

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

M. N.

v.

ILO

139th Session

Judgment No. 4974

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr P. M. N. against the International Labour Organization (ILO) on 21 May 2021, the Organization's reply of 6 August 2021, the complainant's rejoinder of 3 September 2021, corrected on 27 September 2021, and the ILO's surrejoinder of 12 October 2021;

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

Having examined the written submissions;

Considering that the facts of the case may be summed up as follows:

The complainant contests the decision not to reclassify his position.

The complainant is an official of the International Social Security Association (ISSA). The ISSA was founded in 1927 under the auspices of the ILO, but is administered separately from the ILO. Pursuant to the 1992 Agreement between the ILO and the ISSA, amended in 1997, officials of the General Secretariat of the ISSA are under contract with the International Labour Office and their employment is governed by the provisions of the ILO Staff Regulations.

The complainant joined the ISSA's Secretariat on 1 July 2016 as Technical Specialist, at grade P.3, in Social Security (Project Officer). He was awarded a one-year fixed-term technical cooperation project contract at grade P.3 that was renewed several times.

In November 2018, the complainant submitted a formal request for reclassification to his direct supervisor contending that he was performing at the P.4 level, that he was the only one in the team holding a P.3 position and that his output met expectations. The following month, his direct supervisor replied that his position was at grade P.3, as it used to be for his predecessor, and that the Human Resources Department (HRD) had reviewed and approved his job description at that grade. On 7 March 2019, the complainant informed the ISSA Secretary General that he wished to appeal his direct supervisor's decision to reject his request for reclassification. The Secretary General asked the ILO to conduct a desk audit of the complainant's position. The classification expert who conducted the evaluation confirmed, in his report of 4 October 2019, that the complainant's position was at grade P.3 and recommended that his position's title be corrected to "Technical Officer". On 12 February 2020, the Secretary General informed the complainant that, pursuant to the outcome of the technical evaluation, his position would remain at grade P.3. The complainant lodged a grievance with HRD contesting that decision. His grievance having been rejected on 8 May 2020, he lodged a grievance with the ILO Joint Advisory Appeals Board (JAAB) on 4 June 2020.

In its report of 18 November 2020, the JAAB concluded that "[o]wing to the lack of transparency and various shortcomings vitiating the job grading process [...] the classification expert's conclusions and recommendations [were] vitiated and should be set aside". The JAAB recommended that a new job grading review be conducted concerning the complainant. It considered that moral damages were not warranted at that stage given that a new job grading review should be conducted. In addition, it recommended, more generally, that the Office take position on the application of Circular 6/639 on job grading to ISSA staff members.

By a letter of 4 December 2020, the complainant was informed that the ILO Director-General had endorsed the JAAB's recommendation that the classification expert's conclusions lacked transparency and motivation, and set aside the decision of 8 May 2020. Hence, a new job grading review of the complainant's position would be conducted and

a new decision regarding his job grading request would be made. The Director-General also agreed that no moral damages were justified at that stage. Regarding the general recommendation on the applicability of the job grading procedure set forth in Circular 6/639 to ISSA staff members, the Director-General held that it was a matter of human resources policy that laid beyond the scope of the grievance procedure, but had nevertheless instructed HRD to examine possible ways to clarify the procedure to be applied in case of a request for reclassification of development cooperation positions. He added that this was a final decision.

On 27 February 2021, two experts from HRD issued a technical evaluation report after having reviewed the complainant's position for the period from 1 July 2016 to 30 July 2019, the same period that was examined during the initial review. The experts concluded that the title of the complainant's position should be corrected to Technical Officer, and that the post was at the top range of the P.3 grade. They also recommended that ISSA officially assign the complainant additional and ongoing responsibilities in his own right in specific areas thereby ensuring that his responsibilities were on a par with the other social security expert positions in the team. The complainant should also be provided with an up-to-date job description accurately reflecting the work to be performed.

By a letter of 3 March 2021, the ILO Deputy Director-General for Management and Reform informed the complainant that the Director-General had reviewed the new technical evaluation report, and accepted that his position was at the top range of the P.3 grade. As recommended in the technical evaluation report, ISSA should officially assign him additional responsibilities in his own right in specific areas thereby ensuring that his responsibilities were on a par with the other social security expert positions in the team and provide him with an up-to-date job description accurately reflecting the work assigned to him. The Deputy Director-General added that a copy of the report was attached to his letter for information, and that the letter constituted a "new final decision" for which the internal means of redress had been exhausted. That is the impugned decision.

The complainant asks the Tribunal to quash the impugned decision of 3 March 2021, to order that the grade of the contested position be changed from P.3 to P.4 with effect from 1 July 2016, and to order “redress and repair of the financial prejudice” he has suffered. He also seeks compensation for legal fees, and the extra hours he worked to “collate facts and ev[i]dence” and for “emotional pain and suffering in the present case”. In the rejoinder, he adds that his step in grade P.4 should be at least step 4 with effect from 1 July 2016.

The ILO asks the Tribunal to dismiss the complaint as devoid of merit. In any event, the complainant’s request that the Tribunal corrects his grade is beyond the remit of the Tribunal, and the claim to be granted a step higher than step 1 at grade P.4 is a new claim as it was submitted for the first time in the rejoinder.

CONSIDERATIONS

1. As the facts disclose, this case arises out of an exercise undertaken, at the complainant’s formal request in November 2018, to reclassify the P.3 post of Technical Specialist he then encumbered. The facts also disclose the steps that were taken which culminated in the decision, dated 3 March 2021, which the complainant impugns in the present complaint. In that decision, the ILO Deputy Director-General for Management and Reform informed the complainant that the ILO Director-General accepted the technical evaluation report provided by the two evaluation experts from the Human Resources Department (HRD) who had reviewed the complainant’s position for the period from 1 July 2016 to 30 July 2019. They concluded that his position was at the top range of the P.3 grade (91st percentile).

2. In challenging the impugned decision, the complainant seeks the following orders: (1) quash the impugned decision; (2) issue an order to correct the grade of the contested position (from P.3 to P.4, step 4) with effect from 1 July 2016; (3) issue an order for redress and repair of the financial prejudice he suffered due to the violation of applicable provisions; (4) award him compensation for legal fees, and

the extra hours he worked to “collate facts and ev[i]dence”; and (5) award him compensation for the emotional pain and injury he suffered in the present case.

3. The complainant’s second claim for the Tribunal to issue an order to correct the grade of the contested position from P.3 to P.4, step 4, with effect from 1 July 2016, is irreceivable as it is not within the Tribunal’s competence to make orders of this kind against organisations (see, for example, Judgment 4502, consideration 12). Moreover, the classification of posts and gradings are within the discretionary authority of the Director-General (see, for example, Judgments 4502, consideration 6, and 4102, consideration 7).

4. In consideration 3 of Judgment 4810, the Tribunal recalled that 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 and 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.

5. Regarding the regulatory framework, the ILO explains that the administrative and financial arrangements of the ILO-ISSA cooperation (in force at the material time) were provided in the 1992 Agreement as modified in the 1997 Protocol. Under paragraph 1(i) of the 1997 Protocol, officials of the ISSA General Secretariat are under contract with the International Labour Office and their contracts are governed by the provisions of the ILO Staff Regulations. More specifically, “the terms and conditions of their contract of employment shall be those habitually applied by the ILO to officials appointed as technical cooperation staff”. Paragraph 3 of the 1992 Agreement provided that the ILO grading procedures applied to ISSA posts, but the ILO explains before the Tribunal that there are no specific procedures by which to examine requests to review grades of technical cooperation staff. This

suggests that Circular 6/639 does not apply to the complainant's classification or reclassification process although he seems to suggest that it applies to him *mutatis mutandis* in the context of his plea that the reclassification procedure violated the principles of equality and non-discrimination. However, any doubt on this issue was put to rest, when, by reference to a paragraph in the Director-General's decision contained in the letter of 4 December 2020 from the Deputy Director-General for Management and Reform, the complainant stated that "[a] reading of the above paragraph affirms unambiguously that the provisions of Circular 6/639 are not applicable in the present case". The Tribunal agrees with that concession, which aligns with the position of the ILO.

Continuing its explanation of the classifying procedures, the ILO states that, normally, the grades of the post of technical cooperation staff members are determined prior to their recruitment by reference to the relevant job description, but the Staff Regulations do not exclude a change in their grades. Paragraph 2(b) of Annex V to the Staff Regulations, which is concerned with annual appraisals and adjustment of salary of such staff provided that "[t]he assignment of duties and responsibilities in a different grade or a regrading of existing duties and responsibilities during the currency of a fixed-term contract shall be regarded as a new contract" and the salary is adjusted accordingly. The job grading itself is carried out using the same United Nations common system-wide classification standards. It is based on the premise that the value of the job is determined by its level of responsibility and depends upon the complexity of the work and not upon the qualifications, job performance, seniority or other attributes of the incumbent. If the request is for reclassification at a higher level, the higher functions need to be performed on a regular and continuing basis and form a significant part of the ongoing work in that position. The International Civil Service Commission (ICSC) has developed a Master Standard for the classification of posts in the Professional and higher categories which provides a uniform guide on the grading of posts by a points-factor rating evaluation plan and grade level descriptors. The assigned duties are measured through four factors: the nature of the work; enabling environment; partnership and results. These factors are assessed and

rated by the reviewing classifier. The ICSC has also introduced an electronic evaluation system in which the classifier enters the results of the ratings. The system then compiles the ratings.

6. The complainant requests oral proceedings (hearing) under Article 12, paragraph 1, of the Tribunal's Rules and names three witnesses he wishes to be heard. This request is rejected as the Tribunal considers that the parties have presented sufficiently extensive and detailed submissions and documents to permit it to make an informed decision on this case.

7. The complainant challenges the impugned decision on three discernible grounds, which the Tribunal finds it convenient to consider in the following order:

- (1) The Office has failed to implement certain aspects of the impugned decision.
- (2) The decision not to reclassify his post at grade P.4 was taken in violation of the principles of equal treatment, non-discrimination and the Office's duty of care, and failing to do so has tainted the impugned decision.
- (3) The impugned decision should be set aside because it failed to hold that the job grading procedure was flawed.

8. To support the first ground, the complainant states that he did not receive the updated job description reflecting the work to be performed with respect to project management and responsibility on guidelines mandated in the impugned decision. He states that it was incumbent on the Office to enforce the impugned decision by providing him with an updated job description that accurately reflected "the work to be performed with respect to project management and responsibility on guidelines within 60 days from the date of notification of the new final decision", but that had not been done. He suggests that this confirms his allegations that his supervisor obstructed and misled the job classification. In the premises, he requests the Tribunal to quash "the new final decision of the Director-General" and award him the

relief he seeks. There is however no principle or rule upon which the impugned decision may be set aside because of alleged failure to implement it. The first ground is therefore unfounded. In fact, it is apparent that steps have been taken to give effect to the impugned decision, albeit without completion at the material time. Notably, the ILO states that the terms and conditions of the complainant's employment remained the same for reasons which it explains in the following terms: the process of determining the tasks that should be assigned to him that are to be listed in the new job description required a thorough review of the department's needs and an evaluation of the respective duties and responsibilities of all the staff members in the department. The former Director retired and the new Director took up his duties on 1 May 2021, which had delayed certain organisational decisions. However, the ISSA Secretary General was following personally the matter and gave instructions. Consultations were ongoing with the complainant regarding the new job description. On 29 September 2021, the complainant received the new job description, which was updated to include additional responsibilities to bring it in line with the other positions of Technical Specialist in Social Security (Project Manager) in the department. A few days later, he was offered the new contract at the P.4 grade. This constitutes the full implementation of the impugned decision according to the ILO. The reclassification issue should have been moot had the complainant not refused to sign the contract because he disagreed with the assigned "grade" (sic. step) and the starting date. HRD explained to the complainant, on 11 October 2021, that contesting the reclassification, the starting date or the updated job description was part of the same dispute now before the Tribunal.

9. Regarding the second ground, the complainant submits that this case is primarily based on his contention that the decision not to reclassify his post at grade P.4 was taken in violation of the principles of equal treatment, non-discrimination, and, also, about what the Office referred to as an oversight in the job title in the initial classification of his post at grade P.3, which breached the Office's duty of care.

10. It was pursuant to a vacancy announcement No. TC/2016/ISSA/02 that the complainant was recruited in 2016 to a pre-existing position of Technical Specialist in Social Security, which was advertised as a grade P.3 post. The complainant has argued from the outset that there were seven other staff members in his unit who had the same job title, but whose positions were classified as grade P.4. This puts the focus of his allegation of unequal treatment upon the assigned job titles. However, the complainant's further submission is to the effect that by assigning a higher grade to the other seven posts, the Office violated Annex I, paragraph 3, of the ILO Staff Regulations and other applicable job grading rules "which warrant consistency between job titles, grades and duties attached thereto". This confirms the complainant's awareness that the question whether he was treated unequally and/or discriminated against because his post was classified at grade P.3, was not simply based on whether the eight posts had the same job title but also upon whether the duties that attached to his post were at the same level as those that attached to the other seven positions.

It seems obvious to the Tribunal that by undertaking the exercise to reclassify the complainant's post, at his request, the Office took the necessary step to determine the correct grade based not only on his job title, but also upon the duties and functions that attached to the post. In this context, the Tribunal observes that in many instances, the complainant's submissions in this case are based on the misapprehension that suggests that the level of his performance in the post, as well as the fact that he performed duties at a higher level from time to time, should be taken into account in the classification exercise. He states, for example, in the context of his plea on the second ground, that "[he] did this job; honesty and truth warrant that [he be] given full credit for the work [he] did to guarantee [social] justice for all as a mission and mandate of the ILO towards all humanity". These are however legally irrelevant considerations having regard to the analysis in considerations 4 and 5 of this judgment. The Tribunal is inclined to the Office's view that the complainant's statement that, contrary to his supervisors' assertions, he was responsible for project management and direct guidelines is not apparent from the duties and functions that attached to his post, contained in his job description.

11. The complainant further refers to a statement his supervisor made, which, in his view, confirms that, contrary to the provisions of Annex I, paragraph 3, of the ILO Staff Regulations and other applicable job grading rules and in breach of equality and non-discrimination, his post was deliberately placed at grade P.3, as against the other seven posts. He refers specifically to the statement his supervisor made which was reproduced in the investigation report of April 2020 established regarding the complainant's allegations that his supervisor had taken measures to exclude him from work. The Tribunal is satisfied that this statement does not have the meaning the complainant attributes to it. The full statement was as follows:

“[The complainant's supervisor] confirmed that issues began when [the complainant] made a reclassification request from grade P3 to P4. In the lead up to [the complainant]'s recruitment, there had been consideration of whether the post should be classed as P2, P3 or P4. It was decided that it was important to keep P3 as a pathway into the organisation. Grade P4 is a very senior position and P5 denotes an autonomous manager.”

12. The complainant further submits that, in breach of equality and non-discrimination, the ILO did not adhere to the foregoing statement in two subsequent recruitments in his unit as it advertised those positions at grade P.4 (from which he states he was excluded). He attaches the relevant vacancy announcements Nos. TC/2017/ISSA/03 and DC/ISSA/P/2021/01. However, on comparing them, it is not obvious that the functions and duties attached to these two posts are similar to those that attached to the post contained in the vacancy announcement under which the complainant was recruited. Those other two vacancy announcements contained a management component which is not obvious in vacancy announcement No. TC/2016/ISSA/02.

The complainant's submission, by reference to the provisions of Annex V.2(b) of the Staff Regulations, that the Office violated the principles of equality and non-discrimination by not correcting the alleged error in the initial classification of his post at grade P.3 when his contract was extended for the second time in October 2018 is unfounded. This provision, which is inapplicable to the complainant's situation relevantly states that where an extension of contract provides for the assignment

of duties and responsibilities in a different grade, or for a regrading of those duties and responsibilities performed, the salary may be adjusted in light of these changes at the time the extension takes place.

13. The complainant's further submission that he was the victim of unequal treatment and discrimination because he was harassed by his supervisors is unmeritorious as the complainant provides no evidence to support his submission to the effect that the decision not to classify his post at grade P.4 was because his supervisors acted with malicious intent and wanted to ruin his career. Based on the foregoing, the complainant's contention that the decision not to reclassify his post at grade P.4 was taken in violation of the principles of equal treatment, non-discrimination and the duty of care is unfounded. By extension, his request for an order to "redress and repair" the injury he allegedly suffered "due to the deliberate violation of the provisions of annex I.3 of the ILO Staff Regulations by the Management of ISSA and non-adherence to the provisions of annex V.2(b) of the ILO Staff Regulations by the [International Labour] [O]ffice" is rejected.

14. To support his contention, in the third ground, that the new job grading procedure was flawed, the complainant submits that the grading lacked independence as it was not conducted by a different external expert than the expert who conducted the initial review. The record however shows that the classification exercise was not conducted by the same classification expert but by two classification experts who had not conducted the initial classification which had been set aside. The complainant further submits that, contrary to the ILO Joint Advisory Appeals Board's (JAAB) recommendation in its 4 December 2020 report, the classification exercise was not conducted by an external expert. The Tribunal however observes that the JAAB had stated as follows in its first recommendation:

"138. The panel has noted that the classification expert used to work in the [Human Resources (HR)]/TALENT unit of the ILO until 2010. While this alone does not necessarily reflect a conflict of interests, the panel finds, however, preferable that in the instant case, the new job grading review be **conducted by a different external expert than the expert who conducted the initial review.**" (Original emphasis.)

15. The ILO states that the JAAB had not mentioned “external classifier” and that the new technical evaluation was undertaken in an independent, meticulous and transparent manner by two experts in classification and ICSC grading standards, which was thorough, objective and balanced and the complainant has not proved that the review was not impartial. In the Tribunal’s view, that the JAAB recommendation that the classification exercise be conducted by “a different external expert” was not mandatory given that it was qualified by “preferable”. In effect, this left it open to the Administration to appoint HRD classification experts to conduct the exercise.

16. The submissions the complainant proffers to support his contention that the job grading procedure was flawed essentially amount to his subjective view that the work he performed included managerial duties which the external expert failed to take into account in the classification exercise. It is evident from his submissions that he fails to appreciate that the fundamental principle is that the classification of a post involves an evaluation of the nature and extent of the duties and responsibilities attached to the post based upon the job description and not on evidence of the merits of his performance in the post. The complainant submits that the classification experts sought clarification from the “Officer-in-Chief” (OiC) who was not his supervisor during the period under review. However, as the ILO points out, the complainant’s supervisor, the Director of the department, was on long-term sick leave from July 2020; he returned on a part-time basis on 1 March 2021 and was thus not available during the second job grading review, but the OiC was aware of the complainant’s work as he was the only P.5 official in the department and had assisted the Director in his tasks. The complainant submits that the OiC made some untrue, “unclarified and unbacked” statements concerning the implementation of the ISSA-World Bank Memorandum of Understanding. The complainant insists that he managed the project in that respect and his supervisors incorrectly asserted that he did not manage any project and that he had no specific guidelines to review when he had the responsibility to “overhaul 12 sets of guidelines to enhance consistency reinforce linkages and minimise overlaps between different sets of guidelines”.

He draws attention to his supervisors' comments in his 2018 appraisal report that he (the complainant) provided substantial and high-quality contributions on guidelines. He insists that he had full responsibility for the coverage extension guidelines and that managing a set of guidelines requires taking responsibility to update references to the guidelines, manage workshops, and formulate comments on the revision of guidelines, so that the classifiers incorrectly concluded that he had no guidelines responsibilities. However, as the ILO points out, the complainant thereby conflates the task of managing a project with that of completing an assignment, and, additionally, the classification experts had reviewed the evidence the complainant submitted and concluded that the work did not reach the level of "coordinating" or "leading" the implementation of the ISSA-World Bank Memorandum of Understanding. The ILO also submits that being responsible for managing guidelines is different from having responsibilities regarding the design or the revision of guidelines and the second evaluation report accurately determined that he had contributed to the "review/development of guidelines" managed by other colleagues, in a technically satisfactory manner and in accordance with the duties listed in his job description, which was at the P.3 level. In light of the fundamental principle that the classification of a post involves an evaluation of the nature and extent of the duties and responsibilities attached to the post based upon the job description, the complainant's further submission that he was one of the few social security experts who actually wrote guidelines and that the Office is playing around with words such as "manage, coordinate, conceptualise, contribute, support, etc." without looking at the actual work done, outputs and outcomes to serve an "illicit goal" advances his case no further. Based upon the foregoing, the third ground is unfounded.

17. In the foregoing premises, the complaint will be dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 28 October 2024, Mr Michael F. Moore, Vice-President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, Mirka Dreger, Registrar.

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

MICHAEL F. MOORE

HUGH A. RAWLINS

HONGYU SHEN

MIRKA DREGER