

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

C. L. L.

v.

ILO

(Application for execution)

136th Session

Judgment No. 4708

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for execution of Judgment 4480 filed by Ms J. L. C. L. L. on 8 December 2022 and corrected on 12 December, and the reply of the International Labour Organization (ILO) of 10 January 2023, the complainant having declined to file a rejoinder;

Considering Articles II, paragraph 1, and VI, paragraph 1, of the Statute of the Tribunal;

Having examined the written submissions;

CONSIDERATIONS

1. In the complaint that led to Judgment 4480, delivered in public on 27 January 2022, the complainant, a staff member of the International Labour Office (“the Office”), the ILO’s secretariat, challenged the Director-General’s final decision of 4 December 2018. That decision confirmed his decision of 9 January 2017 endorsing the recommendation of the Personal Promotion Joint Panel (hereinafter “the Joint Panel”) not to grant her a personal promotion under the second track in the 2015 exercise on account of the information contained in her personal file regarding a censure issued in 2002. Under the provisions of Article 6.8.2 of the ILO Staff Regulations, this second

discretionary personal promotion track focuses on the staff member's length of service in their grade and rewards satisfactory conduct and performance.

2. In Judgment 4480, the Tribunal interpreted the applicable provisions and found, referring in particular to Judgment 4252, consideration 7, that the Director-General had committed an error of law in failing to conduct an overall appraisal of the complainant's conduct and performance over the entire period in her current grade and by confining himself to considering a single circumstance (the censure issued in 2002) without accounting for the rest of the period concerned. The Tribunal decided as follows:

- “1. The decision of the Director-General of the International Labour Office of 4 December 2018 and his previous decision of 9 January 2017 are set aside.
2. The case is remitted to the ILO so that it may take the action stated under consideration 17 [...]
3. The Organization shall pay the complainant moral damages in the amount of 5,000 Swiss francs.
4. It shall also pay her costs in the amount of 1,000 Swiss francs.
5. All other claims are dismissed.”

In Judgment 4480, consideration 17, to which point 2 of the decision refers, the Tribunal concluded:

“It follows from all these considerations that the Director-General's impugned decision of 4 December 2018 and his previous decision of 9 January 2017 must be set aside, without there being any need to rule on the complainant's other pleas.

The question of the complainant's possible personal promotion under the second track in the 2015 exercise and that of the reconsideration of her file in subsequent exercises must therefore be referred back to the Organization so that the Joint Panel may re-examine the complainant's case in accordance with the applicable provisions and in compliance with this judgment.

It follows that the complainant's request that the Tribunal order her promotion cannot be granted, it being recalled, in any event, that the Tribunal has no jurisdiction to make such an order (see, for example, Judgment 4377, consideration 2).”

Consideration 12 of Judgment 4480, which contains part of the reasoning that led the Tribunal to the above conclusion, reads as follows:

“In [...] Judgment 4252, consideration 7, the Tribunal stated that ‘[f]or the purposes of the second track, satisfactory performance is, under [a]rticle 6.8.2, paragraph 3, of the Staff Regulations, appraised in the light of the official’s overall performance in the grade’ and that ‘performance over the entire period [must] hence [be] satisfactory overall’ before concluding that, in that other case, the Joint Panel and the Director-General had therefore erred in law by confining their appraisal to a shortened period of 13 years.

In this case the Director-General committed a different breach of the applicable provisions and made an error of law in failing to conduct an overall appraisal of the complainant’s conduct and performance over the entire period from 1998 to 2015 in her current grade and by confining himself to considering a single circumstance (the censure issued in 2002) without accounting for the rest of the period concerned.”

3. The day after Judgment 4480 was delivered in public, the Office’s Legal Adviser contacted the departments concerned in order to implement the Tribunal’s decision. The Budget and Finance Branch therefore paid the complainant 6,000 Swiss francs on 1 February 2022 and the Human Resources Development Department included the complainant’s file among those to be considered in the 2021 personal promotion exercise, launched on 21 February 2022. Her file was subsequently reconsidered by the Joint Panel under the second track at its meeting of 5 July 2022. In its report sent to the Director-General on 7 July, the Joint Panel recommended that she should not be promoted. By a letter of 12 August 2022, the complainant was informed of the Director-General’s decision to endorse that recommendation and of the fact that her file would be reconsidered under the second track in the 2023 exercise.

4. In the present application for execution, filed on 8 December 2022, the complainant submits in particular that, by refusing to award her a promotion for the third time in a row on the basis of a report from

the Joint Panel – that was, according to her, provided in a “mutilated”^{*} form that made it incomprehensible to read and tainted with several factual and legal errors – the ILO had undermined her dignity and career objectives, breached its duty of care and engaged in “procedural administrative harassment”^{*}. In this respect she presents a long list of criticisms of the Joint Panel, in which she states she has no confidence, and seeks the Tribunal’s protection. She requests the setting aside of the Director-General’s decision of 12 August 2022, the payment of material and moral damages and an award of costs on account of what she describes as the “non-execution”^{*} of the decision in Judgment 4480. Lastly, she asks the Tribunal to examine this third refusal to award a personal promotion and, as appropriate, to inform the Organization that this refusal constitutes a disguised disciplinary sanction in breach of the rule against double jeopardy and the principle of proportionality.

5. The ILO submits that the present application is vexatious and constitutes an abuse of process by the complainant, who, in its view, is attempting to evade the requirement to exhaust internal remedies against the new decision of 12 August 2022. It therefore requests that the application be dismissed.

6. The Tribunal recalls that its judgments are “final and without appeal” under Article VI of its Statute, carry *res judicata* authority and are immediately operative. As they may not later be called into question except when an application for review is allowed, they must be executed by the parties as ruled. The parties must work together in good faith to execute judgments within a reasonable timeframe. Moreover, under the Tribunal’s case law, the application for execution may relate only to the execution of a judgment and not, for example, to the allegedly harmful consequences of the manner in which it was executed. When the Tribunal allows a complaint, sends the case back so that the organisation may resume or continue some procedure, and leaves it a degree of discretion, the new decision will ordinarily be

^{*} Registry’s translation.

subject to appeal, and in that case the internal remedies do have to be exhausted (see, for example, Judgment 1771, consideration 2(b)).

7. If she was unsatisfied with the outcome of the new procedure concerning the re-examination of her file with a view to a personal promotion under the second track in the 2021 exercise, the complainant should have challenged the final decision taken by the Director-General on 12 August 2022 using the appropriate procedure. Under the case law referred to in consideration 6, above, the fact that the complainant alleges “enormous”^{*} injury arising, in her view, from the decision in question and the allegedly flawed procedure before the Joint Panel did not entitle her, in the present case, to file an application for execution, which is therefore unfounded.

8. In light of the foregoing, the application for execution appears to constitute a veiled attempt by the complainant to avoid the requirement to exhaust internal remedies and must be dismissed, without there being any need to rule on her procedural claims.

DECISION

For the above reasons,

The application for execution is dismissed.

In witness of this judgment, adopted on 12 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.

^{*} Registry’s translation.

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

(Signed)

PATRICK FRYDMAN JACQUES JAUMOTTE CLÉMENT GASCON

DRAŽEN PETROVIĆ