Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

T. (No. 5)

v.

Interpol

136th Session **Judgment No. 4664**

THE ADMINISTRATIVE TRIBUNAL,

Considering the fifth complaint filed by Ms E. T. against the International Criminal Police Organization (Interpol) on 27 October 2021 and corrected on 10 December, Interpol's reply of 2 May 2022, the complainant's rejoinder of 8 August 2022 and Interpol's surrejoinder of 23 November 2022;

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 the classification of her post.

After having worked as an external consultant for Interpol for around a year, the complainant was recruited by the Organization on 13 October 2014 as an administrative agent in the Anti-doping Unit, at grade 9, under a short-term appointment expiring on 15 March 2015. Her letter of appointment stated that she had been appointed in the context of an increase in the Organization's activity owing to an anti-doping project funded by external sources. Her contract was extended several times and she was promoted to Principal Agent at grade 8 as from 1 December 2015. In September 2016 she was appointed to the same post at the same grade for one year, until 30 September 2017, in

the framework of the Energia project, which was planned to last for three years. On 23 August 2017, following the agreement of funding for her post in connection with the continuation of the project in question, she was informed that her short-term appointment would be extended for two further years, until 31 August 2019.

On 4 April 2018, following a procedure to reclassify her post initiated by her superiors, the complainant was notified of the decision to promote her to the title of Anti-doping Operational Assistant at grade 7, step 2, with effect from 1 April 2018. As she considered that her duties were at grade 6 and that the criminal analysis work she had carried out up to that point was not properly recognised in the terms of assignment and consequently in her post classification, on 27 April 2018 she challenged the reclassification decision in a request for review. In particular, she requested a new rating of her post and the related post description sheet by a third-party expert, as well as disclosure of all documents and records relating to the procedure that led to her promotion. Her request was rejected on 11 September 2018.

On 12 November 2018 she lodged an internal appeal seeking the correction of her job description and the classification of her post at grade 6 (corresponding to the role of assistant analyst), her promotion with retroactive effect from a date prior to 1 April 2018, compensation for all the material and moral injury allegedly suffered and an award of costs. On 31 December 2018 she was informed of the composition of the Joint Appeals Committee responsible for considering her internal appeal and was invited to complete that appeal by submitting a written memorandum, which she did on 21 January 2019.

In view, in particular, of the challenging public health situation owing to the COVID-19 pandemic, of the numerous requests for extension of the time limits to submit their memorandums that were filed by the parties and accepted by the Committee, and of the Committee's requests for further documents and information relating to the case, the written procedure lasted until 28 September 2020, on which date the complainant was informed that it was complete and that the documents she had requested would be sent to her at the same time as she was notified of the consultative opinion.

In the meantime, the complainant left the Organization on 31 August 2019 when her contract ended.

On 19 March 2021, after she had enquired several times about the progress of the procedure, the complainant was informed that the Committee's opinion was under discussion and that it would be submitted to the Secretary General imminently.

The Committee delivered its opinion on 6 April 2021. It took the view that, given its limited role of determining whether the reclassification procedure was lawful, it could not substitute its assessment for that of the Administration and recommended that the appeal be rejected. In a letter of 22 July 2021, the complainant was informed of the Secretary General's decision to follow that recommendation. That is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision, "that is to say, the contested evaluation and, if appropriate, the implied rejection of the internal appeal", to order "the withdrawal of the rating [of her post] from all files" and to award her damages for all of the injury she submits she has suffered, which she assesses at 40,000 euros at least. She also claims costs, assessed at 8,000 euros in the complaint form and at 7,000 euros in the complaint brief.

Interpol contends that the complainant's claims are confused and, for some of them, unrelated to the present case or raised for the first time before the Tribunal. It asks that the complaint be dismissed in its entirety as unfounded.

In her rejoinder, the complainant maintains her claims and, alleging a clerical error, states that the amount of costs claimed is the one mentioned in the complaint form.

CONSIDERATIONS

1. The complainant asks the Tribunal to set aside the Secretary General's decision of 22 July 2021 to reject her appeal seeking the reclassification of her post at grade 6.

2. It is firmly established in the case law that the grading of posts in an international organisation is a matter within the discretion of the executive head of that organisation (see, for example, Judgment 3082, consideration 20, and the case law cited therein) and that the Tribunal will only review the classification of a post on limited grounds. A classification decision cannot be set aside unless it was taken without authority, was made in breach of the rules of form or procedure, was based on an error of fact or law, overlooked an essential fact, was tainted with abuse of authority or if a truly mistaken conclusion was drawn from the facts (see, for example, Judgments 4502, consideration 6, 4221, consideration 11, 3589, consideration 4, 1647, consideration 7, and 1067, consideration 2). This is because the classification of posts involves the exercise of value judgements as to the nature and extent of the duties and responsibilities of the posts and it is not the Tribunal's role to undertake this process of evaluation (see, for example, aforementioned Judgments 4502, consideration 6, and 4221, consideration 11).

3. In support of her complaint, the complainant firstly submits that the procedure followed to reject her request for reclassification was tainted by two "breaches of the rules of competence". In the first place, the post description sheet compiled as part of the reclassification procedure was drawn up by an assistant director when it should have been completed by her immediate superior. In the second place, the letter of 4 April 2018 states that the decision to reclassify her post at grade 7, and not grade 6 as she had wished, was taken by the Human Resources Director although, under paragraph 4(c) of Staff Instruction No. 2013.02 concerning the classification system, that decision should have been taken by the Executive Director, Resource Management.

4. In respect of the complainant's first plea, the Tribunal observes that, under Staff Rule 4.2.1(1), the reclassification may be initiated by the Secretary General, the superior under whose responsibility the post to be reclassified is placed, the human resources department or the incumbent of the post, which does not imply that these various participants in the procedure are personally involved at each particular stage. According to Staff Instruction No. 2013.02, the first stage of the

procedure consists of, firstly, drawing up a generic description of grade-related responsibilities and requirements, drafted and updated by the Human Resources Sub-directorate and validated by the Secretary General and, secondly, compiling the terms of assignment which, as shown in the form appended to the Instruction, must be drawn up by an "Assistant Director or higher". In the present case, the documents in the file show indisputably that the Assistant Director who confirmed that he had drawn up the post description sheet was the complainant's superior and that the post she held came under his responsibility. Moreover, the Tribunal does not see how Staff Instruction No. 2013.02 is unlawful in view of the provisions of Staff Rule 4.2.1(1), as the complainant submits. On this point, she confuses the authorities empowered to "initiate" the post reclassification procedure and the authorities empowered to intervene at each stage of that procedure.

As regards her second plea, having examined the structural changes that took place within the Organization and taking into account the combined application of Staff Instructions Nos. 2012.31 and 2013.02, quoted by the parties and conferring various delegations of authority on different levels of the hierarchy, the Tribunal finds that the Human Resources Director was competent to take the decision of 4 April 2018 by delegation of authority of the Secretary General.

The complainant's first two pleas must therefore be dismissed.

5. Secondly, the complainant submits that the way the procedure for the reclassification of her post was conducted was tainted with several irregularities.

First of all, she argues that the request for reclassification was submitted by the Assistant Director although it should have been presented by the project manager as the complainant's immediate superior.

However, apart from the fact that the Tribunal does not see how the alleged defect could have adversely affected the complainant, it notes that the Assistant Director who submitted the request for reclassification of the post was a superior under whose responsibility

the post to be reclassified was placed, in accordance with the requirements of Staff Rule 4.2.1(1).

The complainant next submits that the duties and responsibilities of the post concerned by the request for reclassification and the tasks she performed were not described with sufficient precision having regard to the requirements of Staff Instruction No. 2013.04 concerning the drawing up of terms of assignment for the Organization's officials. Thus, according to the complainant: her work in criminal analysis as part of the Energia project was not properly presented, even though her involvement in that field was obvious from, in particular, her annual performance assessments, her superiors' comments and the post reclassification request; the terms of assignment did not constitute a valid basis for reclassifying her post; the post rating conducted was "not very explicit or comprehensible"; the rating of knowledge requirements did not take into account the language skills that were useful in the position; and the reclassification of the post at grade 7 rather than grade 6 was in fact a "ploy" used by the Organization owing to management's reluctance to accept a reclassification by two grades at once.

However, the Tribunal points out firstly that the classification of a post depends on the functions as well as on the nature of the duties and responsibilities assigned to it, and not on the post holder's personal qualifications or experience (including knowledge of languages), the manner in which she or he carries out those functions, or her or his professional performance, in particular in terms of performance appraisal (see, for example, Judgments 2851, consideration 7, and 1808, consideration 7). This basic principle is, moreover, clearly reflected in Staff Regulation 4.1(1) and in Staff Instructions Nos. 2013.02 ("Classification System"), 2013.03 ("Post rating factors – generic descriptions of grade-related responsibilities and requirements") and 2013.04 ("Terms of Assignment"), which describe in greater detail the rating method to be used when classifying posts.

In light of the foregoing and in view of the documents in the case file, the Tribunal considers that, as the Organization submits, it was correct for the post description sheet setting out the complainant's duties when the post reclassification request was submitted not to

include any reference to criminal analysis functions. Therefore, the post description sheet was sufficiently precise, no essential fact was overlooked in the post rating procedure, no errors of law were committed, and the procedure was correctly followed. In this respect, although the various managers who considered the post reclassification request acknowledged that the complainant had shown great interest in criminal analysis and willingness to acquire basic knowledge in this field, the fact remains that this consideration was relevant to the complainant's performance and not to the classification of the post she held, which was plainly not an analyst's post. In this regard, having carefully examined the complainant's submissions on this point, her annual performance assessment reports and the laudatory emails from her superiors, the Joint Appeals Committee could, without committing an obvious error of judgement, conclude in its opinion – as could the Secretary General in his decision of 22 July 2021 – that the complainant's post of operational assistant corresponded to grade 7 and did not inherently involve functions in the field of criminal analysis that would warrant its reclassification at a higher grade.

Lastly, the Tribunal fails to see how the procedure followed was merely a "ploy" by the Organization to justify its refusal as a matter of principle to reclassify a post at two grades higher at one time. The complainant has not adduced any tangible *prima facie* evidence in support of this allegation.

The complainant's objections to the way the procedure for the reclassification of her post was conducted are therefore unfounded.

6. The complainant thirdly alleges that the internal appeal procedure was tainted with several flaws. She alleges that she was not informed "as soon as possible" of the composition of the Joint Appeals Committee, contrary to Staff Rule 10.2.2(5), which denied her the right to object to a member of the Committee; that the composition of the Committee was unlawful because it was chaired by its Alternate Chairman, without any indication that the Chairman was unable to carry out his Committee duties, which is contrary to Staff Regulation 10.2 and Staff Rule 10.3.1 under which, in the first place, the Committee

should be chaired by its Chairman, unless he is prevented from doing so for a valid reason and, in the second place, its composition must remain the same for the entire period needed to settle a case which has been brought before it, which, in the complainant's view, implies that the Chairman and the Alternate Chairman may not be involved in the same case; that the Committee accepted the Administration's reply of 22 February 2019 after the prescribed deadline in breach of Staff Rule 13.3.3(5); that the Committee exhibited "favouritism" towards the Administration on several occasions, which undermined the fairness of the procedure; that the Administration did not provide the Committee with all the information it requested, thereby breaching its duty to act in good faith; that the Committee breached Staff Rule 10.3.4(3) and thereby infringed the adversarial principle by not allowing the complainant to express her views in advance on the documents that the Administration sent to the Committee on 25 July 2019, including Staff Instruction No. 2005.10, to which she did not have access; and that, by wrongly asserting that it did not have to "review" the substance of the case, the Committee misconstrued the scope of its competence and thereby violated the complainant's right to an effective internal appeal.

However, the complainant's various pleas cannot be upheld either because they have not been substantiated or because they do not constitute material errors that render the procedure unlawful.

With regard to the consideration of the Administration's reply to the Committee dated 12 March 2019, the file shows that the time limit for submitting that memorandum had been extended until 23 March 2019. This argument is therefore misconceived.

Although the complainant was not informed of the Committee's composition until 31 December 2018, she still had three working days in which to exercise her right to object to any of its members, which she never showed any intention of doing.

Furthermore, there is nothing in the Staff Regulations and Rules to prevent the Committee from being chaired by its Alternate Chairman in circumstances other than when the Chairman is unable to carry out his duties. The circumstance that, in the present case, one brief or another was sent to the Chairman does not detract from the fact that it was indeed

the Alternate Chairman who was appointed to chair the Committee at the various stages of the internal appeal procedure, including the Committee's discussions and the submission of the consultative opinion. It follows that the composition of the Committee did indeed "remain the same for the entire period needed to settle [the complainant's] case" in accordance with Staff Rule 10.3.1(3).

The exact factual circumstances on which the complainant bases her allegation that the Committee lacked transparency and fairness in her regard are either immaterial (in respect of the extension of the time limit for the Administration to submit some evidence appended to its response) or do not substantiate that allegation (in respect of the letters sent to the Committee that were not immediately forwarded to her).

Furthermore, there is nothing in the written evidence to establish that the Administration did not provide the Committee with the various documents it had requested. The fact that Staff Instruction No. 2005.10 was sent to the complainant belatedly is not in itself sufficient to prove a breach of the adversarial principle. The complainant, who nonetheless received a copy of the Instruction before the Committee finalised its opinion, had the opportunity to submit comments based on it, but did not do so.

Lastly and most importantly, the Tribunal notes that, although overall the Committee's opinion may appear awkwardly worded in various respects, in this case, in compliance with Staff Rule 13.3.4(2) and (3), the Committee not only checked whether the proper procedure was followed for taking the decision contested before it, but also verified the facts invoked by the parties, took account of any other fact that was pertinent to the settlement of the internal appeal brought before it and adequately responded to the pleas concerning the merits of the case, as submitted to it. It therefore discharged its duty properly.

Although the complainant also accuses the Committee of a lack of impartiality and independence, it must be noted that this charge is not backed by any *prima facie* evidence or persuasive arguments.

7. The complainant argues that she initiated the request for her post to be reclassified, even if she did not draft it, and she considers that it would be fair if the promotion that she was granted were implemented retroactively from June 2018 or at least from August 2018.

However, the Tribunal observes that, as the Organization rightly points out, firstly, the complainant does not mention a specific legal basis for this claim and, secondly, the Staff Regulations do not entitle a staff member to have her or his promotion retroactively implemented from a date prior to the reclassification of her or his post, whoever initiated the reclassification.

8. The complainant also submits that the impugned decision was arbitrary in that the Secretary General failed to consider the possibility of granting her additional steps to take account of her aptitudes, qualifications and experience, although he was permitted to do so by Staff Rule 3.3.1.

Besides the fact that the complainant never formally contested the step in which she was placed following her promotion, the Tribunal fails to see how the Secretary General could, in the present case, be criticised for not having on his own initiative considered that possibility, which is, in any event, a matter in which he has broad discretion.

9. Lastly, the complainant takes issue with the inordinate length of the internal appeal proceedings, which altogether took nearly 40 months.

The Tribunal recalls that the recognition that there was an unreasonable delay does not in itself render the decision taken at the end of the procedure unlawful (see, for example, Judgments 4584, consideration 4, 4408, considerations 5 and 6, or 2885, consideration 14).

As regards the injury that may have been caused to the staff member by that delay, the Tribunal takes into account two considerations, namely the length of the delay and the effect of the delay on the staff member concerned (see, for example, Judgments 4493, consideration 6, 4229, consideration 5, and 4031, consideration 8).

In the present case, although the length of time taken to examine the complainant's internal appeal was unreasonable from an objective point of view, the Tribunal observes that the complainant – who left Interpol of her own accord nine months after submitting her internal appeal – does not in any way substantiate the extent or even the existence of that injury in her submissions.

10. It follows 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 11 May 2023, Mr Patrick Frydman, Vice-President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 7 July 2023 by video recording posted on the Tribunal's Internet page.

(Signed)

PATRICK FRYDMAN JACQUES JAUMOTTE CLÉMENT GASCON

DRAŽEN PETROVIĆ