

*Registry's translation,
the French text alone
being authoritative.*

106th Session

Judgment No. 2807

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms R. M.-V. against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 17 October 2007 and corrected on 1 March 2008, the Organization's reply of 9 June, the complainant's rejoinder of 22 July and UNESCO's surrejoinder of 6 October 2008;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

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

A. The complainant, a Peruvian national born in 1953, joined UNESCO in 1991 as a grade GS-2 secretary in the Education Sector. In August 1994 she was transferred to a new post in the same sector. On 1 January 1995 she was promoted to grade GS-3. Her post was subsequently reclassified at GS-4 in 1997 and G-5 on 1 January 2000.

In the complainant's performance report for the period 1 April 2000 to 31 March 2002 her immediate supervisor recommended that her post should be upgraded in view of her motivation and constant

efforts to improve her skills. On 22 April 2002 her two supervisors drew up an updated description of her post and suggested that it should be reclassified at G-6, but they gave it the generic job description number 1(d). This generic, which covers the functions and responsibilities involved in providing secretarial and administrative assistance to the chief and professionals of a section, corresponds to grade G-5.

On 30 January 2003 UNESCO published Administrative Circular No. 2177 introducing the revised classification standard for General Service posts. This standard was designed to serve as the basic tool for the Job Evaluation Committee (JEC), which was responsible for determining the grade of posts by examining the updated post descriptions of the staff members concerned. On 16 December 2003 the complainant was informed that the JEC had submitted its recommendations to the Director-General, who had decided to follow them and to confirm the classification of her post at G-5. She was also notified that staff members wishing to appeal against the Director-General's decisions on the matter should lodge a complaint with the Job Evaluation Recourse Committee (JERC), which had been set up for this purpose. In the meantime the complainant's supervisors had requested the reclassification of her post.

On 26 February 2004 the complainant submitted a complaint to the JERC in which she alleged that insufficient reasons had been given for the decision of 16 December 2003 and that the post description of 22 April 2002 did not reflect the duties she actually performed. The JERC evaluated her post at G-5 after hearing her and her immediate supervisor. She was notified by a letter of 3 November 2004 of the Director-General's decision to accept the JERC's recommendation and to maintain her post at grade G-5. On 1 December 2004 she submitted a protest to the Director-General against this decision, in which she pointed out that the JERC's evaluation of her post had not been forwarded to her. The JERC's factor ratings were sent to her under cover of a letter of 15 December 2004. On 26 January 2005 she was notified of the Director-General's decision to maintain her post at grade G-5 and to reject her protest as unfounded. On 5 September the Deputy Director-General met with the

complainant as part of a general mediation process; he informed her on 23 December 2005 that he had not recommended any change in her administrative situation to the Director-General.

In the meantime the complainant had lodged an appeal with the Appeals Board against the decision rejecting her protest. The Board issued its opinion on 17 July 2006. It was puzzled as to why the JERC had confirmed the level of the complainant's post at grade G-5 after she and her immediate supervisor had shown that it was of a higher grade. Nevertheless, it concluded that in the absence of evidence from the JERC itself, it was impossible to determine whether the latter had committed an error of fact. It added that such an error could not be excluded solely on the basis of the Administration's reports. The Board recommended that the Director-General should strongly encourage the Education Sector to request reclassification of the complainant's post and an updated job description, include her on a priority basis in any future scheme of merit-based promotion and issue instructions to ensure that classification or evaluation committees operated with a higher degree of transparency. The complainant was informed by letter of 25 October 2006 that the Director-General had decided to follow part of the Board's first recommendation and to instruct the Administration to undertake one more evaluation of the complainant's post. He considered, however, that the Board's finding that an error of fact could not be absolutely excluded was not substantiated by convincing evidence adduced by the complainant. On 11 January 2007 an auditor met her and her immediate supervisor in order to conduct a desk audit of her post. The complainant was informed by a letter of 25 July 2007 that the Director-General, after receiving the results of the desk audit, had decided to maintain her post at G-5. That is the impugned decision.

On 20 October 2007, following the complainant's request for certain documents in order that she might file a complaint with the Tribunal, the Organization sent her a summary of the evaluation process and a comparative table showing the factor ratings allocated by the JEC, the JERC and the audit office.

B. The complainant contends that the decision of 25 July 2007 is tainted by errors of fact, procedural flaws and incorrect “evaluation”. She alleges that by refusing to reclassify her post and take account of the favourable opinion of her supervisors, the Director-General ignored essential facts. She emphasises that her post description has never been updated and that it did not reflect her real tasks and responsibilities. Since no up-to-date version has ever existed, it could not be used for the evaluation of her post by the JEC, the JERC or during the desk audit. She submits that the said desk audit did not result in a duly approved description of her assignments as they existed in 2002. In her view, these errors cast doubt on the Administration’s objectivity and the real reasons behind the way in which she was treated and the fact that her post was maintained at grade G-5.

The complainant claims that UNESCO failed to give adequate reasons for the impugned decision. She says that she did not receive a copy of the desk audit, the results of which were referred to in support of the impugned decision. The documents forwarded on 20 October 2007 do not, in her opinion, provide sufficiently detailed or substantiated information. She also draws attention to the fact that the reasons for the decision of 25 October 2006 should also have been given, especially as the Director-General simply brushed aside the Appeals Board’s unanimous recommendations, thereby committing an error of law.

The complainant alleges that the impugned decision was prompted by personal prejudice, as was demonstrated by the serious procedural flaws which led to the “stubborn maintenance” of her post at grade G-5.

She asks the Tribunal to set aside the decision of 25 July 2007, retroactively to reclassify her post at G-6, to award her the additional salary and benefits resulting from this reclassification as from 1 January 2002, as well as compensation for all the injury suffered.

C. UNESCO submits that the complaint is irreceivable insofar as it seeks the retroactive reclassification of the complainant’s post, because the Tribunal has no jurisdiction to rule on job classification issues.

It replies on the merits subsidiarily. It contends that the evaluation of the complainant's post has always been based on the post description drawn up in 2002 and the amendments made to it by her supervisors. The desk audit also took account of the complainant's tasks and responsibilities as set out in a draft post description of 26 December 2006. The Organization maintains that it is the complainant who bears the burden of proving that the evaluations of the JEC and the JERC were not based on the 2002 version of her post description as updated by her supervisors. It considers that the impugned decision is not tainted with any flaws, and it points out that any reclassification of the complainant's post would not necessarily have entailed her promotion, since promotions are awarded at the discretion of the Director-General.

UNESCO states that, contrary to the complainant's assertion, the decision of 25 October 2006 does not indicate that the Director-General simply brushed aside the Appeals Board's recommendations; it mentions that he remained convinced that the process of evaluating the complainant's post had offered all the guarantees of objectivity, transparency and fairness, since she had been given the opportunity to present her case before the JERC and the latter had taken into consideration all available information in reaching its conclusion. In UNESCO's opinion, an error of law stems from misinterpretation of a legal text or rule; but no such error could have occurred because a recommendation of the Appeals Board cannot be regarded as a "rule". It adds that it is ultimately up to the Director-General to take what he considers to be the appropriate final decision.

While it admits that the information contained in the decision of 25 July 2007 "was not very detailed", the defendant argues that the documents subsequently forwarded to the complainant provided her with the information she needed in order to be able to exercise her rights.

UNESCO observes that the complainant is merely making unsubstantiated allegations of personal prejudice, whereas according to the Tribunal's case law a person relying on personal prejudice must prove it.

D. In her rejoinder the complainant maintains her pleas. She argues that her complaint is receivable because it concerns only the issue of whether the evaluation of her post and the desk audit complied with the rules and procedures in force.

She draws attention to the tasks and responsibilities which she had taken on, especially those of a supervisory nature, and she stresses that they did not tally at all with generic job description number 1(d), which corresponds to grade G-5; in her view it had been decided beforehand that her post classification would fall within this generic.

The complainant points out that the JEC evaluation supplied by UNESCO is neither dated nor signed and that it therefore has no probative value. She adds that, under the pretext that they are confidential, she has never been sent a copy of the JERC's recommendations and other documents concerning her case, contrary to the provisions of Administrative Circular No. 2195 determining the Committee's mandate, and that the Organization has not disclosed them because it wishes to conceal procedural flaws. Drawing attention to the laconic nature of the other documents produced by UNESCO, she submits that the Organization has not fulfilled its duty to provide information and to state the reasons for its decisions, and that it has violated her right to be heard. She recalls the Tribunal's case law according to which a staff member must be able to obtain all the items of information material to the outcome of his or her case.

The complainant highlights the very clear distinction which exists, in her view, between classification – which is determined by the duties to be performed by the post holder – and promotion, which depends on the manner in which he or she discharges them.

She maintains that there was personal prejudice against her and she also alleges that the decision flows from a misuse of authority. She draws attention to the “[Organization's] obdurate insistence on undertaking a third evaluation of her post in the form of a desk audit [...] in order unfairly to call into question the reclassification at the grade it merited”.

E. In its surrejoinder UNESCO maintains its arguments. It emphasises that decisions on personnel policy are the prerogative of the Director-General, and that it was in the exercise of that prerogative that the generic job descriptions were established.

The Organization contends that if, as she claims, the complainant exercised supervisory responsibilities, these would certainly have been mentioned by her immediate supervisor in the revised post description.

It denies that it sought to conceal information by supplying only excerpts of the JEC and JERC reports and it produces a complete copy of them. It holds that the complainant was acquainted with the content of the JERC's recommendations. In addition, it considers that the reasons for the decision of 26 January 2005 were duly stated.

As for the alleged misuse of authority, UNESCO states that in deciding to maintain the complainant's post at grade G-5, the Director-General was merely following the recommendations made by the JEC, the JERC and the external auditor. Moreover, the complainant has not proved that any misuse of authority occurred.

CONSIDERATIONS

1. The complainant joined UNESCO in 1991 as a secretary in the Education Sector. In 1994 she was transferred to a new post which was reclassified several times with the result that she reached grade G-5 on 1 January 2000.

The JEC, which had been instructed to evaluate the complainant's post on the basis of a revised classification standard established by Administrative Circular No. 2177, considered that the post in question belonged to generic job description 1(d). The complainant's post was therefore maintained at grade G-5 by a decision of 16 December 2003. Hence the complainant's administrative situation remained unchanged, contrary to her request in which, with her supervisors' backing, she argued that there had been a considerable growth in her responsibilities due to structural changes in the sector to which she was assigned.

2. The complainant filed a complaint with the JERC in order to contest the decision of 16 December 2003. A complicated procedure of assessment, complaint and appeal before the JEC and the JERC then ensued. Finally, the complainant turned to the Appeals Board to which she was able to present detailed submissions.

3. In its opinion of 17 July 2006 the Appeals Board concluded that it was unable to determine definitively whether an error of fact had been committed. It considered that such an error could not be absolutely excluded solely on the basis of the Administration's argument. It therefore recommended that the Director-General should encourage the Education Sector to request the Administration to reclassify the complainant's post with an updated job description, and that he should include the complainant on a priority basis in any future scheme of merit-based promotion and issue instructions to ensure that classification or evaluation committees operated in future with an even higher degree of transparency.

The Director-General did not accept these recommendations. The complainant was informed by letter of 25 October 2006 that he had, however, decided to order one more evaluation of her post, called a desk audit, in order to review and evaluate the functions and responsibilities of the post as they had existed in 2002 as well as those based on the updated job description.

4. The Director-General issued his final decision on 25 July 2007 after he had been informed of the results of the desk audit. Pursuant to this decision the complainant's post was maintained at grade G-5.

On 20 October 2007, at the complainant's request, the Organization sent her a copy of the summary of the desk audit and a comparative table of the factor ratings allotted by the three bodies which had evaluated her post.

The complainant requests the setting aside of the decision of 25 July 2007, the retroactive reclassification of her post at grade G-6,

the award of the additional salary and benefits resulting from this reclassification, and compensation for the injury suffered.

5. The Tribunal will not undertake an exercise to classify or reclassify posts in an organisation's structure (see Judgment 2151, under 9), since decisions in this sphere lie within the discretion of the organisation and may be set aside only on limited grounds. Such is the case, for example, if the competent bodies breached procedural rules, or if they acted on some wrong principle, overlooked some material fact or reached a clearly wrong conclusion (see Judgment 2514, under 13). In the absence of such grounds, the Tribunal will not remit the case to the organisation, nor will it substitute its own post evaluation for that of the competent bodies (see Judgment 2581, under 2).

6. The complainant submits that insufficient reasons were given for the impugned decision.

(a) The Director-General departed from the Appeals Board's recommendations. He had a duty to explain in adequate detail why he had done so.

There is no need to rule on the question of whether sufficient reasons were given for the Director-General's decision of 25 October 2006, since he immediately ordered the holding of a desk audit; after that desk audit he took a fresh decision on 25 July 2007, which constitutes the impugned decision.

The decision of 25 July 2007, which was reached after a procedure in which the complainant and her immediate supervisor, who had supported her request for reclassification, were again heard, provides only brief reasons confined to the results of the desk audit. However, the Administration forwarded a summary of the desk audit to the complainant as soon as she requested it. This document was accompanied by a comparative table showing each of the factor ratings allotted to her post by the JEC, the JERC and the audit office responsible for the desk audit. The complainant therefore had all the

information she needed in order to understand why her request for reclassification had been definitively rejected.

It follows that the Director-General may not be taxed with a breach of his duty to state the reasons for the decision at issue.

(b) In her rejoinder the complainant also complains that, under the pretext that they are confidential, she has never been allowed to examine certain documents concerning the proceedings before the JERC. It was therefore impossible for her to follow this committee's reasoning and to ascertain whether the recommendations contained errors which had been repeated in the decision of 25 October 2006 informing her that the Director-General had ordered a new desk audit.

The complainant's memorandum to the Appeals Board of 23 June 2006 and the Board's decision of 17 July 2006 contain nothing which would support the allegation that the JEC or the JERC concealed relevant items of evidence. On the contrary, it appears that the complainant was able to express her opinion on her dispute, in full knowledge of the facts, to both the JERC and the audit office. It does not seem to the Tribunal that these successive procedures were tainted with irregularities or a lack of transparency unduly restricting the complainant's right to be heard.

7. The complainant further submits that the impugned decision is tainted with errors of fact, procedural flaws and incorrect "evaluation". She holds that the desk audit carried out on the instructions of the Director-General did not result in any duly approved description of her post at the time in question. Moreover, since this audit failed to take account of either the favourable opinion of her supervisors or the real increase in her tasks and responsibilities, it disregarded some essential facts. Hence the evaluation of her post was not based on an updated post description.

This criticism is without merit. The audit office responsible for the desk audit was acquainted with the previous post evaluations which had been conducted by the JEC and the JERC. It has not been shown that the audit office had not also perused the complete file pertaining to these evaluation procedures, which contains

the complainant's numerous descriptions of her real tasks and responsibilities. Furthermore, the complainant and her immediate supervisor were invited to make oral submissions to the audit office. The comparative table drawn up by the latter shows that the desk audit confirmed the previous evaluations, apart from the "Intellectual Effort/Problem Solving" factor where the number of points awarded was substantially higher. Nevertheless, the larger total number of points awarded to the complainant's post was still lower than that needed for the post classification to be upgraded from G-5 to G-6. The complainant has not proved that this audit failed to recognise the scale of the normal workload of the post she held in 2002, or the real growth – as time went by – of her tasks and responsibilities. In particular, she has not proved that she carried out supervisory duties not covered by her post description, which were unduly ignored in the audit.

8. Lastly, the complainant contends that there was misuse of authority and personal prejudice against her. Again, there is nothing in the file which convinces the Tribunal that, by deciding to maintain her post at grade G-5 in accordance with the recommendations of the JEC and the JERC and the results of the desk audit, the Director-General committed any of the above-mentioned serious breaches, since the available evidence does not show that the impugned decision was taken for an improper purpose, or that the various bodies which successively evaluated the complainant's post displayed prejudice against her or were pressurised into replying subjectively to the questions put to them.

9. Since the complainant's pleas are clearly unfounded, the complaint must be dismissed.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 5 November 2008, Mr Seydou Ba, President of the Tribunal, Mr Claude Rouiller, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 4 February 2009.

Seydou Ba
Claude Rouiller
Patrick Frydman
Catherine Comtet