Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

118th Session **Judgment No. 3374**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr J. J. against the International Labour Organization (ILO) on 21 October 2011 and corrected on 25 November 2011, the ILO's reply of 28 February 2012, the complainant's rejoinder filed at the Registry of the Tribunal on 27 April and the ILO's surrejoinder of 1 August 2012;

Considering Articles II, paragraph 1, 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 and the pleadings may be summed up as follows:

A. On 14 March 2001 the International Labour Office, the ILO's secretariat, and the ILO Staff Union signed the Collective Agreement on Arrangements for the Establishment of a Baseline Classification and Grading (hereinafter "the Baseline Agreement"), which was amended on 9 May 2001 and then replaced by another agreement, signed in February 2002, amendments to which were published in Circular No. 639, Series 6, of 11 June 2003. This Circular was amended in September 2004 and in August 2005.

In the context of the general classification exercise undertaken in 2001, the post occupied by the complainant in the Bureau of Programming and Management (PROGRAM) was classified at grade G.6. After having unsuccessfully requested a review of this initial classification, the complainant referred the matter to the Independent Review Group (hereinafter "the IRG") on 3 August 2001. On 2 May 2005 the IRG, after obtaining further information and having heard the complainant, confirmed the G.6 grade. The complainant appealed to the Joint Advisory Appeals Board (JAAB) on 1 August 2005. The proceedings before the JAAB were suspended with effect from 14 October to enable the IRG to clarify the grounds for its decision, which it did on 24 November 2005. Noting that the IRG had not had access to certain documents, in July 2006 the Human Resources Development Department (HRD) requested PROGRAM to forward to the IRG the documents it required for its examination of the complainant's case. PROGRAM sent the complainant's performance appraisal report for the period 2000-2001 to HRD on 7 February 2007.

After the complainant had requested the resumption of the proceedings before the JAAB, the latter submitted its report on 22 August 2008, in which it recommended, *inter alia*, that the Director-General should remit the case to the IRG for a fresh review that took account of the information contained in the aforementioned performance appraisal report. By a letter of 21 October 2008, the complainant was informed that the Director-General had decided to endorse that recommendation. On 27 June 2011 the IRG recommended that the complainant's post be classified at grade G.7. By a minute of 29 July 2011, which constitutes the impugned decision, the complainant was informed that in light of an expert opinion provided by the HRD Organizational Design and Job Classification Unit, the Director-General had decided not to endorse the IRG's recommendation.

B. The complainant contends that the ILO failed to exercise due diligence in dealing with his case. He complains, for instance, that it took the IRG two and a half years to reach a conclusion after the Director-General had referred the case back to it on 21 October 2008.

Furthermore, the complainant affirms that the applicable provisions throughout the proceedings were those of the Baseline Agreement, Article 8 of which stipulated that the IRG was to take a "decision". However, when the case was referred to that body in October 2008, his case was reviewed on the basis of the provisions of Circular No. 639 (Rev.2), Series 6, according to which the IRG was merely required to make a recommendation. According to the complainant, the Director-General should not have requested an expert opinion before taking his final decision, because in doing so he not only violated aforementioned Article 8 but also acted *ultra vires*. The complainant adds that the Director-General breached the provisions of the Circular because he did not take his decision in the light of the IRG's findings but on the basis of a fresh review during which the complainant had not been heard.

The complainant asks the Tribunal to set aside the impugned decision, to "enforce the IRG's decision", to grant redress for the injury suffered and to award him costs in the amount of 2,000 Swiss francs.

C. In its reply the ILO notes that the complainant's arguments all relate to an alleged procedural flaw. However, pursuant to paragraph 22 of Circular No. 639 (Rev.2), Series 6, any grievance filed on that ground must first be submitted to the JAAB. The complaint is therefore irreceivable.

After recalling that decisions regarding the grading of jobs are discretionary and subject to only limited review by the Tribunal, the ILO asserts that the essential facts were duly taken into consideration during the proceedings in this case, which were fully transparent.

The ILO notes that, while the time taken to deal with the complainant's case may appear excessive, "it was not entirely responsible" for the delay. It points out that the IRG is an independent body and that it would have been accused of interference if it had attempted to influence the course of the proceedings.

The ILO further submits that, according to the Tribunal's case law, an administrative authority, when dealing with a claim, must generally base itself on the provisions in force at the time it takes its

decision and not on those in force at the time the claim was submitted. Hence it was the procedure prescribed by the above-mentioned Circular, which explicitly stated that it replaced the procedure set out in the Baseline Agreement, which was applicable in the present case. According to paragraph 20 of the Circular, the Director-General was to take a decision on the IRG's "recommendation". The recommendation made by that body on 27 June 2011 was, in the ILO's opinion, "based on a highly technical assessment in respect of which the Director-General lack[ed] the necessary expertise". That being the case, the Director-General preferred, in the interests of sound management, to seek the opinion of the unit with the greatest expertise in the area of classification.

The ILO contends that the complainant's claim for an award of costs should be rejected inasmuch as the Staff Union provided him with legal assistance.

D. In his rejoinder the complainant reiterates his pleas. He claims to have referred the case to the Tribunal in order to comply with the instructions contained in the minute of 29 July 2011.

E. In its surrejoinder the ILO maintains its position. It points out that the minute of 29 July 2011 referred to paragraph 23 of Circular No. 639 (Rev.2), Series 6, which stipulates that a staff member who disagrees with the outcome of a grading review may file an appeal with the Tribunal "on grounds other than those mentioned in paragraph 22". As the complainant filed his appeal on one of those grounds, namely the existence of procedural flaws, he should have filed a grievance with the JAAB, in accordance with paragraph 22.

CONSIDERATIONS

1. The complainant impugns the decision of 29 July 2011 whereby the Director-General of the ILO, rejecting the IRG's recommendation to classify his post at grade G.7, confirmed its classification at grade G.6 in light of an expert opinion provided by an HRD Unit.

2. The relevant facts may be summarised as follows:

On 14 March 2001 the ILO and the Staff Union signed the Collective Agreement on Arrangements for the Establishment of a Baseline Classification and Grading. At the time, the complainant held the post of Senior Department Network Administrator in PROGRAM. The grade of the complainant's post was confirmed at G.6 on 18 May 2001 at the close of the classification exercise; the complainant challenged this decision under the procedure prescribed by the Baseline Agreement. As the IRG confirmed the classification at grade G.6, the complainant referred the matter to the JAAB in August 2005. Following a suspension of the proceedings by agreement of the parties until November 2007, they were resumed at the complainant's request.

On 22 August 2008 the JAAB issued its report, in which it recommended, inter alia, that the Director-General should set aside the decision on the grading of the complainant's post and "remit the case to the IRG for a fresh review that takes account of the information on the complainant's duties and responsibilities contained in his performance appraisal report for 2000-2001".

The Director-General endorsed the JAAB's recommendation and remitted the case to the IRG for "a *de novo* review taking into account information on the duties and responsibilities attached to the post […] during the period of the job classification exercise (from 1 January 2000 until 31 March 2001)".

On 27 June 2011 the IRG issued its report, concluding that the post should be classified at grade G.7.

The Director-General requested the HRD Organizational Design and Job Classification Unit to conduct a fresh examination of the documents submitted by the complainant to the IRG before taking the decision brought before the Tribunal.

3. The complainant requests the Tribunal to set aside the impugned decision, to "enforce the IRG's decision", to grant redress for the injury suffered and to order the ILO to pay him costs in the amount of 2,000 Swiss francs.

4. He contends, in essence, that the ILO failed to exercise due diligence in dealing with his case, violated the Baseline Agreement and wrongly ordered a "*de novo* review" of his case by HRD following the "IRG's decision".

5. The ILO argues that the complaint is irreceivable on the ground that the complainant, who puts forward arguments "pertain[ing] to an alleged procedural flaw", could not appeal directly to the Tribunal but should have filed a grievance with the JAAB, as required by the provisions of paragraph 22 of Circular No. 639 (Rev.2), Series 6, of 31 August 2005.

6. However, the Tribunal considers, without needing to rule on the applicability in the presence case of the aforementioned provisions, that this objection to receivability must be rejected since it has been established, from the content of the file, that the final decision of 29 July 2011 explicitly stated that the complainant could file an appeal with the Tribunal in accordance with its Statute and Rules. This statement must, in any event, be construed as an authorisation to appeal directly to the Tribunal without pursuing any other internal means of redress.

7. The complainant contends that the ILO violated the Baseline Agreement by, on the one hand, treating the IRG's final decision as a recommendation and, on the other, subjecting what was a final decision to a re-examination by HRD that was not envisaged in the applicable provisions; moreover, this re-examination was conducted without inviting any comments from the complainant.

8. The Baseline Agreement provides for a three-stage job grading procedure in the new structure, namely initial grading, review of initial grading and re-examination of grading.

9. The complainant's request for a review of the initial grading of his post was submitted pursuant to Article 4.1 of the Baseline Agreement. All stages of the procedure were then conducted and the

classification of the complainant's post was eventually confirmed at grade G.6. This confirmation decision was set aside following an appeal to the JAAB.

In the meantime, Circular No. 639, Series 6, which replaced the special procedure established in the Baseline Agreement, had been published. However, the right of officials to file an appeal with the IRG was maintained and the Director-General was required to take a decision on the IRG's recommendation within a month of receiving its report.

10. The IRG, to which the case was referred again following the decision to set aside the confirmation of the grading of the complainant's post at G.6, concluded that G.7 was the appropriate grading for the post.

11. Before taking the final decision, the Director-General requested the HRD Organizational Design and Job Classification Unit to review the case. However, neither the Baseline Agreement nor Circular No. 639 (Rev.2), Series 6, of 31 August 2005 provides for the involvement of HRD after the IRG's examination or re-examination of the grading of a post.

12. The Tribunal considers that by requesting the aforementioned Unit to undertake a re-examination of the grading before taking his final decision, the Director-General violated the rules governing the job grading procedure, and that this violation of the established rules cannot be justified, as argued by the ILO, by the Director-General's lack of expertise to undertake a technical assessment of a post and by a concern to ensure sound management.

13. It follows from the foregoing that the impugned decision, which was taken through a flawed procedure, must be set aside, without there being any need to rule on any other pleas entered to that end.

14. In view of the setting aside of the impugned decision, the Director-General must be deemed to have failed to take a decision

within the time limit of one month from receipt of the IRG's report prescribed by paragraph 20 of Circular No. 639 (Rev.2), Series 6. It must therefore be concluded from the provisions of the said paragraph that the IRG's recommendation becomes effective *ipso jure*. The complainant must therefore be reclassified retroactively in accordance with the provisions of paragraph 15 of the Circular.

15. The complainant objects to the excessive duration of the proceedings and seeks redress for the injury that he claims to have suffered on that account.

16. The ILO admits that "the delays in processing the request for regrading submitted by the complainant appear to be excessive". However, "it considers that it was not entirely responsible for the delays" inasmuch as the IRG is an independent body and it cannot therefore interfere with the proceedings before it.

17. As the Tribunal has consistently held, an organisation has an obligation to ensure that internal appeal procedures move forward with reasonable speed (see, for example, Judgment 2197, under 33).

18. In this case, the Tribunal considers that a period of almost two and a half years to complete the proceedings that were resumed following the JAAB's recommendation is unreasonable. The complainant is therefore entitled to redress for the injury suffered in that regard. He is also entitled to redress for the injury stemming from the unlawfulness of the impugned decision.

He will therefore be awarded, on these two grounds, compensation for moral injury in the amount of 10,000 Swiss francs.

19. The complainant requests an award of 2,000 Swiss francs in respect of costs. The ILO objects to this request on the ground that the complainant received legal assistance from the Staff Union. However, the Tribunal considers that, notwithstanding this circumstance, the complainant, having obtained satisfaction, is entitled to costs in accordance with the case law.

The amount of these costs will be set at 1,000 francs.

DECISION

For the above reasons,

1. The impugned decision is set aside.
2. The complainant's post shall be reclassified at grade G.7, with all the legal consequences that this entails, as indicated in consideration 14 above.
3. The ILO shall pay the complainant compensation in the amount of 10,000 Swiss francs for moral damages.
4. It shall also pay him the sum of 1,000 francs in costs.

In witness of this judgment, adopted on 29 April 2014, Mr Giuseppe Barbagallo, 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.

GIUSEPPE BARBAGALLO
SEYDOU BA
PATRICK FRYDMAN

DRAŽEN PETROVIĆ