113th Session **Judgment No. 3133**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs P. B.-R. against the International Labour Organization (ILO) on 23 March 2010 and corrected on 10 May, the ILO's reply of 11 August, the complainant's rejoinder of 17 November 2010 and the Organization's surrejoinder of 15 February 2011;

Considering Article II, paragraph 1, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

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

A. The complainant, a British national born in October 1946, joined the International Labour Office, the secretariat of the ILO, in 1999 at grade P.5. She was promoted to grade D.1 in 2001. In July 2005 she was appointed Deputy Director of the Social Security Department (SEC/SOC). In that capacity she was involved in a technical cooperation project funded by the United Kingdom's Department for International Development (DFID).

In the course of 2008, the year in which she was due to reach the statutory retirement age, the complainant expressed an interest in

remaining in service beyond retirement in order to complete some work on the DFID project. By an e-mail of 28 July she asked her immediate supervisor, the Director of SEC/SOC, to initiate the process for extending her appointment, which was due to expire on 31 October 2008. She suggested that her existing fixed-term contract, which was funded from the regular budget, should be extended until 31 December 2009, still at grade D.1, using funds from the technical cooperation project, and that she should be given the new title of "Project Coordinator". A question arose as to whether there should be a break between the end of her existing contract and the start of the extension, since this was liable to affect her terminal entitlements. In the event, it was decided that there should be no break in service and that her contract would be extended and converted into a fixed-term technical cooperation contract.

The Human Resources Development Department (HRD) then requested that a job description be prepared for the complainant's new position. To that end, the complainant asked to be provided with a generic job description for D.1 posts. HRD informed her that such a job description did not exist, but it sent her instead the job description for D.1 posts used by the International Civil Service Commission (ICSC). At her request, she was also given a copy of the job description of a colleague in SEC/SOC who was working at the D.1 level on various technical cooperation projects as "Manager, Technical Cooperation Programme". Referring to these two documents, the complainant drafted a job description which, having been amended by her Director, was submitted to HRD on 13 October 2008.

The next day HRD informed the Director of SEC/SOC by e-mail that, "[c]onsidering the scope of the programme and the level of responsibilities", the job description, as provided, could not be graded at the D.1 level, as it was not consistent with either ILO practice with respect to grading or with the ICSC's grading standards. The new position would therefore be graded at the P.5 level. The Director of SEC/SOC forwarded that e-mail to the complainant on 15 October. In order to minimise the resulting decrease in salary, it was subsequently agreed that the complainant would be appointed at the highest step in

grade P.5, namely step 13. The Director conveyed this information to the complainant by an e-mail of 27 October and asked her what she wished to do. At the complainant's request, HRD provided her by an e-mail of 30 October with an estimation of her terminal entitlements if she separated from service on 31 October 2008 at grade D.1, compared with her entitlements if she separated on 31 December 2009 at grade P.5. She had a meeting on 31 October with the Administration to discuss the matter.

On 5 November 2008 an offer of appointment at grade P.5 step 13 under a 12-month fixed-term technical cooperation contract was sent to the complainant. The offer specified that it was "considered as an extension with transfer to the position of 'Manager, Technical Cooperation Programme', (P5) in SEC/SOC". She signed the declaration of acceptance on 6 November and returned it to HRD adding the following handwritten reservation: "I have signed this contract with the reservation that I do not accept that the classification of the post is in conformity with ICSC job classifications standards". On 18 March 2009 she filed a grievance with HRD, contesting the grade of her new position. The Director of HRD dismissed this grievance by a letter of 18 June, but by this time the complainant had already referred the case to the Joint Advisory Appeals Board. In its report dated 9 November 2009 the Board concluded that the grievance was entirely devoid of merit and recommended that it should be rejected. The Director-General accepted that recommendation and the complainant was so informed by a letter of 22 December 2009. That is the impugned decision.

B. The complainant contends that, although she was aware that the extension of her appointment beyond retirement age involved a transfer to another position, the Organization failed to inform her in a timely manner that it would be graded at level P.5. She asserts that according to SEC/SOC the post should have been graded D.1, but even though she had expressed "strong reservations" as to the grading of her position at the P.5 level, those reservations were ignored. She argues that the retroactive extension of her contract was unlawful, in that it made it very difficult, if not impossible, for her to challenge the

grading of her position effectively. In her view, the Organization thus ensured that she would either have to accept the position at grade P.5, or separate from service.

The complainant also contends that her position should have been graded at the D.1 level based on the nature of her functions, the ICSC Job Classification Manual and the job description of a colleague in SEC/SOC also managing technical cooperation projects, at the D.1 level. In particular, she submits that the functions she performed under the technical cooperation contract did not correspond to the P.5 generic job description used by the ILO.

She asks the Tribunal to order a retroactive classification of her post at the D.1 level. She claims material and moral damages, as well as an apology for the "manner in which this case was conducted".

C. In its reply the ILO submits that the complainant was not only informed of the P.5 grading of her new position before receiving the contract, but was also given several opportunities to comment on its grade. Indeed, the question of the grade of the position was clearly raised as soon as the job description was provided to HRD on 13 October 2008. According to the Organization, HRD unambiguously rejected the proposal to grade the position at D.1 and this was duly conveyed to the complainant on 15 October. An estimation of her terminal entitlements was also provided to her in the event that she accepted the contract at grade P.5, which she did orally during a meeting with HRD on 31 October. It denies that SEC/SOC was of the opinion that the grading of the position should have been at D.1, and invites the Tribunal to refer to the views expressed by the Director of SEC/SOC on the grading of the job description, which clearly contradict the complainant's assertion in this regard.

The Organization acknowledges that the complainant only received its written offer of employment on 5 November 2008, but it points out that, following the meeting of Friday 31 October, the necessary administrative action was immediately initiated and the complainant was informed on Tuesday 4 November that the process had been completed. She was not, therefore, left in a position of

uncertainty, nor was the retroactive contract in any way prejudicial to her. Indeed, the Joint Advisory Appeals Board found that, in light of the fact that her final job description was sent to HRD only on 13 October, the delay in issuing the offer of appointment was acceptable.

As regards the complainant's claim that her reservation was ignored, the defendant emphasises that the offer made to her was clear and unequivocal and that she signed the declaration of acceptance, which expressly states: "I accept the offer of appointment as described above". The Administration took note of her reservation, but did not consider that it nullified the contract. Moreover, as the complainant continued to perform the work required of her under the job description and accepted the salary paid to her, it considers that her conduct also amounted to an acceptance of the terms of the offer.

The ILO recalls that the complainant was offered a one-year contract beyond her statutory age of retirement in order to allow her, as she herself admits in her complaint, "to complete the remaining work on a project […] funded by DFID", and not to continue in her role as Deputy Director of SEC/SOC. The Director of SEC/SOC confirmed that the responsibilities under the technical cooperation programme differed substantially from those she had exercised as Deputy Director of the Department, and she therefore no longer performed a significant number of the tasks and responsibilities which previously justified her D.1 grade.

The Organization considers that the grading of the job description was carried out in conformity with the ICSC Job Classification Manual. It recalls that the decision to confer a grade of D.1 or higher lies within the discretionary authority of the Director-General. Consequently, generic job descriptions were created and published for all grade levels up to and including P.5, but no such job descriptions have been developed for the grade D.1 and above. Moreover, there are no equivalent generic job descriptions for activities undertaken in the framework of technical cooperation projects. The Organization emphasises that, while the ICSC Job Classification Manual does contain guidance and generic job descriptions for Technical Cooperation

Administrators, including at the P.5 and D.1 grade levels, the classification of posts is not simply a matter of borrowing terminology and language from any given generic model and the Administration found that the tasks described in the job description submitted to HRD on 13 October 2008 more accurately corresponded to those foreseen in the ICSC's P.5 job description for Technical Cooperation Administrators. In its view, the complainant has failed to provide any evidence to the contrary.

Lastly, the Organization stresses that the complainant's situation, in both fact and law, is not comparable to that of the colleague whose job description was provided to her.

D. In her rejoinder the complainant presses her pleas. She maintains that the retroactive extension of her contract was unlawful and disputes the defendant's assertion that she accepted the offer of appointment on 31 October 2008. She further denies that HRD expressed an unambiguous refusal to grade the position at the D.1 level. She adds that, in accordance with the provisions of the Staff Regulations concerning transfer to duties and responsibilities attaching to a lower grade, her agreement should have been sought before she was transferred to a grade P.5 post. The complainant alleges that the Organization never informed her that as a result of a classification exercise the Administration had determined that the tasks described in the job description submitted on 13 October 2008 more accurately corresponded to those foreseen in the ICSC's P.5 job description for Technical Cooperation Administrators. Indeed, she asserts that she first learned of this during the exchange of submissions related to her complaint. Before then, she had been informed that the grading of technical cooperation positions was at the discretion of the Director-General.

E. In its surrejoinder the ILO maintains its arguments. It points out that, had the complainant really refused the verbal offer made to her at the meeting of 31 October 2008, the administrative steps required to issue the P.5 contract would not have been taken by the officials in charge. It submits that the findings of the Administration were

communicated to her during the internal grievance procedure. The complainant reached the statutory retirement age on 31 October 2008, and the Organization was therefore under no obligation to keep her in service after that date. She was at all times aware that the extension offered, with no break in service, was not to be considered as a regular transfer under the Staff Regulations, but rather as an administrative solution to her concerns.

CONSIDERATIONS

1. In the year in which she was due to reach the statutory retirement age of 62, the complainant discussed the possibility with her immediate supervisor of remaining in service for one more year in order to complete some work on a technical cooperation project funded by the United Kingdom's Department for International Development (DFID). The additional year would also allow her, inter alia, to reach the minimum period of service of ten years required to be eligible for the voluntary health insurance offered to former ILO officials who had separated from service. Specifically, the complainant requested that her employment be extended beyond retirement age until 31 December 2009, at grade D.1, under the new title of "Project Coordinator", to be financed from the technical cooperation budget. Following correspondence between the complainant and the Administration, in order to preserve her entitlements it was agreed that there would be no break in service between the expiration of her existing regular budget contract and the commencement of her new technical cooperation contract.

2. The complainant submitted a draft job description to HRD for the new position, based on the ICSC generic D.1 level description for Technical Cooperation Administrators and the job description of a colleague working in SEC/SOC at grade D.1 on a technical cooperation project. The Administration responded, stating that the position could not be graded D.1 and instead would be graded at P.5, consistent with ILO practice and the ICSC's grading standards. On

5 November 2008 an offer of appointment at grade P.5 under a 12-month fixed-term technical cooperation contract with retroactive effect as of 1 November 2008 was sent to the complainant for signature. On 6 November 2008 she signed the declaration of acceptance and returned it to HRD adding the following handwritten reservation: "I have signed this contract with the reservation that I do not accept that the classification of the post is in conformity with the ICSC job classifications and standards."

3. The grievance contesting the P.5 grading that the complainant submitted on 18 March 2009 to the Director of HRD was dismissed as entirely groundless. On 9 July, before receiving a reply from HRD, the complainant lodged an appeal with the Joint Advisory Appeals Board. In its opinion of 9 November 2009 the Board considered that the complainant had not suffered financial discrimination, as the Organization had acted in good faith and had "made special efforts to retain her in service in order to ensure her long-term financial security". It unanimously concluded that the complainant had not been subjected to discrimination, mobbing or harassment, and therefore recommended that the Director-General should reject the appeal as devoid of merit. In a letter dated 22 December 2009 the complainant was informed of the Director-General's decision to accept that recommendation and to reject her appeal. She impugns that decision before the Tribunal.

4. The complainant puts forward two pleas. The first is an allegation that the ILO offered her an "unlawful retroactive contract extending [her] employment". This plea is based on three main arguments: (1) that the P.5 grading came as a surprise; (2) that the Director of SEC/SOC thought the post should be graded at the D.1 level; and (3) that the retroactive extension of her contract made it almost impossible to challenge the grading of her new position.

5. Firstly, it is clear from the e-mails dated 15, 27 and 30 October 2008 that the complainant was aware of the P.5 grading of the new position before the expiry of her contract funded from

the regular budget and before she signed the declaration of acceptance of the new technical cooperation contract.

The complainant asserts that, as the draft job description submitted to HRD was based, in part, on her colleague's D.1 job description, her new position should also have been graded at the D.1 level. This assertion is baseless given that her colleague's job description was for a more complicated programme which, unlike the complainant's project, included training responsibilities and complex negotiations, and had a broad geographical scope.

6. Secondly, the complainant has not proven that she was in a similar position, in fact or in law, to her colleague. It may be noted that in an e-mail dated 12 October 2009 the Director of SEC/SOC responded to an e-mail inviting comments or clarification on statements made by the complainant in her internal appeal and which involved him. The question put was as follows: "[the complainant] has referred to an email exchange between yourself and HRD dated 17 [October] 2008 concerning the grading of the [technical cooperation] position, in which you wrote 'I have to accept the decision and I think I understand some of the underlying reasons…'. [The complainant] proceeds to state that '[o]bviously he (you) had serious doubts about the validity of the reasons for the decision'". In his response, the Director clarified that the P.5 grading of the position had been explained to him and that, not wanting to enter into an argument on the matter with the complainant, he simply signalled to her that he understood the Office's reasoning to be valid. The Tribunal also notes that the functions of the complainant's new position differed greatly from her functions as Deputy Director of SEC/SOC and that the Administration, in an informal consultation, found that the tasks described in the draft job description submitted on 13 October 2008 more accurately corresponded to the tasks and responsibilities of the ICSC P.5 job description for Technical Cooperation Administrators. As the complainant has not submitted any evidence that the post classification decision was vitiated by any flaws subject to the Tribunal's review (i.e. that it was taken without

authority or in breach of a formal or procedural rule, or was based on a mistake of fact or of law, or overlooked some essential fact, or constituted abuse of authority, or drew mistaken conclusions from the factual evidence, etc.), there is no reason for the Tribunal to consider the decision unlawful.

7. Thirdly, it is essential to note that the Organization was under no obligation to extend the complainant's employment beyond her statutory retirement age. Indeed, the Organization acted in good faith and made special efforts, with the complainant's future financial well-being in mind, when it agreed to her proposal to employ her under a 12-month technical cooperation contract with no break in service. The complainant accepted this offer of a new contract (indeed it was her idea), albeit with the caveat that she did not agree with the grading of the post. This caveat merely served to indicate her readiness to contest the grading through the internal means of redress available to her, but did not in any way invalidate the contract itself.

8. In a second plea the complainant elaborates her argument that her position should have been graded at the D.1 level. The Tribunal has addressed this issue above. However, the Tribunal will deal with her additional argument that "the contract issued on 5 November 2008 was simply an extension of [her] employment and not a new contract following a break in service" and that therefore, in accordance with Article 6.11 of the Service Regulations "she should have been in agreement to be transferred to duties and responsibilities attached to a lower grade with a corresponding change in her grade". Article 6.11(1)(a) relevantly provides under the heading "Transfer to duties and responsibilities attaching to a lower grade" that: "[o]fficials may be transferred to duties and responsibilities attaching to a lower grade, with a corresponding change in their grade […] at their own request". The Tribunal observes that the complainant's new contract – offered to her upon her request – which was set to begin with no break in service following the date of her reaching the statutory

retirement age, is to be considered an extension of employment insofar as it allowed her to continue accruing years of service with the Organization, in order to reach the ten-year minimum required to be eligible to enrol in the voluntary health insurance programme offered to ILO officials upon their separation from service. As the Tribunal finds that the new job description was properly classified at the P.5 level, it follows that that overrides the complainant's caveat and makes her acceptance of the new contract unconditional in all its parts.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 4 May 2012, Ms Mary G. Gaudron, Vice-President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Ms Dolores M. Hansen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 4 July 2012.

Mary G. Gaudron
Giuseppe Barbagallo
Dolores M. Hansen
Catherine Comtet