

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**B. Y. (No. 2)**

**v.**

**WHO**

**131st Session**

**Judgment No. 4377**

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr S. B. Y. against the World Health Organization (WHO) on 28 February 2018 and corrected on 2 May, WHO's reply of 27 July, the complainant's rejoinder of 13 November 2018 and WHO's surrejoinder of 15 February 2019;

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 alleges that he was promised promotion to grade D-2.

Facts relevant to this dispute are to be found in Judgment 3870, delivered in public on 28 June 2017, concerning the complainant's first complaint.

The complainant, who had raised the matter of a promise allegedly made to him in September 2003 by the former Director-General to appoint him at grade D-2, was called to two meetings in 2010. By email of 10 October 2010, he was ultimately informed that the "final administrative decision" was that his grade was D-1. The complainant submitted an appeal against that decision to the Headquarters Board of Appeal. By a letter of 8 May 2014, which constituted the impugned decision in the complainant's first complaint, the Director-General informed the complainant, who had meanwhile been promoted to grade D-2, that she had decided to endorse the Board's recommendation

to dismiss his appeal as time-barred. The complainant retired at the end of April 2015.

In Judgment 3870, the Tribunal found that, since the appeal against the decision of 10 October 2010 had been filed within the prescribed time limit, the Director-General had been wrong to consider it time-barred. It therefore set aside the impugned decision and remitted the case to the Organization for the Global Board of Appeal to examine, within three months, the merits of the complainant's appeal, and, in particular, the question of whether the promise on which the complainant relied was in fact made and, if so, the scope of that promise.

The Global Board of Appeal delivered its report on 24 October 2017. It found that the complainant had not adduced convincing evidence of the existence of a firm or substantive promise to promote him to grade D-2 and recommended that the appeal directed against the decision of 10 October 2010 be dismissed. By a letter of 30 November 2017, which constitutes the impugned decision in these proceedings, the Director-General informed the complainant that he had decided to accept that recommendation.

The complainant asks the Tribunal to set aside the impugned decision, to promote him with retroactive effect from 1 September 2003 with all the legal consequences that this entails and to award him interest on the sums owing as a result of that promotion, compensation for material, moral and professional injury, and costs.

WHO submits that the complaint should be dismissed. It maintains that the complainant, who had several opportunities to raise the matter of the alleged promise during his career, did not do so and, since he never requested a review of the grading of his post, he did not exhaust the existing administrative remedies.

## CONSIDERATIONS

1. The complainant impugns the decision of 30 November 2017 in which the Director-General of WHO dismissed his second appeal (after its remittance by the Tribunal in Judgment 3870) and confirmed the decision of 10 October 2010, which itself confirmed his grade of D-1. He also asks the Tribunal to promote him to grade D-2 with retroactive effect from 1 September 2003 with all the legal consequences that this entails, including the payment of interest on the sums owing as a result of

that promotion, to award him compensation for the material, moral and professional injury arising from the fact of his remaining at grade D-1 between 1998 and 2012 (the year during which he was promoted to grade D-2) and to order the Organization to pay his costs.

2. As regards the complainant's request for retroactive promotion to grade D-2 from 1 September 2003, the Tribunal points out that it is not for it, in any event, to order that an official be promoted (see Judgments 3999, consideration 9, and 4066, consideration 11). This claim will therefore be dismissed at the outset as irreceivable.

3. The central issue to be decided in this case is whether the Director-General, and then the Director-General *ad interim*, promised the complainant, in 2003 and 2006 respectively, that he would be promoted to grade D-2.

4. The complainant submits that, by stating on 1 April 2004, in a "Personnel Action" concerning his administrative situation, that he had held grade D-1 since 1 September 2003, and by appointing him Director of Special Assignments at grade D-1 on 22 November 2005 and then reassigning him to the post of Director of Emergency Response and Operations on 8 October 2009, the Organization broke the promises that it had successively made to him in 2003 and 2006. He considers that his appointment to a post at grade D-2 in the Regional Office for the Eastern Mediterranean on 1 July 2012 does not affect the scope of his appeal, which seeks compensation for the injury suffered in previous years.

5. The Tribunal notes that although under its case law – as illustrated, in particular, by Judgments 3204, consideration 9, and 3221, consideration 21 – officials are entitled to expect that organisations will honour the promises they have made in certain circumstances, the right to fulfilment of those promises is subject to various conditions, the first of which is, of course, their actual existence.

6. The complainant submits that on 20 October 2003 he had been appointed, with effect from 1 September 2003, as Director of the Iraq Programme, a post which, according to him, was classified at grade D-2. He infers that, although his appointment was made without specifying a grade, it was implicitly an appointment to a post at

grade D-2. He asserts that this position continued to exist until the closure of the Iraq Programme, which took effect on 31 March 2004, pursuant to an information note dated 5 April 2004.

However, the Tribunal notes that the position of Director of the Iraq Programme, previously held by Mr M., which had been established in March 2002 for a limited period of time, was abolished by the Director-General on 15 October 2003 with effect from 1 September 2003. The file shows that the abolition of this post was already part of the planned closure of the Iraq Programme at the end of March 2004. Thus, while it is true that the complainant was appointed as Director of the Iraq Programme on 20 October 2003, the Tribunal takes the view that the duties to which the complainant was so appointed no longer entailed the same level of responsibility as the abolished post.

Furthermore, while the complainant refers to a letter sent to him by the Executive Director of the Office of the Director-General on 21 May 2012, in which she laid emphasis on the qualities which he had demonstrated when he held, in particular, the post of Director of the Iraq Programme, the Tribunal finds that, contrary to what the complainant submits, that letter does not show that this post should be considered as being at D-2 level.

The complainant does not therefore have any grounds to submit that he performed duties inherent to a post at grade D-2.

7. The complainant further submits that, during an exchange of emails on 25 September 2006, the Representative of the Director-General for Health Action in Crises had proposed to the Director-General *ad interim* that the complainant be reassigned, with immediate effect, to the grade D-2 post of Director of Emergency Response and Operations and that the Director-General *ad interim* had approved that proposal by answering with the word “[a]greed”. However, it is not disputed that the complainant was ultimately not appointed to that post. The mere indication of the agreement of the Director-General *ad interim*, expressed in an email which was not addressed to the complainant and of which, moreover, the complainant was unaware until 2010 cannot be regarded as equivalent to a promise of promotion to grade D-2.

8. In the light of the above, the Tribunal considers that none of the documents submitted by the complainant establishes the existence of a promise to appoint him at grade D-2. In these circumstances, there is no need to consider whether the other criteria on which the case law bases the duty to honour a promise are met in this case.

9. The complainant has requested that the Tribunal order the disclosure of various documents. The Tribunal notes that WHO produced, as an annex to its reply, some of the documents in question and gave reasonable explanations as to why it could not provide others. In these circumstances, the disclosure of additional documents will not be ordered.

10. It follows from the foregoing that the complaint must be dismissed in its entirety, without it being necessary to consider its receivability in respect of the exhaustion of internal means of redress, as required by Article VII, paragraph 1, of the Statute of the Tribunal.

#### DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 17 December 2020, Mr Patrick Frydman, President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Ms Fatoumata Diakit , Judge, sign below, as do I, Dra en Petrovi , Registrar.

Delivered on 18 February 2021 by video recording posted on the Tribunal's Internet page.

*(Signed)*

PATRICK FRYDMAN GIUSEPPE BARBAGALLO FATOUMATA DIAKITÉ

DRAŽEN PETROVIĆ