

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

J.-A. C. (No. 2)

v.

ILO

139th Session

Judgment No. 4972

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Ms M. S. J.-A. C. against the International Labour Organization (ILO) on 6 February 2021 and corrected on 7 March 2021, the ILO's reply of 9 April 2021, the complainant's rejoinder of 11 May 2021 and the ILO's surrejoinder of 3 June 2021;

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 contests the decision not to award her a contract without limit of time.

The complainant joined the International Labour Office, the ILO's secretariat, in August 2002 under a fixed-term contract, which was renewed until 28 February 2005. She then worked, with some interruptions, from October 2005 to October 2008 under a series of external collaboration contracts. During that period, she was not considered to be an ILO official, but her date of entry on duty had remained 1 August 2002. On 25 January 2009, she was reappointed under a fixed-term contract and her date of entry on duty in the

Integrated Resource Information System (IRIS) was changed to 25 January 2009.

On 20 December 2016, the complainant wrote to the Human Resources Department (HRD) asking if she would be considered for titularization (the award of an appointment without limit of time) in the 2017 exercise. She was informed that she did not qualify on the ground that external collaboration contracts were not taken into consideration in calculating the length of service required for titularization purposes, and that appointments without limit of time were based on the date of entry on duty under successive contracts without any interruption in service exceeding 30 days. The complainant did not pursue the matter at that time.

On 16 December 2019, the ILO Staff Union informed all staff that a new titularization exercise had begun for staff members in the Professional category recruited before 13 May 2008, and that it could verify upon request whether the names of officials who considered themselves to be eligible for titularization were on the list drawn up for that purpose. The complainant made such request and was informed by the Staff Union that her name was not on the list. HRD confirmed this in January 2020, explaining that her date of entry on duty was 25 January 2009.

On 5 March 2020, pursuant to a conversation between the complainant and HRD, the latter wrote to her and confirmed that the ILO had consistently applied the date of entry on duty as the cut-off date regarding eligibility for titularization, and that prior service in the Organization that had been interrupted by a break of more than 30 days was not considered. Consequently, the period from 1 August 2002 to 28 February 2005 could not be considered for this exercise.

On 4 May 2020, the complainant filed a grievance with HRD contesting the decision not to include her name on the list of eligible candidates for the 2020 titularization exercise. Her grievance having been rejected, she appealed that decision to the Joint Advisory Appeals Board (JAAB) on 6 August 2020 and asked that she be considered for titularization with retroactive effect from 2017.

In its report of 16 October 2020, the JAAB concluded that the grievance was time-barred insofar as the complainant challenged the decision to exclude her from the 2017 titularization exercise, which had been confirmed to her in March 2017 and which she had not challenged within the prescribed time limit. Her grievance was, however, receivable to the extent that she contested the decision not to consider her eligible for the 2020 titularization exercise. The JAAB found that, in accordance with applicable rules, she was precluded from being considered for the 2020 titularization exercise owing to her date of entry on duty, which was “reset” to 25 January 2009 when she was reappointed. Indeed, the cut-off eligibility date for titularization in 2020 was 13 May 2008. However, it held that discretion “could perhaps” have allowed an exception regarding her eligibility for titularization by equating, to some extent, her employment situation at the time she held external collaboration contracts to that of staff reappointed following termination on reduction of staff as foreseen by Article 4.11 of the Staff Regulations. It therefore recommended a review of the Office’s titularization process with a view to avoiding situations detrimental to staff who held fixed-term contracts under the regular budget with a break of more than a month. It also recommended that the Office refrain from referring to Article 14.4 of the Staff Regulations to justify an analogous approach regarding break of service in the “administrative practice for titularization”. It noted that paragraph 3 of Article 14.4 referred to interruption of service “between two contracts subject to the Rules Governing Conditions of Service of Short-Term Officials” whereas the complainant’s interruption of service was between two fixed-term contracts, which were not mentioned in Article 14.4. The JAAB accordingly recommended that the Director-General dismiss the grievance as partially irreceivable and, in any case, as devoid of merit.

By a letter of 5 November 2020, communicated to the complainant on 16 November, the Director-General accepted the JAAB’s recommendations to dismiss the grievance. He also endorsed the JAAB’s conclusion that the complainant’s date of entry on duty was correctly reset to January 2009 and that the latest date of entry on duty was used to calculate seniority for titularization purposes as foreseen by the Office’s legal framework and practice. This is the impugned decision.

The complainant asks the Tribunal to order that she be considered in the 2020 titularization exercise. She seeks compensation in an amount of 4,500 euros for the time and effort required to pursue this case, as well as moral damages.

The ILO asks the Tribunal to dismiss the complaint as partially irreceivable and, in any case, as devoid of merit.

CONSIDERATIONS

1. The complainant challenges the impugned decision in which the Deputy Director-General for Management and Reform informed her of the Director-General's decision to accept the unanimous recommendation of the Joint Advisory Appeals Board (JAAB) to dismiss her grievance "as partially irreceivable and, in any case, devoid of merit". The aspect of the grievance, which the JAAB correctly considered time-barred and therefore irreceivable, concerned the complainant's request to be considered for titularization, which would have qualified her for an appointment without limit of time, retroactively to 2017. The complainant does not pursue this aspect in her present complaint.

The aspect the JAAB considered receivable but devoid of merit concerned the complainant's challenge to the decision not to select her for titularization for the 2020 exercise. In the impugned decision, the Deputy Director-General informed the complainant that the Director-General agreed that her date of "Entry on Duty" had been duly reset to "29 January 2009 [...] and that the use of the latest date of 'Entry on Duty' to calculate seniority for titularization purposes [was] in accordance with the Office's legal framework and applicable practice". In challenging this decision, the complainant, in effect, asks the Tribunal to order that she be considered in the 2020 titularization exercise. The complainant also requests compensation under a number of heads, as well as moral damages for alleged negligence, carelessness and (seemingly) for damage to her reputation, and costs.

2. At the material time, the Staff Regulations contained no specific provision for titularization. However, Circular 452 (Rev. 1), Series 6, of 8 April 1993, on Rules and Procedures for Titularization (“the Circular”) contained specific provisions and explained the procedures for it. In addition, the Circular established criteria for appointments without limit of time. In its report, the JAAB noted the Office’s explanation that the annual titularization exercise is the procedure for assessing the suitability of officials for without limit of time contracts, which was subject to seniority and the requirements set out in Article 4.6(c) of the Staff Regulations.

3. Notably, paragraph 7 of the Circular, headed “Criteria”, provided as follows:

“7. The criteria set out in Article 4.6 (c) [of the Staff Regulations] are integral. Subject to the rules and procedures explained below, officials must fulfil each of these conditions to be considered by the Administrative Committee.

[...]

7(c) Seniority

The length of service required in order to be considered for titularization is fixed according to the number of posts available. Nevertheless, the minimum length of service completed must be at least five years.”

Article 4.6(c) of the Staff Regulations, which paragraph 7 of the Circular cross-referenced, mentioned four criteria that were to be considered for appointments without limit of time. It stated as follows:

“Appointments without limit of time to established posts and to posts created by the Governing Body under special funds shall be subject to good conduct, satisfactory performance as consistently reflected in several performance appraisal reports, seniority, as well as the official’s capacity to pursue a career having regard to his field of competence and the prospective needs of the Organization. Such appointments shall be made in accordance with the procedure established by the Director-General, after consulting the Joint Negotiating Committee.”

Paragraph 7(a) of the Circular explained the meaning of “Good conduct” by reference to Chapter I and Article 1.2 of the Staff Regulations. Paragraph 7(b) of the Circular explained satisfactory performance for the purpose of paragraph 7 of the Circular, whilst

paragraph 7(d) rationalized the co-relationship between an “Official’s capacity to pursue a career having regard to his/her field of competence” and “the prospective needs of the Organization” stated in Article 4.6(c) of the Staff Regulations. Paragraph 7(d) stated as follows:

“7(d) [...]

This is to ensure that the specialization (or polyvalency) of those officials who fulfil all the other requirements also corresponds to the on-going needs of the Organization, based not only on the availability of resources relating to their field of work in the Programme and Budget, but also, in the medium term, on the priorities approved by the International Labour Conference and, on a more permanent basis, on the objectives of the Organization as outlined in the Constitution.”

Paragraph 8 of the Circular, which is headed “Procedures”, relevantly stated as follows:

“The Administrative Committee draws up the list of officials to be considered for titularization based on the criteria of good conduct, satisfactory performance and seniority, as explained in paragraph 7(a), (b) and (c) above. The list is then submitted to each departmental director concerned inviting his/her opinion on the proposed titularizations with regard to the capacity of officials on the list under his/her authority to pursue a career in line with subparagraph 7(d), above. [...]”

Under paragraphs 9.1 and 9.2 of the Circular, the Administrative Committee was responsible for selecting officials to be considered for titularization giving priority by order of entry on duty and taking “all service as an ILO official” into account, except for those periods specified in paragraphs 9.2(i), (iii), (iv) and (v), which are not applicable to the complainant or in this case.

4. The facts reveal that the complainant’s date of “Entry on Duty” into the service of the ILO was initially 1 August 2002 as she first entered the service of the ILO during that month (on 20 August). She worked therein continuously until 28 February 2005. Thereafter, she was again employed by the ILO from October 2005 to October 2008 but under a series of external collaboration contracts punctuated by breaks. On 25 January 2009 when she was reappointed to the service of the ILO under a fixed-term contract on a full-time basis, her date of “Entry on Duty” was reset to this latter date. The complainant did not

challenge that decision and she takes no issue with it in this complaint. She has consistently argued, in effect, that, pursuant to paragraphs 7(c), 9.1 and 9.2 of the Circular, the Office should have included her name in the list of officials considered in the 2020 titularization exercise as she met the requirements.

5. On the other hand, whilst the ILO has not disputed that the complainant met the requirements in Article 4.6(c) of the Staff Regulations, it contends, in effect, that she did not meet the seniority requirements under paragraphs 7(c) and 9.2 of the Circular. It argues that her service for the purpose of determining eligibility to be included in that exercise had not been continuous and commenced from 25 January 2009, the date when she was re-employed under a fixed-term contract. The ILO states that this position accords with its long-standing practice, which was informed by Articles 2.1 and 4.11 of the Staff Regulations.

6. Article 2.1 of the Staff Regulations, which is under the heading “Composition of the staff”, relevantly stated as follows:

“The staff of the Office shall comprise:

- (1) Officials appointed without limit of time to posts established by the budget of the Organization and to such posts as may be created by the Governing Body under any special funds which may be made available to the Organization for that purpose; such officials shall be ‘established officials’.
- (2) Officials appointed for a fixed-term; such officials shall be ‘fixed-term officials’.”

Article 4.11, which provided for reappointed officials, stated as follows:

“A former official, on reappointment, shall be regarded, for the purpose of these Regulations, as becoming an official for the first time, provided that the Director-General may make exceptions to this rule in the case of former officials who are reappointed under article 11.5(a) and (b) (Termination on reduction of staff).”

Article 14.4, under the heading “Service under successive contracts”, stated, in paragraph 1, that all continuous service under contracts governed by these Regulations or by the Rules governing

conditions of service of short-term officials shall be taken into account for the purpose of the application of specified provisions, which provisions have no bearing either upon titularization or the grant of contracts without limit of time.

7. In reply to the ILO's submissions, the complainant argues that these Staff Regulations are not applicable, particularly because titularization is not regulated in the Staff Regulations. The complainant's argument to the effect that Article 4.6(c) of the Staff Regulations is not applicable to this case because it does not mention titularization is unfounded as it overlooks the fact that Article 4.6(c) of the Staff Regulations is cross-referenced in paragraph 7(c) of the Circular.

8. In its report, the JAAB accepted the Office's explanation for its practice to calculate seniority for the purpose of titularization with effect from an official's entry on duty date. In the view of the Tribunal, this was not merely a matter of practice, but was founded mainly on Article 4.11 of the Staff Regulations and paragraph 9.1 of the Circular, which permitted the Administrative Committee to select officials to be taken into consideration giving priority by order of entry on duty.

9. The JAAB also observed the Office's position, as gleaned from its communications to the complainant after she applied to be included in the 2020 titularization exercise, that she was not considered because the date of her entry on duty was 25 January 2009 and only staff members who were recruited before 13 May 2008 were eligible for consideration. In an email of 14 January 2020 to the complainant, the reason for this was explained by reference to Article 4.11 of the Staff Regulations. Having referred to this Article, the Human Resources Department (HRD) stated in the email that "[f]or the purposes of the titularization exercise however it has been the practice to consider continuity of service for all successive contracts that had less than 30 days interruption. Your Entry on duty is considered as 25 January 2009." The JAAB noted that, in response to HRD's email of 14 January 2020, the complainant insisted that there was no provision that required

continuity of service for calculating the time a staff member has worked with the Organization for titularization purposes and that, since titularization is not regulated by the Staff Regulations, the requirement for continuity of service cannot be founded on Article 4.11 of the Staff Regulations, which Article is applicable “for the purpose of these Regulations”. The JAAB had earlier noted that in a telephone conversation on 5 March 2020 between Ms M.C., HRD, and the complainant, the former had confirmed that the ILO had consistently applied the entry on duty date as the cut-off date for an official being considered for titularization and that according “to consistent practice in this exercise and the importance of the [without limit contract] for the future needs of the [ILO], prior service in the [ILO] that has been interrupted by a break of more than 30 days [was] not considered”. The JAAB concluded that based upon the ILO’s legal framework, particularly regarding seniority, as well as its practice which requires continuity of service to determine whether an official is listed to be considered for titularization, the complainant “did not meet the eligibility conditions for titularization”. Notably, the JAAB then went on to state that “[c]oherence might have led the Office to consider the [complainant]’s prior service as Regular Staff under [fixed-term] contracts from 2002 to 2005 for the purpose of this [2020] titularization exercise”.

It has been noted that the complainant does not dispute that the periods she worked with the ILO on external collaboration contracts should not be included for the purpose of calculating her eligibility to be listed for titularization. Neither does she dispute that 25 January 2009 was her new entry on duty date following her re-employment on fixed-term contracts. What she disputes is the Office’s reliance on this date alone, apparently founded upon a practice informed by Articles 2.1, 4.11 and 14.4 of the Staff Regulations, for the purpose of listing her for titularization.

10. The Tribunal notes that Article 4.11 of the Staff Regulations is unambiguous. As stated above, in consideration 6, according to that provision, a former official, who like the complainant, is reappointed, shall be regarded for the purpose of the Staff Regulations as becoming

an official for the first time. Although Article 4.11 provides for exceptions to that rule, it specifies the circumstances in which an exception can be made. The complainant's situation does not fall within the scope of those exceptions. The Tribunal recalls that the primary rule of interpretation is that words are to be given their obvious and ordinary meaning and must be construed objectively in their context and in keeping with their purport and purpose (see, for example, Judgment 4796, consideration 3). The Organization therefore correctly found that the complainant's date of entry on duty was 25 January 2009 when she joined again the Organization under a fixed-term contract, and thus correctly concluded that she was not eligible for the 2020 titularization exercise as she was not recruited before 13 May 2008.

11. All the other issues raised, in particular regarding the applicability of the Circular, should not be examined since the complainant was not eligible to be considered for titularization in 2020. Accordingly, the complaint should be dismissed.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 8 November 2024, Mr Patrick Frydman, President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Rosanna De Nictolis, Judge, sign below, as do I, Mirka Dreger, Registrar.

Delivered on 6 February 2025 by video recording posted on the Tribunal's Internet page.

PATRICK FRYDMAN

HUGH A. RAWLINS

ROSANNA DE NICTOLIS

MIRKA DREGER