

FICSA LEGAL ADVISOR*

TIPS AND INFORMATION NEWSLETTER

March – April 2014

Equal Pay for Equal Work/Due Process in the Internal Appeal

In Judgment No. 3284, the ILOAT granted material damages for breach of the principle of equal pay for equal work. In that case, the G-5 staff member claimed that he had been performing work at the P-2 level since 2007. The ILOAT, which is not a trial court, said that it would not make any independent analysis of whether such allegation is accurate or not on the evidence: the “Tribunal rejects this aspect of the complaint to the extent that the complainant invites the Tribunal to determine that the work he did from January 2007 should properly be viewed as work at the P-2 level.” The organization was however obligated to initiate procedures to ensure that equality existed. The organization in fact conducted a classification exercise which resulted in a recommendation that the post be upgraded to the P-2 level. The ILOAT thus held that this evidence, not contested by the organization, was sufficient to prove the plea of equal pay. The ILOAT also awarded moral damages for the delay in submitting the reclassification proposal for approval to the appropriate governing body, and for delay in the internal appeal process. Interestingly, the staff member also requested damages for the lack of any detailed reasoning by the appeals body in its recommendation; the ILOAT held that it could not assess this aspect of the appeal since the staff member had not submitted his appeal statement to the ILOAT. Finally, the ILOAT awarded moral damages for breach of confidentiality in the internal appeal process – the staff member’s supervisor, who should not have had any knowledge of the appeal board proceedings, had berated him for submitting certain evidence to the appeals board which was not contested by the administration.

The lesson learned from the foregoing case is that the ILOAT will not undertake an independent review of whether the staff member is performing work at a higher level, as this assessment is reserved for the organization. The staff member should make a request for reclassification according to the organization’s rules and a claim for breach of equal pay for equal work; and as this case demonstrates, where the outcome of the review is favorable to the staff member the Tribunal will allow the claim based on equal pay.

In Judgment No. 3272, which is a companion case to the judgment discussed in the January-February Newsletter, the staff member challenged the selection decision

for a secretarial G-4 post. In an earlier judgment, the ILOAT had upheld the abolition of the staff member's G-4 secretarial post on the grounds of financial constraints, but awarded the staff member damages for the administration's refusal to provide documents to the appeals board. In this case, the ILOAT identified another breach of due process but this time it was committed by the appeals board itself. In particular, the executive head had ordered the Chair of the appeals board – who was appointed by the executive head to serve on the board – to undertake a fact-finding mission on behalf of the appeals board, ie., to review documentation relating to the recruitment exercise, and to provide the full board with a report on whether the review showed the recruitment exercise was fair and impartial. This was a clever maneuver by the executive head and appeals board under his jurisdiction with the result that the Chair concluded the recruitment exercise was fair and impartial (no surprise there) and the appeals board agreed. The ILOAT had no trouble finding this *ad hoc* procedure fundamentally flawed and awarding 10,000 euros in moral damages:

the organization's rules "sets out a specific procedure for dealing with claims of confidentiality in relation to documents that requires the involvement of the whole Panel. The Panel cannot unilaterally adopt an alternative procedure. There is another reason to reject the approach adopted by the JAP. Fact-finding is an integral component of the internal appeal process that involves the assessment of the evidence in terms of its admissibility, reliability, accuracy, relevance and weight. As it is an appellate body, the members of the Panel each have an individual responsibility to be fully engaged in the fact-finding process. This obligation cannot be delegated to another member of the Panel. Additionally, the procedure adopted also offends the requirement that the entire Panel be present at all meetings."

Instead of reaching the merits of the appeal, the ILOAT remanded the case back to the appeals board to reassess the appeal. It also ordered the organization to provide the staff member the relevant recruitment documents with appropriate redactions to ensure confidentiality. Assuming the staff member has the strength and stamina to continue the fight, the staff member will have to wait several years more to have a decision on the merits, ie, whether the selection for a G-4 post was lawful.

Other News

The ILOAT has announced that it will hold its 118th Session from 28 April to 16 May 2014 at the International Labour Office (ILO), Geneva, and that its judgments will be released on Wednesday, 9 July 2014 at 3pm at the ILO (Room XI, floor R2).

Despite the additional session added in February 2014, the ILOAT is currently taking up to two to two and a half years to decide cases.

**Laurence Fauth, FICSA's Legal Advisor, provides counsel and advice to international civil servants and staff unions. You can visit his website for more information: www.unattorney.com. The information and content contained in this newsletter is for general information only and does not constitute legal or other professional advice, nor does it necessarily express the views of FICSA. You must not rely on any information or content contained in, or omitted from, this newsletter without obtaining independent legal advice.*