



Federation of International
Civil Servants' Associations

Laurence Fauth¹
Tips and Information Newsletter for International Civil Servants

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*Importance of Addressing Performance Issues Often and Early;
Lessons from ILOAT Judgment No. 4289 (S. v. ICGEB)*

In Brief

A long-serving GS staff member (from 2003) at the International Centre for Genetic Engineering and Biotechnology (ICGEB) agreed to a performance improvement plan (PIP) rather than challenging the negative performance appraisal given at the end of 2016 by her new supervisor – P-4 Head of Legal and Administration. Even though the full period for the PIP was not completed, ICGEB decided not to extend the appointment for alleged failure to show improvement. The staff member appealed on the grounds that the procedures relating to the PIP were not followed. In Judgment No. 4289 the ILOAT found that the ICGEB terminated the PIP prematurely, and awarded 40,000 EUR in moral damages but did not order reinstatement, ending a long and successful career.

Facts

The complainant had served the ICGEB successfully for many years under a senior manager at the D level, and had even received two promotions. After her supervisor retired at the end of 2015, complainant came under the supervision of a new professional staff member at the P-4 level – Head of Legal and Administration. At the end of the year, the new supervisor gave a poor performance appraisal based in part on a review of the organization by an external consulting firm. The complainant provided comments in response to the criticisms but did not formally challenge the ratings, so the appraisal became final. The complainant agreed to enter into a PIP in good faith since she assumed that her new supervisor would act in good faith and give her a fair opportunity to show her true worth – after all she had worked successfully under a Director level professional for more than a decade and had significantly more experience than her new supervisor. The complainant's performance appraisals over the last few years had been satisfactory or better and she had received two promotions.

According to the complainant, the supervisor did not conduct the PIP according to its terms, assignments were not given for areas where alleged shortcomings were found, meetings to

¹ Private lawyer based in Vienna, Austria representing international civil servants of the United Nations and other international organizations. Visit his website for more information www.unattorney.com.

discuss her performance were perfunctory, and the PIP was ended prematurely, after which complainant was given notice of non-extension. The complainant's internal appeal was rejected and while the ILOAT found that ICGEB did not respect the PIP procedure on the narrow grounds that it was ended prematurely and set aside the decision, it did not order reinstatement and instead awarded material and moral damages for the lost opportunity of successfully completing the PIP and having the possibility of a further contract extension. In awarding damages, the ILOAT emphasized that the complainant had not challenged the performance appraisal ratings in 2016 and implicitly had accepted her performance was not up to par by agreeing to the PIP. The ILOAT therefore added that it appeared that even if the PIP had not been ended prematurely, it was unlikely complainant would have successfully completed the PIP. This was a dubious and speculative finding at best, and caused the complainant in this case significant anguish, feeling that justice had not prevailed although having "won" the appeal.

Comment

This case demonstrates the power imbalance between a newly appointed P-level supervisor and a G-level subordinate. Having worked successfully for her entire career under a Director level officer, the complainant was unaware of the consequences of not dealing diligently to counter any allegations of poor performance, and of not formally challenging the unsatisfactory performance ratings in the 2016 assessment, and instead agreeing to a PIP. The ability of her new supervisor, a trained lawyer with no prior experience with ICGEB, to surgically end complainant's 14-year career for her own purpose was underestimated. It is critical that staff members guard their performance assessments diligently and earnestly, and challenge with all means available any unsatisfactory performance ratings.

Other News

The ILOAT is holding its 131st session in three parts. It recently finished its first part session on 6 November 2020, deciding 40 cases, and will publish the judgments on 7 December 2020 on its website (www.ilo.org/trib).