

The Administrative Tribunal,

Considering the complaint filed by Mr M. K. against the World Health Organization (WHO) on 8 February 2006, the Organization's reply of 12 May, the complainant's rejoinder of 20 June and the WHO's surrejoinder of 20 July 2006;

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 French national born in 1944, joined the WHO in 1985. He was appointed Building Management Officer at grade P.4, within the "Building Management and Technical Installations" Unit.

On 13 June 2001 the complainant submitted a request for a classification review of his post. The grounds he gave were that, following the restructuring his division had undergone in July 2000, his responsibilities had increased as he was asked to supervise the so-called "UMG" Unit.* The Organization reports that a post classification review was undertaken in response to that request and that the conclusion reached was that the tasks and responsibilities related to the post were correctly assessed at grade P.4. The complainant reiterated his request on 22 July 2002, giving further reasons for a reclassification. This time a desk audit was conducted by a consultant, who on 21 May 2003 recommended upgrading the post to P.5. On 22 July, however, the complainant was notified that the Director-General had decided to maintain his post at grade P.4.

The complainant challenged that decision in a memorandum of 8 August 2003. The Administration then referred the matter to the Professional Staff Classification Review Standing Committee which, at a meeting of 15 January 2004, recommended maintaining the post at grade P.4. The Director-General endorsed that recommendation and the complainant was notified accordingly by a memorandum of 16 February. He appealed against that decision in a memorandum of 13 April. On 30 June 2004 he retired from the Organization. On 6 April 2005 the Board of Appeal submitted its report to the Director-General. The Administration considered, however, that the Board had not fully complied with the rules of procedure and the Director-General referred the case back to it for reconsideration. In its second report, dated 1 July 2005, the Board of Appeal, adopting the view that the Standing Committee's recommendations were based on two errors, recommended that the Director-General's decision should be "rejected" and that two independent classification specialists who had not been involved in the case should undertake a new classification of the post. It drew the Director-General's attention to the shortcomings of the Standing Committee as constituted, because its members were not experts in classification. In a letter of 13 December 2005, which constitutes the impugned decision, the Director-General rejected the appeal and confirmed the decision of 16 February 2004.

B. The complainant contends that his post changed significantly as a result of the abolition of the post of his assistant, whose duties he had to take over, and then of the restructuring of his division in July 2000, following which he was asked to supervise the UMG Unit, representing 22 additional posts in what for him was a new area. According to him, these changes justified his request for a classification review.

He points out that the desk audit was conducted by a specialist chosen by the Administration and that the arbitrary decision not to follow the specialist's recommendation, in disregard of the classification standards, must be due either to reasons opposed to the principles of classification or to a biased attitude regarding the classification of his post. Referring to the fact that in February 2004 his duties relating to the UMG Unit had been withdrawn, he argues that while that decision was intended as a means of maintaining his post at the grade P.4, it implicitly demonstrates the importance of those duties and the accuracy of the classification made by the consultant. He contends that the Director-General took his final decision on the basis of incomplete information.

The complainant asks the Tribunal to set aside the impugned decision and to award him 60,000 Swiss francs in damages. He also claims costs.

C. In its reply the WHO recalls that, according to firm precedent, the Tribunal exercises only a limited power of review over classification decisions. It adds that in this case the consultant had no decision-making authority and that his preliminary recommendation was subject to review by another classification specialist before being submitted to the Director-General. Furthermore, in view of the fact that the difference of opinion between those two specialists was based on objective reasons, namely the basic principles and rules governing classification, the accusation of bias, which is supported by no concrete evidence, must be rejected. It maintains that the withdrawal of the complainant's duties as supervisor of the UMG Unit was due solely to the rationalisation and general reorganisation of the services and that it was in no way connected with his request for a classification review. Here too, it recalls, the Tribunal exercises only a limited power of review.

The Organization then discusses the justification for the decision to maintain the complainant's post at grade P.4. The classification specialist of the Recruitment, Placement and Classification Unit (HRC) considered that the consultant had overrated two factors involved in the evaluation of the complainant's work, namely its complexity and its impact. On two occasions he had proposed a rating which did not comply with the Guidelines for the Application of the Master Standard contained in the WHO Manual. Moreover, he had re-evaluated some of the ratings taking into account the complainant's future activities, especially those connected with the construction of a new building, whereas a post cannot be upgraded before its incumbent is actually performing more difficult duties. The Organization contends that the Board of Appeal misappraised the situation, especially where the Standing Committee's report was concerned. The Director-General was fully and correctly informed when he took his decision and was justified in considering that there was no evidence of the so-called errors noted by the Board of Appeal.

Lastly, the WHO considers the claim for damages to be irreceivable on the grounds that it was not submitted on internal appeal.

D. In his rejoinder the complainant accuses the Organization of abusing the discretion allowed by the Tribunal's case law in matters of classification and restructuring. He submits that an employer cannot substantially increase an employee's workload without offering compensation. He suggests, lastly, that his request for financial compensation "has been implicit for a long time" and that the amount claimed corresponds strictly to the pay he was denied as a result of the impugned decision.

E. In its surrejoinder the WHO argues that the job description used for the purposes of the complainant's last classification review request took full account of the changes made in the duties related to the post. It points out that the mere fact that it disagrees with the complainant regarding the classification of his post does not mean that it is at fault. It reiterates that the claim for damages is irreceivable on the grounds that such a claim cannot be "implicit".

CONSIDERATIONS

1. The complainant, who joined the WHO in 1985 as Building Management Officer within the "Building Management and Technical Installations" Unit at grade P.4, was given in July 2000 the additional task of supervising the UMG Unit.

On 13 June 2001 he requested a review of the classification of his post in order to take account of the added responsibility.

The classification review culminated in a finding by the Professional Staff Classification Review Standing Committee that the post should be maintained at grade P.4, and the complainant was notified on 16 February 2004 that the Director-General had decided to endorse that recommendation.

When the complainant appealed against that decision, the Board of Appeal on 1 July 2005 recommended that the Director-General's decision "should be rejected and that two independent classification specialists who were not involved in the case should undertake a new written classification of the post".

By decision of 13 December 2005 the Director-General rejected the recommendations of the Board of Appeal and maintained the complainant's post at grade P.4. That is the decision impugned before the Tribunal.

2. As recalled by the Organization, consistent precedent has it that "decisions in respect of post classification are at the Administration's discretion and can only be set aside on limited grounds. It does not behove the Tribunal to substitute its own post assessment for that of the Organization" (see for example Judgment 1874).

Relying on paragraph II.1.30.3 of the WHO Manual the defendant points out that:

"[t]he following basic principles of post classification must be adhered to: [...] a change in the grade of a post should result only when a significant change in the level of its duties and responsibilities has occurred."

On considering the evidence on file and the parties' arguments, the Tribunal finds that in this case the change in the level of the duties and responsibilities related to the post was not so substantial as to justify a change in its classification. Indeed, regarding the extra responsibility given to the complainant as supervisor of the UMG Unit, the 2001 review concluded that the addition of this responsibility did not constitute a sufficient change in duties to justify a P.5 grade. The complainant did not challenge that conclusion at the time. Moreover, the 2001 post description was taken into account and used at the time of the 2003 review.

The subsequent withdrawal of the duties related to the supervision of the UMG Unit cannot be considered as indicating that the request for a classification review was justified, as suggested by the complainant, since that withdrawal was required for the purposes of restructuring the services. The external consultant who, on 21 May 2003, had recommended upgrading the post to P.5 based his re-evaluation of the ratings attributed to the post on the activities related to the construction of a new building. Those activities, however, had not yet materialised, but were to be exercised by the complainant in the future.

3. Lastly, the defendant is accused of having rejected the recommendations of the Board of Appeal after an incomplete review of the situation.

The impugned decision is drafted as follows:

"[...]

The Headquarters Board of Appeal (HBA) has provided me with its report concerning your appeal. Please find enclosed a copy of that report dated 1 July 2005.

In its report the Board of Appeal considered that the recommendations of the Professional Staff Classification Review Standing Committee (hereinafter the Standing Committee) were based on two errors and that I did not have all the relevant facts of the case at hand when taking my decision. The Board of Appeal recommended that the decision of 16 February 2004, based on the Standing Committee's recommendations, should be rejected and that two independent classification specialists who had not been involved in considering your case beforehand should undertake a new written classification of the post.

Having considered the HBA's report concerning your appeal, I hereby notify you of my final decision on the subject. With regard to the two 'errors' mentioned in the report, I consider that, contrary to the Board of Appeal's opinion:

- 1) The Standing Committee did not reject the external consultant's recommendation because of the use of 'split ratings' but because some of the duties had been overrated.
- 2) Both the recommendations of the external consultant and the differing conclusions of the HRC Coordinator were brought to my notice.

I therefore believe that I had all the necessary elements and relevant facts at hand to take my decision.

With regard to the HBA's recommendation to call in two independent classification specialists, I do not accept this recommendation on the grounds that soon after you retired, actually in November 2004, a review was conducted of the classification of your former post with a view to drawing up the corresponding vacancy announcement. Another human resources classification specialist, who had not been involved in the case previously, then

confirmed the level of the post you occupied at grade P.4. In the light of all the above circumstances, I confirm the decision of 16 February 2004 to maintain [your] post [...] at grade P.4.

I have referred the HBA's general recommendation to the Human Resources Services for further action as necessary.

[...]"

The Tribunal finds that the reasons given by the Director-General for rejecting the Board of Appeal's recommendations are sufficient and, in the absence of any irregularity in the post classification procedure and of any evidence of the alleged bias, will not substitute its own assessment for that of the Organization.

The complaint must therefore be dismissed in its entirety without any need to rule on the receivability of the claim for the award of a lump sum in damages.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 15 November 2006, Mr Michel Gentot, President of the Tribunal, Mr Seydou Ba, Vice-President, and Mr Claude Rouiller, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 7 February 2007.

Michel Gentot

Seydou Ba

Claude Rouiller

Catherine Comtet

*Until the year 2000, it would appear, the UMG Unit covered ushers, messengers, guards and drivers. In 2003 the messengers were no longer part of the Unit, which still remained known as "UMG".