

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

N.
v.
ILO

137th Session

Judgment No. 4810

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr P. N. against the International Labour Organization (ILO) on 21 October 2021 and corrected on 24 November, the ILO's reply of 23 December 2021, the complainant's rejoinder of 16 February 2022 and the ILO's surrejoinder of 11 March 2022;

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 may be summed up as follows:

The complainant challenges the decision not to reclassify his post.

In July 2019, following a review of all generic job descriptions for regular budget posts in the National Professional Officer and General Service categories at non-headquarters duty stations, a collective agreement was signed by the International Labour Office ("the Office"), the ILO's secretariat, and the ILO Staff Union. As a result of this agreement, the Human Resources Development Department (HRD) sent an email to all staff on 6 August 2019 announcing the introduction of a new set of generic job descriptions for these service categories. The email stated that the new descriptions – which replaced those drawn up in 2001 – would apply from the first week of September 2019.

At the material time, the complainant held the post of Senior Programme Officer, at grade NO-B, in the “Decent Work Technical Support Team and Country Office for Cameroon, Equatorial Guinea and São Tomé and Príncipe”, in Yaoundé (Cameroon). His post had been reclassified at grade NO-B as from 1 February 2014 after the complainant had made a request to that effect.

In line with the aforementioned email of 6 August 2019, on 9 September 2019 the complainant received an updated job description for his post and was informed that there had been no change to “the job family or grade of [his] post”.

On 8 November 2019 he submitted a request to his line manager for a job grading review of his post pursuant to paragraph 4 of Circular No. 639 (Rev.2), Series 6, of 31 August 2005 on the job grading procedure, asking for a reclassification at grade NO-C. His request was supported by his line manager and based on the fact that, in his view, he had for several years been carrying out responsibilities on a daily basis that went beyond the expectations for NO-B grade positions and in fact corresponded to those relating to NO-C grade positions. A technical assessment of his duties and responsibilities was carried out by the Organizational Design Unit of the Talent Management Branch, which, after interviewing him on 7 April 2020, issued a review report on 27 April recommending that his post be maintained at grade NO-B. This recommendation was based, firstly, on the fact that the complainant did not head a programme unit and did not supervise other programme officers and, secondly, on the fact that the portfolio of development cooperation projects that he had managed in recent years had considerably shrunk. On 13 May 2020 the complainant was notified of the decision to confirm his grade, taken on 27 April.

On 6 July 2020 he lodged an appeal with the Independent Review Group (IRG) – the competent appeals body pursuant to paragraphs 16 to 20 of aforementioned Circular No. 639 – providing additional information in support of his request for reclassification. In its report of 2 July 2021, the IRG found that the request could not be granted as it stood and therefore recommended that the post be maintained at grade NO-B. By a minute of 27 July 2021, the complainant was

informed that the Director-General had decided to endorse that recommendation. That is the impugned decision.

On 27 August 2021, before filing a complaint with the Tribunal, the complainant lodged a grievance with the Joint Advisory Appeals Board (JAAB) against the decision of 27 July. In its report of 15 February 2022, the JAAB, referring to paragraph 22 of Circular No. 639, which allowed a dispute to be referred to it in the event of a “material breach of a rule of procedure or unfair treatment”, recommended that the grievance be dismissed as irreceivable *ratione materiae* because the complainant – who did not invoke either of those grounds in support of his appeal – failed to show a cause of action to challenge before it the decision taken on the basis of the IRG’s recommendation. The Director-General accepted this recommendation by decision of 24 February 2022.

In his complaint, the complainant asks the Tribunal to set aside the impugned decision and to order that his post be reclassified at grade NO-C, in keeping with his initial request. In compensation for the material injury he considers he has suffered, he seeks the retroactive reimbursement – as from the date of his request of 8 November 2019 – of any salary, benefits or allowances linked to grade NO-C and claims moral damages in the amount of 10,000 Swiss francs. Lastly, he asks the Tribunal to award him costs and to take any action it deems fit to remedy the situation completely.

The ILO submits that the complaint should be dismissed as “premature” and, in any event, as unfounded.

CONSIDERATIONS

1. The complainant seeks the setting aside of the decision of the Director-General of 27 July 2021 dismissing his request for a post reclassification, taken in accordance with the recommendation of the Independent Review Group (IRG).

2. The complainant submits that the impugned decision is tainted by an error of law in that the Organization considered that the criterion of the size of the portfolio of development cooperation projects managed by the staff member concerned is, on its own, a determining criterion in deciding whether to classify a post at grade NO-C. In his rejoinder, he contends that the Organization initially misinterpreted this criterion, which is included in the generic job description for the grade NO-C. He submits that the criterion only applies to Country Offices serving a specific country (CO) and not to decent work technical support teams and offices serving several countries (DWT/CO), which is the case for the Yaoundé office. In any event, he criticises the way in which the Organization applied this criterion to his personal situation: firstly, he argues that the IRG's assessment was utterly irrelevant since the number of projects to be managed and the average volume of resources mobilised by the post holder are not stated anywhere in the applicable rules; secondly, he submits that the IRG was wrong to carry out a comparison with other country offices despite the fact that, according to the complainant, no NO-C grade has yet been awarded in a programme unit in any ILO office; thirdly, he maintains that the size of a portfolio of development cooperation projects is too random and changeable over time to be taken into account as a determining criterion, while the complexity of the tasks and responsibilities involved is not necessarily directly proportional to the size of the portfolio in question; fourthly and lastly, he contends that, as the applicable rules do not weight the various criteria stated in job descriptions and all criteria must be met, the criteria should be given equal weight and none can be regarded as determining in itself.

3. It is firmly established in the case law that the classification of posts is a matter within the discretion of the executive head of the organisation (or of the person acting on her or his behalf) (see, for example, Judgments 4186, consideration 6, and 3082, consideration 20). As a result, the Tribunal will only review such a classification on limited grounds. A classification decision can only be set aside if it was taken without authority, was made in breach of the rules of form or procedure, was based on an error of law or fact, overlooked an essential

fact, was tainted with abuse of authority or if a truly mistaken conclusion was drawn from the facts (see, for example, Judgments 4437, consideration 2, 4384, consideration 4, 4186, consideration 6, 1647, consideration 7, and 1067, consideration 2). This is because the classification of posts involves the exercise of value judgements as to the nature and extent of the duties and responsibilities of the posts and the Tribunal will not substitute its own assessment for that of the competent authority (see, for example, Judgment 3294, consideration 8).

4. The Tribunal observes in this respect that the complainant's request for reclassification was considered three times and on the last occasion by the IRG – a body composed of experts with the training and experience to do so (see, to this effect, Judgment 4502, consideration 7, and the case law cited therein) – following a careful examination of his particular case.

Under Article 5 – entitled “Sections of the generic job descriptions” – of the Collective Agreement, signed on 25 July 2019, between the Office and the ILO Staff Union, “[e]ach job description comprises the following sections: generic job title, job family, grade and individual sections as follows: organizational setting; main purpose; working relationships; key duties and responsibilities; minimum requirements, which include education, experience, languages and competencies (technical and behavioural)”. The second sentence of Article 1 of the Agreement, entitled “Definitions – Generic job description”, further states that “[t]he grade attached to each generic job description is based on the [International Civil Service Commission] common system job classification standards”.

The “Organizational setting” section of the generic job description for grade NO-C states that “[t]his level is only applicable for DWT/CO and CO with a large portfolio of development cooperation projects”. Given this wording, it was reasonable for both the IRG and the Director-General to take the view that the criterion of a “large portfolio of development cooperation projects” was applicable both to DWT/CO and to CO.

As to the way in which the Organization applied this criterion to the complainant's personal situation, the Tribunal notes that the IRG's recommendation, to which the Director-General expressly referred, stated *inter alia*:

"This case is the first [appeal] that the IRG has had to deal with since the Office adopted new generic job descriptions for regular budget posts in the National Professional Services and General Services categories in non-headquarters duty stations. The IRG observes that these new generic job descriptions, which the Administration wished to have introduced and the Staff Union has approved, are considerably more detailed and leave less room for interpretation of the various criteria required. [...] [T]he IRG has noted that the NO-C grade in principle applies only to [DWT/CO] with large portfolios of development cooperation projects. Clearly, this criterion has not been met by the incumbent in view of the current situation at the Yaoundé DWT/CO. Therefore, after a close examination of all available information, the IRG finds that the evidence in this case does not support a reclassification of this post to NO-C level, despite the fact that some factors fulfil the criteria set out in the generic job description for a senior programme officer at NO-C level."

"[I]n all the new generic job families, there are factors that are decisive in whether a grade is awarded (grade determining factors) versus non-determining factors. In the case of grade NO-C, it appears that leading a team is in fact a determining factor as compared with grade NO-B. The same is true for the factor requiring the NO-C grade to apply in principle only to [DWT/CO] with a large portfolio of development cooperation projects. The IRG remarks that these determining criteria have been drawn broadly from normal practice at other United Nations agencies as regards job families at grade NO-C for senior programme officers." (Original emphasis.)

On the question of the size of the portfolio of development cooperation projects to be managed by a Senior Programme Officer at NO-C grade, the IRG further noted:

"[This matter] is covered by criteria that are easier to assess. The information available to the IRG, including the work samples submitted by the incumbent, shows quite clearly that the volume in terms of projects has significantly reduced in recent years (at the time when the request for reclassification was made, only three development cooperation projects were still active, compared to 15 projects in the 2000s). To better assess this volume, the IRG examined the situation in the ILO's other non-headquarters offices. This comparison revealed that many ILO non-headquarters offices located in Asia, Africa and Latin America that are not regional offices report much larger project portfolios, with teams sometimes made up of several

programme officers. In this respect, the IRG must point out that the issue of ‘volume’, which was not necessarily a relevant factor in assessing the nature and complexity of tasks under the old matrices, has now become a determining factor in the specific case of the NO-C grade for senior programme officers. The IRG must recognise this. In these circumstances, it would appear that the incumbent does not fulfil this determining criterion for obtaining an NO-C grade.

[...]

In conclusion, in view of the information in the file and the Office’s new criteria for post classification, and despite the fact that the incumbent performed his duties in a fully satisfactory manner in the period under review, the IRG considers that one of the determining criteria in the new senior programme officer generic job description for obtaining the grade of NO-C is not fulfilled.”

In the light of that motivation, the Tribunal, within the limits of its limited power of review in this matter, finds that the Director-General’s decision of 27 July 2021 cannot be regarded as being tainted by an error of law. The Organization was entitled to consider that the recent introduction of a new set of generic job descriptions meant that:

- in all the new generic job families, there were now criteria or factors that were determining in awarding a grade;
- in the case of grade NO-C, the factor requiring the NO-C grade to apply in principle only to DWT/CO and CO with a large portfolio of development cooperation projects could be considered determining;
- on the basis of the information available to it, including the work samples submitted by the complainant, it appeared that he was involved in only three development cooperation projects at the time of his request for reclassification and did not meet this requirement.

5. It follows from the foregoing considerations that the complaint must be dismissed in its entirety, without there being any need to rule on the ILO’s objection to receivability based on the allegedly “premature” character of the complaint.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 7 November 2023, Mr Patrick Frydman, President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Mirka Dreger, Registrar.

Delivered on 31 January 2024 by video recording posted on the Tribunal's Internet page.

(Signed)

PATRICK FRYDMAN JACQUES JAUMOTTE CLÉMENT GASCON

MIRKA DREGER