

107th Session

Judgment No. 2851

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs S. H. against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 16 October 2007 and corrected on 11 January 2008, the Organization's reply dated 18 June, the complainant's rejoinder of 18 September 2008 and UNESCO's surrejoinder of 7 January 2009;

Considering Article II, paragraph 5, 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, an Egyptian national born in 1953, joined UNESCO in 1981 as an audio typist at grade GS-2. In May 2000 she was appointed to her current post in the Social and Human Sciences Sector (hereinafter "the SHS") as a Clerk (Administration) at grade G-5.

In 1998 UNESCO adopted new classification standards for posts in the Paris General Service and related categories, which involved replacing the former six-grade structure (G-1 to G-6) by a seven-grade structure (G-1 to G-7). The Organization encountered problems with

the implementation of the new standards and, as a result, the new seven-grade structure was applied temporarily, with effect from 1 January 2000, pending a post classification exercise that the Organization planned to undertake using revised classification standards. Managers of all sectors of the Organization were asked to submit updated job descriptions for the posts within their sectors. In April 2002 the complainant's supervisors drew up an updated description of her post, listing its functional title as "Senior Administrative Assistant" and suggesting that it be reclassified at grade G-6. The complainant signed this post description in November 2002. Her post was reclassified at grade G-6 with the title "Senior Administrative Assistant" and effective January 2002 she was promoted to that grade by retention in the post.

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, which was responsible for determining the grade of posts by examining the updated post descriptions of the staff members concerned. In its report of 23 June 2003 to the Director-General the Committee recommended that the complainant's post be reclassified at grade G-6. By letter of 16 December 2003 the complainant was informed that the Director-General had decided to follow the Committee's recommendation and that the post she occupied would remain at grade G-6.

On 11 February 2004, pursuant to Administrative Circular No. 2195, the complainant filed a complaint with the Director of Human Resources Management, contesting the classification of her post. Her immediate supervisor supported the complaint and emphasised the volume of tasks and level of responsibilities entrusted to her, as well as her job performance. The complaint was reviewed by the Job Evaluation Recourse Committee (hereinafter "the JERC"), which had been set up for that purpose. The JERC evaluated the complainant's post at grade G-6 after hearing her and her supervisor. She was notified by a memorandum of 3 November 2004 of the Director-General's decision to accept the JERC's recommendation and to maintain her post at grade G-6. On 9 November she sent a

memorandum, through her immediate supervisor, to the Assistant Director-General for the SHS expressing her disappointment with the decision and pointing out inter alia that other posts with the same functional title as hers were classified at grade G-7. She requested that her post be graded at G-7.

On 22 November 2004 the complainant submitted a protest to the Director-General contesting the decision of 3 November. Under cover of a letter dated 3 December 2004 she was provided with the JERC's factor ratings for her post. On 3 January 2005 she lodged a notice of appeal with the Appeals Board which was followed on 4 March by her detailed appeal. By letter of 26 January she was informed of the Director-General's decision to maintain her post at grade G-6 and to reject her protest as unfounded. On 11 February an updated description of her post was signed by her immediate supervisor and by the Assistant Director-General of the SHS as authorising manager.

As part of a general mediation process the Deputy Director-General had a meeting with the complainant on 5 September 2005. A new post description was signed on 14 September by her immediate supervisor and the Assistant Director-General of the SHS. That same day the complainant sent a memorandum to the Director of Human Resources Management, attaching the post description. She stated that the tasks and responsibilities outlined in her post description corresponded to grade G-7 and she indicated her willingness to withdraw her appeal upon the Administration's agreement to classify her post at grade G-7 with retroactive effect from January 2003.

A desk audit of the complainant's post was conducted on 24 November 2005. In his report of 25 November the auditor recommended that the post be confirmed at grade G-6. By memorandum of 23 December 2005 the Deputy Director-General informed the complainant that the Bureau of Human Resources Management had completed its assessment of her case and had established that her post had been classified correctly. Therefore, he had not recommended any change in her administrative situation to the Director-General. The complainant replied on 6 February 2006,

criticising the evaluation process and indicating that she intended to pursue her appeal.

The Appeals Board issued its opinion on 19 July 2006. It found that there were reasonable doubts as to the objectivity of the classification and mediation exercises. Consequently, the complainant's post had not yet received a comprehensive, objective and transparent review in order to arrive at a fair classification within the new standard. The Board concluded that it was possible that UNESCO had made "an error or errors of fact". It recommended that the Director-General should strongly encourage the SHS to request reclassification of the complainant's post on the basis of the 14 September 2005 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 memorandum of 25 October 2006 that the Director-General had decided to follow the Board's first recommendation in part and to instruct the Administration to undertake one more evaluation of the complainant's post. His final decision would be based on the results of this final desk audit. He considered, however, that the Board's findings regarding the objectivity of the JERC's evaluation and possible errors of fact were not substantiated. In a memorandum dated 6 November 2006 to the Director of Human Resources Management the complainant proposed that, instead of a single desk audit, a committee be nominated to carry out a comparative analysis of all the Senior Administrative Assistant posts and that it submit a report to the Director-General. This proposal was not followed and the complainant was informed by a memorandum of 25 July 2007 that the Director-General, after receiving the results of the desk audit referred to in the memorandum of 25 October 2006, had decided to maintain her post at grade G-6. That is the impugned decision.

Shortly afterwards, on 31 August 2007, the complainant was provided with a summary of the grounds for the decision which explained, inter alia, that her post had been compared with another

Senior Administrative Assistant post in the Education Sector that was graded at G-7 but that that post was an anomaly, that the Organization intended to reclassify it at G-6 as soon as the incumbent left the position and that all other Senior Administrative Assistant posts were classified at grade G-6.

B. As a preliminary matter the complainant points to the length of the internal procedure in her case and submits that it took almost four years for her to receive the Director-General's final decision.

She contends that the decision of 25 July 2007 violates the principle of equality of treatment. She points out that she fulfils the same duties and responsibilities as other staff members whose posts are graded G-7, and refers in particular to a post which, according to her, is "of the same category" and has the same generic description as hers but which was graded G-7 by the JERC. In her view, UNESCO has provided no objective justification for the different classification of these posts.

The complainant argues that the Organization has violated the rules governing the classification of posts, in particular the principles contained in Administrative Circular No. 2177 and Circular No. 2195. She points out that her post has been classified differently by the Job Evaluation Committee, the JERC and the auditor, and that the evaluation exercise lacked objectivity and transparency, as noted by the Appeals Board.

She further contends that material facts have been overlooked. The Administration did not take into account the specificities of the work in her Sector in its assessment of her post, yet it did so for another G-7 post in the Education Sector.

Referring to the case law, the complainant challenges "the motivation of the impugned decision", arguing that the Director-General did not even partially follow the recommendations of the Appeals Board but instead decided to undertake an additional evaluation of her post with the aim of reconciling her to the Organization's position. She submits that the summary of 31 August 2007 did not include any justification regarding the criteria used to

classify her post. Moreover, the final desk audit lacked objectivity, and as the Director-General's final decision was based on that audit his decision must be set aside. Indeed, in his letter of 25 July 2007 the Director-General did not provide any further argument in support of his decision.

The complainant alleges that the impugned decision was prompted by bias because, despite the support of her supervisors and her requests for an objective evaluation, her post was maintained at grade G-6. Furthermore, three post descriptions were prepared to reflect the updated tasks and responsibilities of her position but they were not approved by the Bureau of Human Resources Management. She states that she does not know which post description was used in the assessment of her post.

She asks the Tribunal to set aside the decision of 25 July 2007, to reclassify her post at grade G-7 and to award her the additional salary and benefits resulting from this reclassification as from 1 January 2003, as well as compensation for damages suffered as a consequence of the lengthy appeal procedure.

C. In its reply UNESCO submits that the complainant's claims concerning the reclassification of her post and the payment of additional salary and benefits associated with such reclassification are irreceivable, because the Tribunal's competence does not extend to undertaking a classification review or determining a salary level. Referring to the case law, it points out that there are limited grounds for review of decisions regarding post classification and that the complainant has not discharged the burden of proof in this regard.

The Organization accepts that it took a long time to deal with the complainant's case but considers that the delay may reasonably be attributed to the difficulty of the post classification exercise. It asserts that there was no wilful dilatoriness on its part, and that the delay is immaterial with respect to the legality of the impugned decision.

UNESCO argues that there has been no breach of the principle of equal treatment. It contends that the fact that the functional title of "Senior Administrative Assistant" is attributed to a post does not mean

that this post should be classified at grade G-6 or G-7 for this reason only. During each of the classification reviews the Organization compared the complainant's post to other positions, including a post in the Education Sector to which the complainant refers, and found that her post should be classified at grade G-6. It emphasises that the quality of the complainant's job performance is irrelevant.

The defendant denies that material facts were overlooked. The descriptions of the complainant's post reflected the changes in her duties and responsibilities between 2002 and 2005 and they were taken into account by the expert bodies that reviewed the classification of her post. The final desk audit was conducted using the post description of 14 September 2005, to which the Director-General's impugned decision also referred. Moreover, his decision reaffirmed the findings of three previous classification reviews, during which the complainant was given the opportunity to present additional facts or make corrections.

UNESCO also denies the allegations of bias and notes that such allegations must be proved. The complainant has not shown that any of the reviews were influenced by extraneous considerations, or that the impugned decision was tainted by an irregular motive.

The Organization submits that the complainant is misguided in seeking a reclassification of her post when, in fact, what she seeks is a promotion in recognition of her job performance.

D. In her rejoinder the complainant develops her pleas. She argues that the Tribunal has the authority to ensure that classification procedures are correctly interpreted and properly applied and that therefore her claim is within the Tribunal's competence and thus receivable. She contends that the Organization withheld information that was essential to the preparation of her case and she asks the Tribunal to order disclosure of specific documents.

The complainant provides a lengthy criticism of UNESCO's classification exercise. In particular, she alleges that the various review bodies did not employ the factor ratings in the same manner. In her opinion, due process demands that her post should always be assessed

by comparing it to other posts, because her request for upgrading was premised on the fact that her duties and responsibilities are similar to those required for other posts at grade G-7. She maintains that she is entitled to compensation for the “serious material and moral injury” which she has suffered on account of the inordinate delays in her case.

E. In its surrejoinder the Organization maintains its position. It emphasises that the complainant has not substantiated her allegations and that, even if she had done so, they would not establish a breach of the prescribed procedures.

CONSIDERATIONS

1. The complainant was appointed to her current post in May 2000 and in January 2002 her post was reclassified at grade G-6. She contested that reclassification a number of times, requesting instead a reclassification of the post to grade G-7.

2. On 3 January 2005 she lodged a notice of appeal with the Appeals Board and on 4 March 2005 she filed a detailed appeal. The Appeals Board issued its opinion on 19 July 2006. By a letter dated 25 October 2006 the complainant was notified of the Director-General’s decision to follow partially the Board’s first recommendation and to instruct the Administration to undertake one more evaluation of her post through an additional desk audit.

3. On 25 July 2007, after reviewing the final desk audit, the Director-General decided to maintain his decision to classify her post at grade G-6. The complainant impugns that decision and requests the Tribunal to set it aside, to reclassify her post at grade G-7, and to order payment of the corresponding difference in salary and related benefits with effect from 1 January 2003, as well as compensation for damages sustained as a consequence of the lengthy appeal procedure. In support of her complaint she argues that the Organization violated the rules regarding classification of posts, the principle of equality of treatment, and the principles guiding the classification of posts. She

submits that material facts were overlooked, that the impugned decision was not properly motivated, and that she was subject to bias. She also notes the excessive length of the internal procedure, which started late in 2003 and lasted until 2007 when she received a final decision.

4. The Organization notes that there are limited grounds on the basis of which the Tribunal may review decisions regarding post classification (see Judgments 968, 1152, 1281, 1808, 1874, 1976 and 2581). It argues that there was no error of fact and that no material fact was overlooked. The impugned decision was based expressly upon a desk audit which evaluated the functions and responsibilities of the complainant's post during 2002 as well as its current functions and responsibilities as outlined in the job description dated 14 September 2005. The complainant's duties were reviewed several times and expressly taken into account by the successive expert bodies which reviewed the classification of her post. The Organization asserts that there was no denial of due process and no bias against the complainant. In addition, the delay in the process was "reasonably attributable to the difficulty of the grading exercise" and there was no wilful dilatoriness on the Organization's part.

5. In support of her contention that the Organization has violated the principle of equality of treatment, the complainant points to a G-7 post in the Education Sector which, she argues, carries the same duties and responsibilities as her post. UNESCO submits that there are differences between the posts based on levels of responsibility and that, in any event, it intends to reclassify the Education Sector post at grade G-6 after it is vacated by its present incumbent.

6. The Tribunal considers her contention unfounded. As the Organization points out, the post in the Education Sector was not identical to the complainant's post and it was correct to note that the belief that the post in the Education Sector was erroneously graded cannot be the basis for an upward reclassification of the complainant's

post, since “[i]t is well settled that the principle of equality requires the equal application of the relevant law, not its equal misapplication” (see Judgment 2556, under 13). The Organization’s intention to downgrade the Education Sector post when it becomes vacant does not prove that the complainant’s post is identical or that it should be graded at G-7. The complainant makes reference to other G-7 posts (which she claims are also similar to her post) in order to further prove her claim of inequality but the Tribunal does not find any proof that those posts are truly comparable to the complainant’s nor that it would automatically mean her post was incorrectly graded at G-6.

7. Moreover, the complainant fails properly to support her allegation of a violation of the applicable rules for the classification of posts. She mentions repeatedly that material facts were overlooked and that there were errors in the classification exercise, but there is no evidence of that, and on the contrary, the documents show that the detailed classification reviews were completed with diligence and thoroughness, in accordance with the applicable rules and the classification standards introduced by Administrative Circular No. 2177. The Tribunal points out that post classification cannot be confused with performance review. It is uncontested that the complainant’s performance was considered highly by her supervisors but that does not have any relevance to the assessment of her post for the purposes of grade classification. In his report dated 25 November 2005 the auditor noted that the complainant’s supervisor felt “that not enough consideration is given to the person, and that someone like [the complainant] who has managed to obtain a higher education and who puts in extra hours each working day, is unable to obtain a reward for her dedication. To sum it up ‘there is no way of rewarding quantity and quality of work’.”

8. As regards the complainant’s challenge to the motivation of the impugned decision, the Tribunal is of the opinion that the Director-General’s decision to maintain the classification of the complainant’s post, as recommended by the various review bodies and auditors, was properly supported by the relevant reports and that his

reasons were properly detailed in the memorandum of 25 July 2007. That memorandum states explicitly the basis upon which the final decision was made. Furthermore, the complainant raised the question of the differing results of the various classification reviews and the Tribunal notes that while the specific factor ratings relating to the grade classification did vary they were all consistent with a G-6 post classification. It should also be noted that the complainant submitted updated information of her duties and responsibilities as well as an updated job description to the various review bodies. It stands to reason that if the review bodies had slightly different information on which to base their opinion it is not unusual that they reached slightly different factor ratings. The important fact is that they still reached the unanimous conclusion that the complainant's post was properly classified at grade G-6.

9. Lastly, the Tribunal finds that the complainant has shown no proof of bias against her on the part of the Organization. In fact it appears that the Organization was diligent in the exercise of its duty of care towards the complainant, as seen in the repeated attempts at mediation and the care in offering her multiple opportunities to contribute to the post classification process through updated job descriptions and other relevant submissions.

10. However, it is to be noted that 16 months passed between the date when the complainant filed her detailed appeal and the date when the Appeals Board delivered its opinion; a further three months passed until the complainant was notified of the Director-General's decision partially to endorse that opinion, which then led to an additional desk audit of the complainant's post resulting in a further nine-month delay. It took therefore almost two and a half years before the complainant received the final decision impugned in her complaint. The internal appeal procedure was much too long and consequently the complainant was deprived of her right to a speedy resolution of her grievances (see Judgment 2196, under 9), for which she is entitled to an award of moral damages in the amount of 1,000 euros.

11. As regards the long classification process, the Tribunal notes that it required careful fact-gathering and evaluation which was by its nature time-consuming, but the length of the process did not amount to any wilful disregard of the complainant's rights (see Judgments 529, under 2, and 1192, under 11).

12. As the complainant succeeds in part, her claim for costs is upheld. The Tribunal sets the costs at 800 euros.

DECISION

For the above reasons,

1. UNESCO shall pay the complainant 1,000 euros in compensation for moral damages due to the delay in the internal appeals procedure.
2. It shall also pay her 800 euros in costs.
3. The complaint is otherwise dismissed.

In witness of this judgment, adopted on 8 May 2009, Mr Agustín Gordillo, Judge of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Ms Dolores M. Hansen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 8 July 2009.

Agustín Gordillo
Giuseppe Barbagallo
Dolores M. Hansen
Catherine Comtet