Organisation internationale du Travail
*Tribunal administratif*

International Labour Organization
*Administrative Tribunal*

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

**118th Session** **Judgment No. 3372**

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Ms R. A.B. against the International Labour Organization (ILO) on 5 September 2011 and corrected on 13 and 19 October 2011, the ILO's reply of 19 January 2012, the complainant's rejoinder of 23 April and the ILO's surrejoinder of 20 July 2012;

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 and the pleadings may be summed up as follows:

A. Facts relevant to this case are to be found in Judgment 3101, delivered on 8 February 2012 on the complainant's first complaint. Following the Director-General's decision of 6 May 2009, which was impugned in that judgment, to cancel the result of the competition for a vacant post of Editor (RAPS/2008/22) and to order a new technical evaluation as recommended by the Joint Advisory Appeals Board (JAAB), in the summer of 2009 the three shortlisted candidates sat another written examination and attended another interview. The complainant was informed on 20 October that she had not been selected and that the appointment of the candidate originally chosen

had been confirmed. To obtain feedback on the technical evaluation, on 18 December 2009 she requested an interview with the responsible chief, which took place on 5 February 2010. On 19 February she requested a written response from him, which she received that same day. On 26 March she filed an initial grievance with the JAAB on the basis of paragraph 17 of Annex I to the Staff Regulations, relating to the recruitment procedure. In her grievance she challenged the definition and description of the post in question, as well as the way in which the second technical evaluation had been conducted and its outcome. On 27 July the Director-General, endorsing the JAAB's opinion of 4 June, dismissed the grievance as irreceivable.

In the meantime, on 15 June the complainant, acting on the basis of Article 13.2, paragraph 1, of the Staff Regulations, had filed a second grievance, repeating the arguments she had already put forward. On 15 September the Human Resources Development Department (HRD) decided to reject the grievance. On 14 October 2010 the complainant appealed to the JAAB in accordance with Article 13.3, paragraph 2, of the Staff Regulations. In its report of 29 April 2011, the JAAB recommended that the grievance be dismissed on the merits, and the Director-General did so in a decision of 10 June 2011. That is the impugned decision.

B. The complainant argues that the vacancy notice RAPS/2008/22, entitled "Editor (Document Quality Assurance Officer)", was drawn up in breach of paragraph 7 of Annex I to the Staff Regulations, which requires the responsible chief to "identify the relevant job description, indicating the job family and the grade, and prepare a description of the responsibilities and objectives that are specific to the job as well as of other requirements to be fulfilled by candidates". She contends that this vacancy notice, which was for a supposedly "linguistic" post, should have specified the principal working language, "as the rules for this professional category require", yet it did not do so. She also alleges that the description of the responsibilities and objectives of the post drawn up by the responsible chief did not match the vacancy in question, and that he had chosen the wrong job family. In her view, the only purpose of the disputed competition was to enable the

contractual situation of the chosen candidate to be regularised, in line with the wishes of the responsible chief.

The complainant also alleges a breach of paragraphs 9 and 12 of Annex I, because the Staff Union did not provide any comments concerning either the vacancy notice or the report compiled following the second technical evaluation, though both documents were flawed. In her view HRD, which is supposed to ensure objectivity and transparency in recruitment, ought to have rejected the proposed vacancy notice.

The complainant draws attention to the fact that, according to Article 4.2, paragraph (a)(i), of the Staff Regulations, in the filling of any vacancy the paramount consideration is the need to obtain "staff of the highest standards of competence, efficiency and integrity". She seeks to show, on the basis of the curriculum vitae of the selected candidate and Volume II of the Job Classification Manual of the International Civil Service Commission (ICSC), that contrary to the Tribunal's consistent case law, the candidate in question did not possess the minimum qualifications required for the advertised post.

Lastly, the complainant avers that given the lack of objectivity and transparency in the second technical evaluation, there was no "rigorous technical evaluation" within the meaning of paragraph 11 of Annex I to the Staff Regulations.

She asks the Tribunal to set aside the impugned decision and the appointment resulting from it, and to award her compensation for material and moral harm, and costs.

C. In its reply, the ILO argues that the requirements of paragraph 7 of Annex I to the Staff Regulations were in fact observed in this case, since a job description was prepared and a job family identified. The practice of classifying posts according to job families cannot place limits on the discretionary power of the Director-General to create posts. The ILO explains that in the present case, shortcomings had been noted in the production of official documents, and in order to preserve the quality of these documents the Director-General had decided, inter alia, to create a post of Editor. This post is admittedly of

an “atypical” kind, since it involves the planning and supervision of the process of producing documents, but in this respect the provisions of the ICSC Job Classification Manual were not breached. Indeed, because of its atypical character, the post did not necessitate a principal working language. The ILO also rejects as groundless the complainant’s allegations that the post had only been created in order to regularise the contractual status of the selected candidate.

As for the alleged breach of paragraphs 9 and 12 of Annex I to the Staff Regulations, the ILO argues that the Staff Union was entitled, but not obliged to comment on the vacancy notice and on the report produced following the second technical evaluation. It points out that there is no provision in paragraph 9 for verifying whether proposals for competitions have been made in accordance with the rules.

The ILO also seeks to show that the selected candidate did possess the minimum qualifications required by the vacancy notice. The written and oral parts of the technical evaluation were designed and conducted in such a way as to comply with the requirements of objectivity, transparency and impartiality. Lastly, it points out that the Tribunal exercises only a limited power of review over appointment decisions.

D. In her rejoinder, the complainant argues that there are several flaws in the Director-General’s decision that warrant the Tribunal exercising its power of review. The ILO should have made use of the possibility of creating a job family, which exists for particular cases in the United Nations system. She asks the Tribunal to request the ILO to produce the curriculum vitae submitted by the selected candidate when she applied for the vacancy in 2008, since the copy she possesses dates from 2010.

E. In its surrejoinder, which was filed subsequent to the delivery of Judgment 3101, the ILO contends that the complaint is irreceivable for two reasons. Since the two complaints raise the same issues, the Tribunal cannot rule on the second one without infringing the

principle of *res judicata*. Secondly, because in that judgment the Tribunal granted the complainant's chief requests, namely the setting aside of the decision of 6 May 2009 and the resumption of the competition at the technical evaluation stage, the complainant no longer has a cause of action. It adds that the date on the curriculum vitae submitted by the complainant is the date on which it was printed.

## CONSIDERATIONS

1. Facts relevant to this case are set out in Judgment 3101, delivered on 8 February 2012 on the first complaint filed by the complainant.

2. In this case, it is sufficient to recall that the complainant applied for a grade P.3 Editor post advertised in vacancy notice RAPS/2008/22; that she was shortlisted and attended an interview with the selection panel; that, not having been selected for the post, which was given to another candidate, she submitted a grievance to the JAAB; that the JAAB issued its report on 6 March 2009, expressing the view that the technical evaluation of the candidates in the competition had not been carried out in an objective, transparent and impartial manner, and recommended that the Director-General of the International Labour Office should cancel the result of the competition while shielding the successful candidate from any injury, and order a new technical evaluation of the candidates; that the Director-General followed that recommendation and informed the complainant by a letter of 6 May 2009 that he was doing so and that a new technical evaluation would be organised; that the complainant impugned that decision before the Tribunal; and that in the meantime, in the summer of 2009, the new technical evaluation took place, with the result that the candidate who had been selected in the disputed procedure was again successful.

3. Further to the decision of 6 May 2009 impugned by the complainant in her first complaint, on 28 May 2009 she was invited to take part in another technical evaluation, in the form of a written

examination. That same day, she requested clarification of the JAAB's recommendation and of the Director-General's decision from the legal adviser to the Human Resources Development Department (HRD). On 19 June 2009, the latter replied that there was no doubt that the JAAB had recommended a new technical evaluation of the same candidates who had been shortlisted in the competition.

4. As already explained, the new technical evaluation took place in the summer of 2009, and on 20 October 2009 the complainant was informed that she had not been selected.

On 18 December 2009 she requested an interview with the responsible chief to obtain feedback on the technical evaluation. This interview took place on 5 February 2010. She was dissatisfied with its outcome and on 19 February 2010 she requested a written response. On the same day, the responsible chief gave her the reasons why she had not been selected.

5. On 26 March 2010 the complainant filed a grievance with the JAAB, which dismissed it as irreceivable in a summary report dated 4 June 2010.

6. On 15 June 2010 she filed a grievance with HRD under Article 13.2, paragraph 1, of the Staff Regulations, seeking cancellation of the competition RAPS/2008/22 and of the appointment resulting from it. She was informed in a letter of 15 September 2010 that this grievance had been dismissed.

7. On 15 October 2010 she appealed to the JAAB, which issued a report on 29 April 2011 recommending that the Director-General should dismiss the grievance as unfounded.

8. The Director-General followed this recommendation and decided, on 10 June 2011, to dismiss the complainant's grievance.

9. While the first complaint was being examined by the Tribunal, on 5 September 2011 the complainant filed her second

complaint impugning the decision of 10 June 2011, in which she seeks the cancellation of that decision and of the appointment resulting from it, as well as compensation for moral and material injury.

10. The ILO has forwarded the complaint to the selected candidate for comments, but none have been received.

11. On 8 February 2012 the Tribunal delivered the aforementioned Judgment 3101, in which it decided inter alia that:

– The decision of 9 May 2009 is set aside.
– The competition procedure shall be resumed from the stage at which it became flawed, in other words at the stage of evaluation by the Assessment Centre.

12. According to the case law of the Tribunal, the selection of a successful applicant in a competition is a discretionary decision of the executive head of the organisation (see Judgment 2584, under 15). Such a decision is subject to only limited review. The Tribunal will interfere with such a decision only if it was taken without authority, or in breach of a rule of form or of procedure, or if it rested on an error of fact or of law, or if some essential fact was overlooked, or if there was abuse of authority, or if clearly mistaken conclusions have been drawn from the evidence. Moreover, the Tribunal will exercise its power of review with special caution in such cases, and will not replace the organisation's assessment of the candidates with its own. (See, for example, Judgments 2362, 2365 and 2392, under 10.)

13. In support of her claims, the complainant puts forward several pleas based respectively, on: breach of paragraph 7 of Annex I to the Staff Regulations, in that several rules were broken when the vacancy notice was published; breach of paragraph 9 of the Annex, because the prescribed procedure was not observed when the responsible chief proposed the vacancy notice; breach of paragraph 12 of the Annex, because the Staff Union representatives did not comment on the technical evaluation report when it was made available to them, despite the existence of procedural flaws in the

evaluation procedure; breach of Article 4.2, paragraph (a)(i), of the Staff Regulations and of the case law of the Tribunal according to which "the successful applicant must have all the minimum qualifications required in the notice of vacancy" (Judgment 1497, under 7); and lack of objectivity and transparency in the procedure owing to a breach of paragraph 11 of Annex I to the Staff Regulations, because there was no rigorous technical evaluation of all the candidates for the post and the interview was not conducted on the basis of good faith and the fundamental principles ensuring fair competition among the candidates.

14. The Tribunal, having found in Judgment 3101 that the procedure in competition RAPS/2008/22 was flawed at the stage of the evaluation by the Assessment Centre, and having therefore ordered a resumption of the competition at that stage although the complainant had requested that it be cancelled in its entirety, cannot without undermining the authority of *res judicata* revert to matters relating to the definition of the post featured in the vacancy notice and the procedure culminating in the preparation of the notice, matters on which it has already ruled in that judgment. The first and second pleas must therefore be rejected.

15. In her third plea, the complainant alleges a breach of paragraph 12 of Annex I to the Staff Regulations, because the Staff Union representatives made no comments when the technical evaluation report was made available to them, although the evaluation, taking the form of a written examination and an interview, involved flagrant procedural flaws.

16. The above-mentioned paragraph 12 reads as follows:

> "The technical evaluation report will be made available for consultation to the Staff Union representatives, who will have ten working days from the notification of the technical evaluation report in which to make comments. Any comments made will be the subject of discussion between the responsible chief, the Human Resources Development Department and the Staff Union representatives. The Director-General will then take a decision on the candidate to be appointed."

17. As the ILO rightly observes, these provisions merely contain procedural rules which provide an option, not an obligation, for Staff Union representatives to comment on the technical evaluation report. Since it is not contended that the Staff Union representatives were deprived of the opportunity to make comments, and it is not disputed that they chose not to make any when the technical evaluation report was made available to them, the ILO cannot be held to have breached the provisions in question.

This plea cannot therefore be admitted.

18. In her fourth plea the complainant argues that Article 4.2, paragraph (a)(i), of the Staff Regulations, and the case law of the Tribunal, were violated because the candidate appointed did not possess the minimum qualifications specified in the vacancy notice.

19. Paragraph (a)(i) of Article 4.2 reads as follows:

> "The paramount consideration in the filling of any vacancy shall be the necessity to obtain a staff of the highest standards of competence, efficiency and integrity. Due regard shall be paid to the importance of maintaining a staff selected on a wide geographical basis, recognizing also the need to take into account considerations of gender and age. Every official shall be required to possess a fully satisfactory knowledge of one of the working languages of the Organization."

According to the case law of the Tribunal, an international organisation must observe the essential rule in every selection procedure, which is that the person appointed must possess the minimum qualifications specified in the vacancy notice.

20. Vacancy notice RAPS/2008/22 states that the educational qualifications required for the post are a first-level university degree in liberal arts, social sciences or publishing studies, the required professional experience being at least five years in drafting, editing and publishing documents on governance or other subjects, or at least three years in an international organisation, and finally, as to languages, a perfect command of the primary working language and proficiency in another.

21. The Tribunal finds that, as noted by the JAAB, the appointed candidate did possess all these qualifications. She held a diploma in political sciences, had over six years' experience at the ILO, including in drafting and editing documents, and had a command of the three working languages of the ILO.

22. The doubts expressed by the complainant as to the authenticity of the curriculum vitae produced cannot be taken into consideration, having regard to the convincing explanations given by the ILO concerning the date of that document.

23. As for the arguments based on the reference to the rules formulated in Volume II of the ICSC Job Classification Manual, the Tribunal considers that a reference to these rules is not relevant in this case because all that had to be taken into consideration was the qualifications clearly specified in the vacancy notice, and in any event it is not for the Tribunal to substitute itself for the Organization, whose task it is to define the responsibilities and qualifications required for the posts it seeks to fill having regard to the needs of the service, in setting the required qualifications and ultimately deciding upon the respective merits of the various candidates.

This third plea is therefore unfounded.

24. Lastly, the complainant alleges that the competition procedure was neither objective nor transparent, because the requirements of paragraph 11 of Annex I to the Staff Regulations were not observed.

25. This paragraph states:

> "The responsible chief will undertake and ensure rigorous technical evaluation of all candidates […]."

26. In the opinion of the complainant, the subject of the written examination and the questions put at the interview were not appropriate for assessing the skills required of an editor, and showed a lack of transparency, objectivity and impartiality.

27. The Tribunal recalls that, as stated previously, it can only exercise its power of review with the greatest caution where a competition procedure is concerned. It cannot therefore interfere with the organisation of a competition in order to determine issues which are inherently outside its competence.

28. In this case there was no rule to prevent the technical evaluation being carried out in the manner chosen, and the Tribunal has no evidence from which it could conclude, as the complainant requests, that the written examination and the interview were inappropriate to assess the skills required for the advertised post.

29. The Tribunal notes the conclusion reached by the JAAB, based on its review of the competition file, and on its own findings, that the complainant "was not justified in arguing that [the new] technical evaluation was inadequate for a proper appraisal of the technical skills of the candidates, and that it lacked objectivity and transparency". There is no reason to doubt the JAAB's findings and conclusions, especially as its chief criticism of the first evaluation had been that the composition of the selection panel and the methods used to evaluate the skills of the candidates did not permit an objective evaluation of the editing abilities of the candidates.

30. It follows from the foregoing that the last plea is likewise unfounded.

31. Since none of the complainant's pleas can be allowed, the complaint must be dismissed, and there are no grounds for ordering further submissions as requested by the complainant in her last submissions to the Tribunal, or to rule on the objections to receivability raised by the ILO in its surrejoinder.

## DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 9 May 2014, Mr Claude Rouiller, Vice-President of the Tribunal, Mr Seydou Ba, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 9 July 2014.

CLAUDE ROUILLER
SEYDOU BA
PATRICK FRYDMAN

DRAŽEN PETROVIĆ