

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

B. Z. (No. 5)

v.

IFAD

134th Session

Judgment No. 4546

THE ADMINISTRATIVE TRIBUNAL,

Considering the fifth complaint filed by Ms R. B. Z. against the International Fund for Agricultural Development (IFAD) on 7 December 2018, IFAD's reply of 10 June 2019, the complainant's rejoinder of 30 July and IFAD's surrejoinder of 29 October 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 challenges the decision of the President of IFAD to reject her request for payment of the financial benefits linked to advancement to steps 2 and 3 of her grade P-4 to which she submits she is entitled.

On 1 February 2014 the complainant joined the IFAD Office in Bujumbura, Burundi, as a Country Programme Officer (CPM) at grade P-4 in the East and Southern Africa Division under a short-term appointment until August 2014. Following a selection process, she was later appointed for a two-year fixed term in the same position from 4 September 2014 until 4 September 2016, and was designated as IFAD Representative in Burundi.

At the end of the first five months of her probationary period, the complainant received a generally positive mid-point assessment report from her then regional director and supervisor, which she signed on 1 February 2015. However, a number of recommendations were made to enable the complainant to improve her performance.

On 6 August 2015 her new regional director and supervisor, in post since 1 April 2015, sent her the probationary report covering the first year of her contract, in which he proposed that the probationary period be extended by six months, until 4 March 2016. The complainant inserted her observations and they both signed the report, which was finalised on 22 August 2015. The complainant explicitly agreed to a six-month extension of her probationary period. On 28 September 2015 her supervisor sent her a performance improvement plan (PIP) for the six-month period from 5 September 2015 to 4 March 2016. It was duly signed by the complainant.

A probationary report was subsequently drawn up at the end of the 18-month period. It was signed on 16 May 2016 by the complainant's supervisor and on 26 May 2016 by her head of department. Given that the probationary period had come to an end and the prescribed maximum duration had been reached on 4 March 2016, the complainant's appointment was confirmed on that date pursuant to IFAD Staff Rule 2.5. However, in view of the weaknesses identified in crucial competencies required for the role of CPM and the fact that, under the applicable rules, the probationary period could not be further extended, it was decided that the complainant would be placed on a new PIP until 3 March 2017.

On 22 November 2016 the complainant lodged an appeal with the Joint Appeals Board (JAB), seeking, *inter alia*, the rescission of the decision to place her on a new performance improvement period, the second PIP, signed by the supervisor on 2 September 2016 and by the complainant on 15 September and covering the period from 4 September 2016 to 3 March 2017, and the decision of 2 September 2016 to extend her employment contract only until 3 March 2017. The JAB delivered its report on 31 January 2017. It found that the appeal was irreceivable *ratione temporis* because it had not been sent to the competent authority

in good time and was time-barred. It also found that the appeal was partly irreceivable because it was, inter alia, directed against a decision which was still under discussion between the parties, namely the second PIP. It further considered that the appeal was unfounded in any event, and therefore recommended that it be rejected. The President endorsed those recommendations in a letter of 20 February 2017.

In her first complaint, filed on 6 June 2017, the complainant requested the Tribunal to set aside the President's decision of 20 February 2017 together with the probationary reports of August 2015 and May 2016 and the first PIP of September 2015. The Tribunal dismissed that complaint in Judgment 4542, also delivered in public today.

In the meantime, in view of her partially unsatisfactory performance, the complainant's appointment was extended by a period of only six months, from 4 September 2016 to 3 March 2017. A decision was then taken on 3 March 2017 not to renew her appointment with effect from 3 April 2017.

The complainant lodged three internal appeals with the JAB against the final performance evaluation report (known as the Performance Evaluation System or PES document) for 2016, the decision to extend her appointment for a period of only six months and the decision not to renew her appointment.

After deciding to join the three appeals, the JAB found that the complainant's alleged underperformance had not been properly substantiated. In its report of 4 June 2018, it recommended that the complainant's PES document for 2016 be considered invalid, that it be removed from the complainant's personal file, and that the decision not to renew her appointment be rescinded. By letter of 25 July 2018, the President informed the complainant of his decision not to endorse the JAB's recommendations and accordingly to reject her three appeals.

As a result, the complainant filed three complaints (her second, third and fourth), in which she sought, primarily, the setting aside of her PES document for 2016, the decision to extend her appointment by only six months, and the decision not to renew her appointment.

The Tribunal dismissed those complaints in Judgments 4543, 4544 and 4545, also delivered in public today.

In the meantime, the complainant left IFAD on 3 April 2017.

In an email of 2 January 2018, the complainant pointed out that she had always been paid on the basis of step 1 of grade P-4, the classification assigned when she was appointed for a fixed term. She requested payment of “supplementary remuneration and [other] financial benefits” on the basis of step 2, then 3, of her grade, together with interest and the reconstitution of her pension entitlements or, alternatively, compensation for the material and moral injury she considered she had suffered.

After a reminder sent on 1 February 2018, the Organisation replied to the complainant on 2 February 2018, stating that the sums paid in full and final settlement were correct and that she had not been granted a step increment during her tenure owing to her unsatisfactory service.

The complainant requested a review of this decision on 1 March 2018. It was confirmed by a letter of 20 April 2018.

Following the internal appeal lodged on 1 May 2018, the JAB stated in its report of 31 July 2018 that the Organisation’s position could not be supported in view of the JAB’s previous report of 4 June 2018, the findings of which it reproduced.

By a letter of 11 September 2018, the President informed the complainant of his decision not to endorse the JAB’s recommendation and to reject her appeal. That is the decision impugned by the complainant in this fifth complaint.

The complainant requests the Tribunal to set aside the impugned decision, the initial decision of 2 February 2018 and the interim confirmatory decision of 20 April 2018; to order payment of the financial benefits linked to advancement to steps 2 and 3 of her grade with effect from 1 September 2015 and 1 September 2016 respectively, with the legal consequences arising therefrom, in particular with regard to her pension, with interest at the rate of 5 per cent per annum; and to award her compensation for moral injury, which she assesses at 15,000 euros at least, and 5,000 euros in costs.

IFAD requests the Tribunal to dismiss the complaint as unfounded and to order the complainant to cover her own costs.

CONSIDERATIONS

1. The complainant seeks the setting aside of the decision refusing to pay her the financial benefits linked to advancement to steps 2 and 3 of her grade starting from, respectively, 1 September 2015 and 1 September 2016.

2. In her first plea, the complainant argues that her appointment was confirmed with retroactive effect from 4 March 2016, which implies that her performance had been considered satisfactory under section 2.20.1 of Chapter 2 of the Human Resources Implementing Procedures. According to her, it follows that pursuant to sections 2.20.3(i) and 3.7.8 of Chapters 2 and 3 of the Implementing Procedures, her remuneration should have been calculated on the basis of a classification at step 2 of her P-4 grade, with effect from 1 September 2015, the date on which her one-year probationary period ended.

The various provisions referred to by the complainant in support of this plea, in the version applicable to the present dispute, provide as follows:

- section 2.20.1 of Chapter 2 states that “[c]onfirmation of the appointment is dependent on satisfactory performance and conduct”;
- section 2.20.3(i) of Chapter 2 provides that “[w]here a Division Director/unit head recommends an extension of the probationary period:
 - (a) The first within-grade salary increment, if applicable, is suspended, and is only granted retroactively to the staff member when and if the appointment is subsequently confirmed;
 - (b) a [PIP] is established by the immediate supervisor covering the period of extension. No later than one month prior to the end of the extension of the probationary period, a final recommendation is made by the Division Director/unit head,

in consultation with the immediate supervisor, through the Head of Department, to the Director, HRD”;

- section 3.7.8(i) of Chapter 3 provides that “[t]he right of a staff member to claim any allowance, grant or payment existing but unpaid shall lapse two years after the date on which the entitlement arose”.

The Tribunal notes that paragraph 2.20.3(i)(a) of Chapter 2 of the Implementing Procedures expressly states that the first within-grade salary increment may only be granted “if applicable”. It should also be recalled that the confirmation of the complainant’s appointment with retroactive effect from 4 March 2016 did not result from the application of section 2.20.1 and section 2.20.3(i)(a) above, but of Staff Rule 2.5(f). Under that provision, “[i]f the Fund has decided to terminate the appointment and that decision has not been communicated to the staff member concerned on expiry of the [maximum] probationary period, the appointment shall be deemed to have been confirmed on the understanding that the Fund will notify the staff member of the decision to terminate at the earliest opportunity”.

Furthermore, this retroactive confirmation of the complainant’s appointment was not based on a satisfactory performance evaluation at the end of her 18-month probationary period. On the contrary, it is apparent from the documents produced by the Organisation and from Judgments 4543, 4544 and 4545, also delivered in public today in respect of the complainant’s second, third and fourth complaints, that her performance was not considered satisfactory, either at the end of her initial probationary period (the August 2015 probationary report expressly stated that the procedure for granting advancement to a higher step had been suspended and that the complainant had been placed on her first PIP) or at the end of her extended probationary period, which had reached the maximum length possible (the shortcomings were highlighted in the May 2016 probationary report). Consequently, section 2.20.3(i)(a) of Chapter 2 of the Implementing Procedures, which the complainant refers to, is not applicable in the present case. There was therefore no reason to calculate the complainant’s

remuneration on the basis of a classification at step 2 of grade P-4 as from 1 September 2015.

The complainant's first plea is therefore unfounded.

3. In her second plea, the complainant, referring to aforementioned section 2.20.3, submits that her performance evaluation should have been carried out before 4 March 2016, the date on which her extended probationary period ended and her appointment was confirmed, but this did not occur because her final probationary report was not drawn up until May 2016. The Organisation, she says, is completely responsible for this omission.

In the present case, as the Tribunal has already noted when considering the first plea, Staff Rule 2.5(f) is applicable, not section 2.20.3(i)(a) of Chapter 2 of the Implementing Procedures. The consequence arising from IFAD's failure to take a decision within the prescribed time limit at the end of the probationary period is therefore specified in Staff Rule 2.5(f), not section 2.20.3(i)(a) of Chapter 2 of the Implementing Procedures.

The second plea is therefore unfounded.

4. In further support of her claim for a within-grade increment from 1 September 2015, the complainant refers to her second, third and fourth complaints before the Tribunal, which, according to her, show that her performance had been deemed satisfactory since she joined IFAD and she was entitled to the renewal of her appointment as from 4 March 2017 for at least two years.

However, in Judgments 4543, 4544 and 4545, also delivered in public today, the Tribunal dismissed the arguments put forward in those complaints. Accordingly, this plea is also unfounded.

5. With regard to the second salary increase which she claims from 1 September 2016, the complainant challenges the validity of the overall final rating of 2 (corresponding to "partially satisfactory" performance) which she was awarded by the Management Review Group (MRG) in her PES document for 2016. On this point, she again

refers to her previous complaints and contends that she should have been awarded an overall final rating of 3 (corresponding to “fully satisfactory” performance). This would entail an entitlement to a second salary increment, corresponding to step 3 of her grade, as from 1 September 2016, in accordance with section 3.2.5(i) of Chapter 3 of the Implementing Procedures.

However, once again it is clear from Judgments 4543, 4544 and 4545, cited above, that this plea is unfounded.

In those judgments, the Tribunal found that IFAD remained within the bounds of its discretion when the MRG awarded the overall final rating of 2 (“partly satisfactory”) for 2016. Having regard to section 3.2.5(i) of Chapter 3 of the Implementing Procedures, according to which an overall final rating of 3 (“fully satisfactory”) awarded by the MRG is required for an increment, and section 3.4.5(ii) of Chapter 3, according to which any increment is “subject to meeting performance requirements as determined by the Management Review Group”, the complainant was not entitled to this second increment.

6. As all of the complainant’s pleas are unfounded, the complaint must be dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 27 April 2022, 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 6 July 2022 by video recording posted on the Tribunal's Internet page.

(Signed)

PATRICK FRYDMAN JACQUES JAUMOTTE CLÉMENT GASCON

DRAŽEN PETROVIĆ