual decision of 18 August 2016, assigning him to grade 2 in the benchmark job of “mechanical craftsman”, confirmed on 30 June 2017; and
- the Director-General’s decision of 25 May 2018 dismissing his internal appeal against the aforementioned decisions.

The Tribunal’s case law has it that a general decision which requires individual implementation cannot be challenged directly; it is only the individual implementing decisions which may be challenged (see Judgments 3628, under 4, 3736, under 3, 4008, under 3, and 4119, under 4, and the case law cited therein). The lawfulness of the general decision may only be challenged as part of the challenge to an individual decision.

The complaint must therefore be construed as being directed against the individual decisions of 18 August 2016 and 30 June 2017, upheld by the decision of 25 May 2018, it being understood that, in support of his claims against those decisions, the complainant challenges the lawfulness of the decision of the Council of CERN approving Management’s proposals following the five-yearly review on which those decisions were founded.

2. The complainant requests oral proceedings, but the Tribunal considers it is sufficiently informed of the case by the content of the written submissions and does not regard oral proceedings as necessary.

3. While his internal appeal was pending before the Joint Advisory Appeals Board, the complainant underwent a career review, the very purpose of which is “to assess the level of expertise, as well as the level of functions exercised by the staff member [...]” according to paragraph 45 of Administrative Circular No. 26 (Rev. 11) of November 2016 on merit recognition.

4. By letter dated 12 July 2018, the Director-General informed the complainant that the career review by the Departmental Committee and the representative of the Human Resources Department had found that his functions and activities matched the benchmark job and the grade to which he had been assigned. On 10 September 2018 the complainant filed an internal appeal against that decision. The Joint Advisory Appeals Board recommended that the appeal be dismissed and, on 13 May 2019, the Director-General informed the complainant that she had decided to follow that recommendation and that, accordingly, his grade and benchmark post were maintained.

5. This was a new decision taken after a fresh examination by different bodies of the Organization. The complainant has not impugned that new decision before the Tribunal, and consequently it has become final.

If the decisions of 18 August 2016, 30 June 2017 and 25 May 2018 on the complainant's assignment to grade 2 in the benchmark job of "mechanical craftsperson" were set aside, the new decision would remain intact.

Accordingly, this complaint has become moot and there is no need to rule on it.

DECISION

For the above reasons,

It is unnecessary to rule on the complaint.

In witness of this judgment, adopted on 23 June 2020, Mr Patrick Frydman, President of the Tribunal, Ms Fatoumata Diakit , Judge, and Mr Yves Kreins, Judge, sign below, as do I, Dra en Petrovi , Registrar.

Delivered on 24 July 2020 by video recording posted on the Tribunal's Internet page.

(Signed)

PATRICK FRYDMAN

FATOUMATA DIAKITÉ

YVES KREINS

DRAŽEN PETROVIĆ