

**108th Session**

**Judgment No. 2887**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms A. B. S. against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 21 April 2008 and corrected on 21 July, UNESCO's reply of 30 October 2008, the complainant's rejoinder of 21 January 2009 and the Organization's surrejoinder of 30 April 2009;

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 Lebanese national born in 1956, was appointed to post HRM-223 at grade GS-3 in July 1993. With effect from September 1998 the post was reclassified at grade GS-4. The adoption by UNESCO of new classification standards for staff in the General Service category through Administrative Circular No. 2066 of December 1998 resulted in the replacement of the previous six-grade structure (GS-1 to GS-6) by a seven-grade structure (G-1 to G-7). Due to difficulties in the implementation of the new classification standards, it was decided that a classification exercise would be carried

out on the basis of revised standards, but that pending their elaboration the seven-level structure would temporarily apply for pay purposes as from 1 January 2000. Accordingly, with effect from that date post HRM-223 was converted to grade G-5 and the complainant was promoted to the grade of her post.

Between March 2001 and August 2002 the complainant made several requests for reclassification of her post on the basis of a new job description which would reflect the tasks she had assumed since January 1999. She was informed on 16 September 2002 that her requests would be examined in the context of a classification exercise to be carried out once the revised classification standards had been approved.

In the process leading up to the classification exercise, the Administration identified groups of jobs and drew up standard (generic) post descriptions for jobs with identical tasks within each group. It also asked all managers to submit updated job descriptions. An updated job description was thus drawn up for the complainant's post in October 2002; it was based on the generic post description for the post of "Senior Human Resources Assistant". The complainant suggested a number of changes by way of handwritten notes but, nevertheless, signed the job description. She also drew up a separate job description, but this was not signed by her supervisor.

The revised classification standards were promulgated in January 2003 through Administrative Circular No. 2177. The Job Evaluation Committee (JEC), which was set up to review individual and generic post descriptions and make recommendations to the Director-General as to the appropriate grade, recommended in its report of 23 June 2003 that the complainant's post be classified at grade G-6. In a letter dated 26 November 2003, the complainant reiterated her request for reclassification and asked for a desk audit. The Director-General endorsed the JEC's recommendation, and the complainant filed a complaint with the Job Evaluation Recourse Committee (JERC) on 24 February 2004. In its report of 30 July 2004 the JERC recommended that the G-6 grading be confirmed. By letter of 3 November 2004 the complainant was informed that the Director-

General had decided to endorse the JERC's recommendation and that her post would therefore be maintained at grade G-6.

In the meantime, on 19 October 2004 the complainant had reiterated her request for a desk audit. An external auditor was engaged to carry out the desk audit on 30 March 2005. He concluded that the duties and responsibilities attached to the post corresponded to grade G-6 and recommended that the post be confirmed at that grade. The complainant was notified of the results of the desk audit by e-mail of 1 July 2005 and on 22 July she contested them in writing. On 22 August she submitted a notice of appeal and on 15 September she filed a detailed appeal with the Appeals Board. By letter of 29 September 2005 she was informed that, in line with the auditor's recommendation, the Director-General had decided to confirm her post at grade G-6. The Appeals Board rendered its opinion on 4 July 2007. Having noted that the complainant's assertion that between March 1999 and February 2001 she had carried out tasks corresponding to a level higher than G-5 – the grade of her post at the time – was corroborated by her performance report for that period, the Board stated that “[i]f this [was] the case, [...] the [complainant] should have been considered for some compensation either through the payment of a special post allowance [...] or the equivalent [...]”. It then recommended that she be compensated “for the additional tasks that she [had] performed from 1999 to 2001” through the payment of a special post allowance or an equivalent amount in moral damages. It also recommended that a new desk audit be conducted and that, in light of the results thereof, the competent services be instructed to arrange for the payment of “an eventually necessary compensation” to the complainant.

The Director-General accepted the Appeals Board's recommendation for a new desk audit but decided that the issue of the level of the complainant's tasks in the period from 1999 to 2001 should be included in the new desk audit. The complainant was informed of that decision by letter of 17 October 2007, which also indicated that the results of the new desk audit together with the Director-General's final decision would be communicated to her in due time. The new desk audit was undertaken by a different external auditor, who

confirmed that the complainant's post was appropriately classified at grade G-6. By letter of 19 December 2007 the Director of the Bureau of Human Resources Management informed the complainant that the Director-General had decided to maintain her post at grade G-6 and not to award her compensation. The complainant contested that decision in writing on 7 January 2008. In a letter of 24 January 2008 she was advised that, as she had exhausted the internal remedies, the Director-General's decision of 19 December 2007 was the final decision in her case. On 21 April 2008 she filed her complaint with the Tribunal, impugning the decision of 24 January 2008.

B. The complainant contends that the impugned decision is vitiated by errors of law and the Administration's failure to consider essential facts and to give proper reasons. While recognising that a decision to determine the grade of a post is discretionary and subject to review on limited grounds only, she considers that the Administration's omissions provide sufficient grounds for the Tribunal to exercise its power of review.

In particular, the complainant points out that the Director-General refused to award her compensation for the additional tasks she performed in the period between March 1999 and February 2001, thereby *de facto* rejecting the Appeals Board's recommendation to that effect. She argues that the new desk audit was carried out hastily, without proper consultation and without account being taken of the technical work she performed and which, in her opinion, corresponded to grade P-2. In addition, she states that she was not given a copy of the report of that audit despite her request, and she asks the Administration to produce that document.

She also contends that the Administration's failure to draw up an updated individual job description or to sign the job description she had drawn up resulted in a situation where neither the JEC, nor the JERC, nor the external auditors had at their disposal an accurate job description as the basis for a proper evaluation of her post.

The complainant requests that the decision of 24 January 2008 be quashed, that post HRM-223 be reclassified at grade P-1/P-2 and that she be awarded the additional salary and benefits resulting from this reclassification as from 1 January 2002. She also claims compensation for the injury she suffered.

C. In its reply the Organization submits that the Director-General's final decision was communicated to the complainant by letter of 19 December 2007. Hence the decision of 24 January 2008 was not a final decision within the meaning of Article VII, paragraph 1, of the Statute of the Tribunal and did not set off a new time limit for the submission of a complaint to the Tribunal. In light of the fact that the complaint was filed on 21 April 2008, that is beyond the ninety-day time limit stipulated in Article VII, paragraph 2, of the Statute, it is time-barred and thus irreceivable. UNESCO also submits that the complainant's claims for reclassification of her post at grade P-1/P-2 and for the award of salary and benefits corresponding to that grade should be dismissed as falling outside the Tribunal's competence.

On the merits the defendant asserts that the impugned decision is lawful and that the complainant has not established any grounds on the basis of which it could be reviewed. It recalls that two classification bodies and two external auditors evaluated the complainant's post and that they all recommended that it be maintained at grade G-6. It denies that the second desk audit was carried out "hastily" and points out that great care was taken to consider the full scope of the complainant's duties and to address her concerns. Indeed, both classification bodies and the first auditor relied on the job description of October 2002, as supplemented by the complainant's handwritten notes, while the second auditor ultimately proceeded on the basis of the job description the complainant herself had drawn up.

UNESCO argues that the Director-General is not bound to follow the Appeals Board's recommendations. It dismisses the allegation that the Director-General failed to give reasons for his decision, emphasising that the letter of 19 December 2007 communicated to the complainant in very clear terms that the result of the second desk audit

did not justify classification of her post at the Professional level or an award of compensation.

D. In her rejoinder the complainant argues that the letter of 19 December 2007 cannot be considered as the Director-General's final decision, not only because it contained no reference to that effect, but also because it did not communicate to her the report of the new desk audit. She reiterates that the duties she performed and which corresponded to Professional-level work were not taken into account in the classification of her post. She states that she received the report of the new desk audit by a memorandum dated 19 February 2008.

E. In its surrejoinder UNESCO maintains its position in full.

### CONSIDERATIONS

1. This complaint is directed to what is said to be a final decision of the Director-General of 24 January 2008. For some years, the complainant has been dissatisfied with the classification of her post. So far as is presently relevant, the Director-General rejected the complainant's claim for reclassification on 29 September 2005 and informed her through the Director of the Bureau of Human Resources Management that her post would be maintained at grade G-6. That decision was in conformity with the recommendation of an external auditor who, amongst other things, had conducted a desk audit. The complainant then lodged an internal appeal seeking to have her post classified within the Professional category. On 4 July 2007 the Appeals Board recommended that she be compensated by special post allowance or moral damages "for the additional tasks [she had] performed from 1999 to 2001" and that there be a new desk audit.

2. On 17 October 2007 the Director-General informed the complainant that he had accepted the recommendation of the Appeals Board that there would be a new desk audit and stated that the audit would include "the determination of the additional tasks [she had] possibly performed [...] between 1999 and 2001 and the level of those tasks". He concluded with the statement that "the results of the [...]"

desk audit [would] be communicated to [her] together with the final decision that [he would] take accordingly”. That communication was never contested. The new desk audit was conducted by a different external auditor. By letter of 19 December 2007 the Director of the Bureau of Human Resources Management informed the complainant that the audit disclosed that the additional tasks she had performed between 1999 and 2001 did not warrant a special post allowance and that her post was “appropriately classified at the G-6 level”. The letter concluded:

“the Director-General has decided [...] that no special compensation be granted to you for the performance of additional tasks from 1999 through 2001; and that the post HRM-223 be maintained at the G.6 level.”

3. On 7 January 2008 the complainant wrote to the Director-General contesting the decision of 19 December 2007. On 24 January 2008 she was advised that the decision of 19 December 2007 was a final decision with respect to her internal appeal and that she had, thus, exhausted internal remedies. On 21 April 2008 she lodged her complaint identifying the impugned decision as that of 24 January 2008. UNESCO contends that the final decision was notified on 19 December 2007 and that, as the complaint was not filed within ninety days of that date, it is irreceivable. On the other hand, the complainant argues that the letter of 19 December 2007 cannot be treated as a final decision because it does not say that it is and, also, because she had not then been provided with the report of the new desk audit. That report was provided with a memorandum of 19 February 2008.

4. The complainant’s arguments as to the date of the final decision dismissing her internal appeal must be rejected. The letter of 17 October 2007 clearly indicated that the results of the desk audit would be communicated to the complainant together with the final decision. In that context, the letter of 19 December 2007 informing her of those results and of the Director-General’s decision that no compensation would be granted and that her post would be maintained at grade G-6 could only be construed as a final decision with respect to her internal appeal. Although it would have been preferable if the letter

of 19 December 2007 had expressly stated that it was a final decision and indicated that it could only be challenged by a complaint filed with the Tribunal, the subsequent letter of 24 January 2008 still allowed the complainant sufficient time within which to file a complaint. So far as concerns the complainant's argument that she was not provided with the report of the new desk audit, the letter of 19 December 2007 set out the Director-General's reasons for dismissing the complainant's internal appeal. In particular, it explained that the external auditor had found that the additional tasks performed between 1999 and 2001 represented only a small percentage of the complainant's overall responsibilities and, mainly, involved the application of standard ratings without authority to make a final decision. As to the classification of the complainant's post, it was said that the external auditor had found that her responsibilities did not meet the definition of Professional work, which involved "the analysis, conceptualization, interpretation, planning, implementation and evaluation of [Human Resources Management] programmes". Those reasons, and not the report accompanying the subsequent memorandum of 19 February 2008, provided the basis for the Director-General's decision. That report merely indicated the points allocated to the complainant's various functions by the external auditor.

5. The letter of 19 December 2007 conveyed the Director-General's reasons and his final decision rejecting the complainant's internal appeal. The subsequent letter of 24 January 2008 did not alter that earlier decision and provided no new grounds for it. Accordingly, it did not give rise to new time limits (see Judgment 2011, under 18). As the complaint was not filed within ninety days of the notification of the final decision dated 19 December 2007, as required by Article VII, paragraph 2, of the Tribunal's Statute, it is irreceivable.

#### DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 30 October 2009, Ms Mary G. Gaudron, President 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 3 February 2010.

Mary G. Gaudron  
Giuseppe Barbagallo  
Dolores M. Hansen  
Catherine Comtet