

O. N.

v.

ICCO

140th Session

Judgment No. 5007

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr E. A. O. N. against the International Cocoa Organization (ICCO) on 5 July 2021, the ICCO's reply of 28 October 2021, the complainant's rejoinder of 4 December 2021, corrected on 13 December 2021, and the ICCO's surrejoinder of 9 March 2022;

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 contests the date of his within-grade step increment.

The complainant joined the ICCO in February 2011 under a two-year fixed-term contract as Statistical Assistant at grade P1, step I. In accordance with the applicable rules, he received incremental steps at yearly intervals on the anniversary of his appointment, advancing to step II in February 2012, to step III in February 2013 and to step IV in February 2014. In January 2015, he was reassigned to the position of Statistician. Although his grade remained unchanged, he was granted two additional salary steps and thus advanced to grade P1, step VI.

With effect from 1 January 2017, the ICCO's salary scale was aligned with that of the United Nations. As a result, the complainant, who had reached step VII that month, was placed in step XII of grade P1.

In October 2017, the complainant was demoted by four steps and reassigned to a new position as the outcome of disciplinary proceedings following charges of serious misconduct brought against him in July 2017. The Staff Action Form informing the complainant of the implementation of this decision indicated that he was placed in grade P1, step VIII, with effect from 1 October 2017 and that the date of his next salary increment was 1 January 2019.

On 9 January 2019, the complainant was informed, by a Staff Action Form prepared by Mr O., Administrative Officer, and approved by the newly appointed Executive Director – who took up office on 1 January 2019 –, of the decision to grant him a salary increment effective 1 January 2019. He thus advanced to grade P1, step IX. The said form also indicated 1 January 2021 as the complainant's next salary increment.

On 10 February 2021, after realizing that he had not received a salary increment in January 2021 as previously indicated by the Administration, the complainant raised this issue with Ms M., Senior Budget and Finance Officer. By an email dated 12 February 2021, Ms M. explained that increments were generally due on the anniversary of the date the staff member joined the Organization. However, for staff members who were promoted or demoted, like the complainant, the date taken into account for the increment was the date of such an event.

In the meantime, by a memorandum dated 11 February 2021, Mr O. informed the Executive Director of a clerical error in the Staff Action Form that had been issued in October 2017. The form incorrectly indicated 1 January 2019 as the complainant's next incremental date whereas the correct date was 1 October 2019 due to the latter's demotion in October 2017. As the complainant had benefited from a salary increment several months before it was due, Mr O. proposed that the complainant be asked to reimburse the undue payments "on his own schedule". On 12 February 2021, the Executive

Director decided that the complainant should reimburse the nine months of unduly paid increment (from January to September 2019), estimated at 1,111.92 euros, and that the increment would only be granted from October 2019 onwards.

On 17 February 2021, the complainant challenged the Executive Director's decision dated 12 February 2021. By a letter dated 1 March 2021, the Executive Director confirmed his decision, acknowledging that the overpayment had occurred due to an "error of the Administration". He clarified that salary increments typically occurred one or two years "after the event which led to the current grade/level", which could be "an appointment, a promotion or a demotion". In the complainant's case, having been demoted as of 1 October 2017, his subsequent increments were due on 1 October 2019 and 1 October 2021.

On 2 March 2021, the complainant lodged an appeal with the Board of Appeal and, on 30 April 2021, he submitted his written statement, requesting to set aside the Executive Director's decision to "modify the date of [his] next within-grade step increment". In its conclusions dated 24 June 2021, the Board recommended in particular that a "favourable response" be given to the complainant's request and that the Organization should bear the cost of the overpayment. By a letter dated 27 June 2021, the Executive Director informed the complainant of his decision not to follow the Board of Appeal's recommendations. However, he decided to "close [the] case" by not pursuing the Organization's claim for the reimbursement of the amount owed by the complainant. This is the impugned decision.

Subsequently, in the context of a separate dispute pertaining to the reclassification of the complainant's post, the Executive Director decided, on 13 August 2021, to grant the complainant a promotion to grade P2 with retroactive effect from 1 October 2014 and to reconstitute his career accordingly. On 20 September 2021, the Executive Director reiterated this decision and informed the complainant that he considered that his promotion to grade P2 rendered his complaint before the Tribunal concerning the date of his within-grade step increment "groundless", thereby encouraging him to withdraw it. The complainant requests the Tribunal to set aside the impugned decision whereby the

date of his next within-grade step increment was changed from January to October, and to order the ICCO to pay him all due “salary arrears” and allowances from January 2021, with interest. He also claims moral damages in the amount of 60,000 euros. Lastly, he seeks an award of 2,500 euros in costs.

The ICCO requests that the complainant’s claims regarding the date of his within-grade step increment and the payment of “salary arrears” and allowances be dismissed as moot. It also asks the Tribunal to reject the complainant’s request for moral damages. Alternatively, the ICCO requests that the complaint be dismissed as unfounded.

CONSIDERATIONS

1. The complainant impugns the 27 June 2021 decision by which, partially departing from the Board of Appeal’s recommendations, the Executive Director confirmed the change of date for the complainant’s within-grade step increment from January to October, as from the step increment due in the year 2019. However, the Executive Director decided not to pursue the Organization’s claim for the reimbursement of the amount of 1,111.92 euros allegedly owed by the complainant for having received the salary increment several months before it was due.

2. At the outset, the Tribunal will address the mootness issue raised by the Organization, which alleges that the complainant’s claims regarding the date of his within-grade step increment and the payment of “salary arrears” and allowances from January 2021 have become moot, as a result of the Executive Director’s decision, taken on 13 August 2021, and confirmed on 20 September 2021, to reclassify the complainant’s post to grade P2 and to reconstitute his career with retroactive effect from 1 October 2014. In his rejoinder, the complainant insists that his complaint is not moot.

The Tribunal notes that until 2017 the complainant had received salary increments in January, consistent with the date he joined the Organization and with the date of his subsequent promotions. With effect from 1 January 2017, he was placed in step XII of grade P1. In

October 2017, he was demoted by four steps and reassigned to a new position as the outcome of disciplinary proceedings following charges of serious misconduct brought against him in July 2017. Consequently, in the Organization's view, his subsequent salary increments were due on 1 October 2019 and 1 October 2021 in accordance with his demotion date, and no longer in January as related to his date of hiring. Further to that, by a decision taken on 13 August 2021 and confirmed on 20 September 2021, the complainant's post was reclassified to grade P2 with retroactive effect from 1 October 2014.

The Tribunal holds that the complainant could not receive any advantage by a decision stating that his salary increments from 2019 onwards were due in January rather than in October for his P1 post. Indeed, the post he encumbered was reclassified to grade P2, and, as a result, salary increments for the P1 post were no longer applicable. Thus, the complainant's claim regarding his salary increments at the P1 level has been overtaken by the reclassification decision, which led to the reconstitution of his career and placed him at grade P2, step VI. As a result, the present complaint is moot to the extent that it concerns the change of date of his within-grade salary increments at grade P1.

Any questions concerning the new decision, which reclassified the complainant's post to grade P2 with retroactive effect, should be raised by means of a separate complaint against this decision.

3. Moreover, the present complaint is also unfounded on the merits.

The complainant contends, in brief, that the impugned decision:

- (i) failed to provide adequate reasons for rejecting the conclusions and recommendations of the Board of Appeal;
- (ii) had no legal basis;
- (iii) relied on Staff Rules which were not applicable at the relevant time; and
- (iv) was a hidden disciplinary sanction and breached the rule against double jeopardy.

4. According to the Staff Rules, applicable at the relevant time:

“Salary increments shall be effective on the first day of the pay period following the period in which the service requirements are completed” (Rule 304(a)); and

“The date of the first salary increment at the higher grade shall be the anniversary date of promotion except that, in the case of those increments that require two years of satisfactory service the first increment at the higher grade will become due two years from the date of promotion” (Rule 305(d)).

It can be inferred from these rules that salary increments are generally due on the anniversary of the date the staff member joined the Organization. However, for staff members who are promoted, the date to be taken into account for the salary increment is the date of promotion. By analogy, these rules are applicable also in case of demotion, because the date of demotion also sets the new starting date for the step advancements of the staff concerned, and, thus, a new anniversary date of any salary increments subsequent to the demotion decision. In the complainant’s case, as he was demoted as of 1 October 2017, the Organization lawfully held that his subsequent salary increments were due on 1 October 2019 and 1 October 2021. Thus, the complainant’s arguments that the impugned decision has no legal basis and relied on Staff Rules which were not applicable at the relevant time, are devoid of merit.

5. The existence of a hidden disciplinary measure cannot be inferred from mere conjecture and cannot be accepted unless it is proven (see Judgments 5001, consideration 6, 4863, consideration 14, and 4231, consideration 10). In the present case, the complainant’s contention that the impugned decision was a hidden disciplinary sanction is unproven. Consequently, the principle of double jeopardy was not breached.

6. The complainant’s argument that the Executive Director departed from the opinion of the Board of Appeal without giving adequate reasons, is also unfounded. The executive head of an international organization, when taking a decision on an internal appeal that departs from the recommendations made by the appeal body, to the

detriment of the employee concerned, must adequately state the reasons for not following those recommendations (see Judgments 4855, consideration 8, 4700, consideration 4, 4545, consideration 4, and 4062, consideration 3). The impugned decision, in the relevant part, stated: “I have received the report of the Board of Appeal. Unfortunately, the recommendations of the Board were not relevant for responding to the issue at stake and failed in helping me to interpret the applicable rules in this instance. I continue to hold the opinion that the administration correctly applied the rules in force by setting the date for your increment on 1st of October. My decision is therefore to uphold the decision fixing the date of your within-grade step increment.” The Tribunal holds that these arguments amount to adequate reasons for departing from the opinion of the Board of Appeal, as the latter did not explain which was the applicable legal framework, and, thus, the decision-maker lawfully disagreed with the unsubstantiated conclusions.

7. In his rejoinder, the complainant advances additional arguments in order to demonstrate the bad faith of the Organization and his right to moral damages. The Tribunal holds that those arguments are insufficient to consider that the complainant has discharged the burden of proving bad faith on the part of the Organization.

8. In his rejoinder, the complainant also advances new pleas concerning the Organization’s decisions to abolish his post and to impose on him disciplinary sanctions. These pleas are outside the scope of these proceedings, as they address decisions which are not the subject matter of the present complaint. Furthermore, in his rejoinder, the complainant alleges new pleas concerning the composition of the Board of Appeal and the proceedings before it. The Tribunal holds that the complainant has no interest in raising such questions, as the Board of Appeal issued an opinion favourable to him.

9. As the complainant’s main claim is moot and, in addition, the impugned decision is lawful, the complainant is not entitled to salary arrears, moral damages, or costs of the present proceedings. In conclusion, the complaint will be dismissed.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 9 May 2025, Mr Patrick Frydman, President of the Tribunal, Ms Rosanna De Nictolis, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, René M. Vargas M., Registrar.

Delivered on 3 July 2025 by video recording posted on the Tribunal's Internet page.

PATRICK FRYDMAN

ROSANNA DE NICTOLIS

HONGYU SHEN

RENÉ M. VARGAS M.