

N. d. O.

v.

IAEA

126th Session

Judgment No. 4024

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms A. N. d. O. against the International Atomic Energy Agency (IAEA) on 3 March 2015 and corrected on 26 March, the IAEA's reply of 24 July and the complainant's e-mail of 19 October 2015 informing the Registrar of the Tribunal that she did not wish to enter a rejoinder;

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

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

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

The complainant challenges the decision not to reclassify her post.

At the material time the complainant held the post of Policy Associate in the Director General's Office for Policy (DGOP) at grade G-6. Following a request by her supervisor, Mr S.A., for reclassification of her post at grade G-7, a desk audit interview was conducted in December 2011.

As from 1 June 2012, the complainant had a new supervisor, Mr C.B. By an e-mail of 19 June 2012 she was informed that the reclassification process was suspended pending a re-assessment of the distribution of duties in the DGOP, which was being restructured. Mr C.B. was interviewed with respect to the classification of her post

in April 2013. The evaluation report, which was finalized in July 2013, recommended that the G-6 grade be maintained. The complainant was informed on 9 October 2013 of the outcome of the review of the classification of her post, namely that her functions and responsibilities did not warrant a reclassification at the G-7 grade.

The complainant asked the Director General to reconsider that decision. In accordance with the relevant provisions of the Administrative Manual, Part II, Section 3 (AM.II/3), this request was forwarded to the Director, Division of Human Resources in the Department of Management (DIR-MTHR), who dismissed it on 22 November.

The complainant's request for review of the decision of 22 November 2013 was dismissed by the Director General on 9 January 2014, and she then lodged an appeal on 22 January 2014 with the Joint Appeals Board.

The Joint Appeals Board heard the complainant on 15 May 2014. In its report of 17 November 2014 the Joint Appeals Board found that the evaluation process followed by the Administration had been comprehensive and not deficient in any material respect. However, it found that there had been undue delay and that, while it was understandable that the Administration might not wish to make the entire evaluation report available, some additional explanation should have been given to the complainant. It recommended dismissing the appeal and providing a summary of the rationale for the evaluation to the complainant.

By a letter of 10 December 2014 the Director General informed the complainant of his decision to follow the Joint Appeals Board's recommendation to dismiss the appeal and to maintain the complainant's post at grade G-6. In his view, the process had not been unduly delayed, as the time taken to complete the evaluation was due to the particular circumstances in the Director General's Office for Coordination (DGOC, formerly known as DGOP) during that period, but he agreed to provide further information on the evaluation of her post. That is the impugned decision.

The complainant requests that her complaint be joined with the complaint filed by her colleague, Ms W. She asks the Tribunal to set aside the impugned decision, to reclassify her post at grade G-7 with

effect from 1 January 2012, and to order the retroactive payment of the resulting difference in salary, including all benefits and the IAEA's contributions to the Pension Fund, together with interest calculated from due dates. She also claims moral damages for the "unnecessarily prolonged delay in the procedure".

The IAEA requests the Tribunal to dismiss the complaint as entirely unfounded.

CONSIDERATIONS

1. For the reasons stated in consideration 1 of Judgment 4026, which is also delivered in public this day, the Tribunal decided not to deal with the present complaint and the complaint of Ms W. in a single judgment.

2. The complainant impugns the decision of 10 December 2014 by which the Director General, at the outcome of the internal appeal procedure, confirmed that her grade G-6 post would not be reclassified as a grade G-7 post as requested by her former supervisor, Mr S.A. She applies to the Tribunal for an order setting aside the impugned decision. She also seeks moral damages "resulting from the unnecessarily prolonged delay in the procedure and the unjustified negative decision". She also asks the Tribunal to reclassify her post at grade G-7 retroactively from 1 January 2012 and to order that she be paid the resulting increase in salary and interest from that date. This latter claim will be dismissed as the Tribunal has no competence to order an organization to reclassify a post (see, for example, Judgment 3834, consideration 6).

3. In Judgment 3589, where the reclassification of a post was challenged, the Tribunal stated the following at consideration 4:

"It is well established that the grounds for reviewing the classification of a post are limited and ordinarily a classification decision would only be set aside if it was taken without authority, had been made in breach of the rules of form or procedure, was based on an error of fact or law, was made having overlooked an essential fact, was tainted with abuse of authority or if a truly mistaken conclusion had been drawn from the facts (see, for example,

Judgments 1647, consideration 7, and 1067, consideration 2). This is because the classification of posts involves the exercise of value judgements as to the nature and extent of the duties and responsibilities of the posts and it is not the Tribunal's role to undertake this process of evaluation (see, for example, Judgment 3294, consideration 8). The grading of posts is a matter within the discretion of the executive head of the organisation (or the person acting on her or his behalf) (see, for example, Judgment 3082, consideration 20)."

4. The IAEA's process for the reclassification of posts in the General Service category (grades G-1 to G-7) is set out in paragraphs 48 to 57 of the AM.II/3. They relevantly provide that a decision to reclassify a post may arise from a request to MTHR by a supervisor, as in the present case. The subject post is to be evaluated "by the classification officer(s) designated by MTHR" who should evaluate it in accordance with the International Civil Service Commission's (ICSC) job classification system. The evaluation of an encumbered post "should include a desk audit" consisting of an interview of the incumbent and her or his supervisor and a review of any information which might be relevant to supplement and verify the documents provided with the reclassification request. The result of the evaluation is to be submitted to DIR-MTHR for approval and the decision thereon is to be communicated to the incumbent and to specified officials. Reasons must be given for a decision not to reclassify a post and the incumbent may request DIR-MTHR to review that decision. In respect of technical issues DIR-MTHR may request the advice of an independent classification specialist. The latter is to submit the findings to DIR-MTHR, who shall take them into consideration in making the final decision. The final decision is to be communicated to the incumbent and specified officials. Reasons must be given for a decision which upholds a prior decision. The promotion of an incumbent whose post is reclassified to a higher grade is not automatic. The Division Director must make a proposal for the promotion to the reclassified post to DIR-MTHR who must then submit it to the corresponding Joint Advisory Panel. The proposal with any comments thereon from the Joint Advisory Panel must then be submitted to the Director General for approval.

5. The complainant states that her job description was revised in 2011; the title was changed to “Policy Associate” and the post was also approved to be assigned grade G-7. It is apparent to the Tribunal that this latter reference is to the approval of the post at that level in the 2012/2013 Programme and Budget. The actual reclassification process commenced after that approval. The complainant’s case is encapsulated in the following paragraphs of her complaint:

“As the process seemed to be dragging on with no outcome, [I] occasionally inquired with MTHR as to where matters stood, and [my supervisor] also did so. However, until receipt of the Director General’s letter, [I was] kept completely in the dark. For example, the report from the desk audit from December 2011 was never received. It is also difficult to understand why, after the desk audit took place, MTHR waited several months to conclude the reclassification without any explanation. This lack of information and keeping [me] waiting for more than 3 years until a final decision was reached gave [me] the impression that [I was] being marginalised and disrespectfully treated by the [IAEA].

Despite high hopes already being raised in May 2011, it took 3 [...] years for the reclassification process to be completed, and, at the end it was rejected – this, although the new job description of the [post] was approved and the functional title changed from Assistant to Associate.

The decision to rescind [the] GS-7 remains to be accurately and rationally justified by MTHR.

Had the [post] been upgraded, this would have taken effect from 1 January 2012 and [I] would not have been disadvantaged financially. However, the fact remains that the [post was] not upgraded and [I was] left in considerable uncertainty for an unreasonable length of time.

The [Joint Appeals Board] provided [me] with a copy of the Desk Audit Report of [my] supervisor’s interview. However, it is unclear who the author of the report is, as it is not signed nor does it carry the date of when it was concluded.”

6. The complainant seems to suggest that errors occurred in the reclassification process which should result in setting aside the impugned decision. She however elaborates a claim only to the extent stated in the foregoing consideration. It will be recalled that it is not the role of the Tribunal to reweigh the evidence before an internal appeal body. In addition, where an internal appeal body has heard evidence and made findings of fact, the Tribunal will only interfere if there is manifest error (see Judgment 3439, consideration 7).

7. The Tribunal finds no ground to set aside the decision not to reclassify the complainant's post to the G-7 grade. Her case, stated in consideration 5 above, reflects misapprehension of the requirements for the reclassification of a post pursuant to AM.II/3. Neither the approval of a new job description, nor the fact that her hopes were raised when her supervisor requested the reclassification in May 2011, nor the change in the functional title of her post from "Assistant" to "Associate" conferred on her an entitlement to have her post reclassified at a higher grade. The inclusion of the reclassified post in the approved 2012/2013 Programme and Budget of the DGOP also did not give the complainant an entitlement to the financial benefits of a reclassified post with effect from 1 January 2012, or at all. First, there had to be a decision by DIR-MTHR, after the process provided for in AM.II/3, to reclassify the post at grade G-7. Second, this had to be followed by a process to determine whether the complainant, as the incumbent, was to be appointed to the reclassified post. The decision was made to maintain the post at grade G-6. That decision did not rescind a decision to reclassify the post to grade G-7 and it is inaccurate to state that in 2011 the post was approved to be assigned a G-7 grade merely because the request for its reclassification was made then.

8. Moreover, MTHR justified the decision to maintain the post at grade G-6 and gave the reasons for that decision by communication dated 9 October 2013 to the complainant. That communication informed her that the review was completed. It stated that during the desk audit the functions and responsibilities of the post were identified and evaluated against the ICSC's job classification system and that the review concluded that those functions and responsibilities did not warrant reclassifying the post at the G-7 level. The reasons given in the communication of 9 October 2013 were repeated in a memorandum to her dated 22 November 2013 from DIR-MTHR. It also rejected her request for review and upheld the decision not to reclassify her post.

9. In the Tribunal's view, there was sufficient evidence upon which the Joint Appeals Board could have concluded, as it did, that the reclassification process was conducted in accordance with the relevant

provisions of AM.II/3. The Tribunal also notes that reasons were given for the decision not to reclassify the complainant's post. In short, the Tribunal is not persuaded that the results of the evaluation or of the reclassification exercise involved a mistaken conclusion (see Judgment 3589, consideration 4). In the foregoing premises, the complainant was not financially disadvantaged by the decision not to reclassify her post. Undoubtedly, however, there was inordinate delay in the reclassification exercise, which may entitle her to moral damages.

10. The Tribunal stated the following, in Judgment 3102, consideration 7:

“[E]ven if a staff member may claim no right to promotion, promotion procedures must be conducted with due diligence and as swiftly as the normal workings of an administration permit. There is nothing to justify delaying for years a promotion which the staff member may legitimately expect and which naturally has a direct impact on his or her career prospects, unless this delay may be attributed to a fault on the part of the person concerned during the procedure (see Judgment 2706, under 11 and 12).”

11. Mr S.A., the complainant's then supervisor, made the request to reclassify the complainant's post in May 2011. A desk audit was not initiated until 12 December 2011, because it was decided that the Director General would approve the Department's staffing plan and the Programme and Budget for 2012/2013 prior to its commencement. Mr S.A. had been preparing the brief for the evaluation but had then demitted office. The evaluation was suspended pending the recruitment of the new supervisor and a reassessment of the briefing process. The new supervisor, Mr C.B., was appointed with effect from 1 June 2012 and the recommendation that the grade of the complainant's post be maintained was issued in July 2013. The complainant was informed of this by communication of 9 October 2013. The reclassification process took too long and the IAEA's explanation for the delay is unconvincing. Given the circumstances of the delay in the reclassification process, the complainant will be awarded 2,000 euros in moral damages.

12. The complainant further claims that the Joint Appeals Board's delay in processing the appeal breached Staff Rule 12.01.1(D)(9) as it

took ten months to issue its report, although it was required to do so within three months. This Rule states as follows:

“In considering an appeal, the Joint Appeals Board shall act with the maximum of dispatch consistent with a fair review of the issues before it. The Board shall submit its report to the Director General within three months after undertaking consideration of an appeal. The Board may, however, with the agreement of the Director General, extend this time limit in exceptional circumstances.”

13. In the present case, the Joint Appeals Board presented its report to the Director General more than nine months after it undertook consideration of the appeal. However, there was no agreement to extend the time limit pursuant to Staff Rule 12.01.1(D)(9). For this, and in the circumstances, the complainant will be awarded 1,000 euros in moral damages.

14. The Joint Appeals Board observed that the information and explanation which the complainant received about the reclassification were insufficient, particularly after such a delay in the process, and that additional information should have been given to her at the end of the process. The complainant states that she requested a copy of the “reclassification review document” from MTHR but never received it. The IAEA states that there is no such document. It is however noted that the IAEA provided documents to the Joint Appeals Board, which it did not provide to the complainant. It is also noted that the IAEA did not provide a copy of the full job evaluation report, which included the desk audit report and the proposed job description for Policy Associate, DGOP, until it submitted its reply in these proceedings. It confirmed that Ms S.G. prepared the document, which is dated July 2013. The IAEA should have provided these documents to the complainant much earlier, and, in any event, in time to enable her to properly prepare and present her internal appeal. The IAEA thereby breached the principle of procedural fairness. This would usually warrant setting aside the impugned decision. However, in the circumstances of this case, that will not be done. The complainant will be awarded moral damages in the amount of 8,000 euros.

DECISION

For the above reasons,

1. The IAEA shall pay the complainant 11,000 euros in moral damages.
2. All other claims are dismissed.

In witness of this judgment, adopted on 1 May 2018, Mr Giuseppe Barbagallo, President of the Tribunal, Ms Dolores M. Hansen, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 26 June 2018.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

HUGH A. RAWLINS

DRAŽEN PETROVIĆ