

107th Session

Judgment No. 2844

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs H. M. G. against the World Health Organization (WHO) on 12 February 2008 and corrected on 26 February, WHO's reply of 12 June, the complainant's rejoinder of 20 July, supplemented on 21 September, and the Organization's surrejoinder of 23 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, an Egyptian national, was born in 1950. She joined WHO's Regional Office for the Eastern Mediterranean (EMRO) in 1974 as a clerk/stenographer. Two years later she was offered a fixed-term appointment as a clerk/typist. She was subsequently promoted several times, attaining grade CR.07 in 2000 as a Senior Administrative/Programme Assistant. She is due to retire on 30 September 2010.

By a memorandum of 25 February 2004 addressed to the Director of the Division of Health Systems and Services Development, the Deputy Regional Director and the Regional Director, the complainant requested that her post description be reviewed on the grounds that her responsibilities had increased in the past few years following the restructuring of her division. On 16 January 2005 the Director of Health Systems and Services Development, who was the complainant's first-level supervisor, wrote to the Deputy Regional Director suggesting that the post descriptions of certain staff in his division, including the complainant, should be reviewed. He pointed out that neither he nor the complainant had received a reply to the request submitted in February 2004. The complainant wrote again to the Deputy Regional Director and to the Regional Director on 9 October 2005 requesting a response by 6 November to her earlier request of February. The Regional Personnel Officer notified the complainant on 16 October 2005 that she had not received her memorandum of 25 February 2004 and asked her to send a copy of the request so that she could review it. The complainant did so on 19 October 2005.

On 3 January 2006 the Regional Personnel Officer informed the complainant that a classification review had been undertaken and that her post had been confirmed at grade CR.07. On 19 January the complainant requested that her case be reviewed by the Post Classification Review Committee (PCRC). Having applied and been shortlisted for the position of Administrative Officer, at grade P.2, in the Office of the Deputy Regional Director in EMRO, she was interviewed on 19 February.

By a memorandum of 16 March 2006 the Regional Personnel Officer informed the complainant that the PCRC had met and that its recommendations had been sent to the Regional Director. She added that her request for reclassification had been rejected. On 19 March the complainant filed a notice of intention to appeal with the Regional Board of Appeal against that decision followed by her statement of appeal on 17 April. She alleged that the decision to reject her request for the reclassification of her post was tainted by procedural irregularities and by personal prejudice on the part of some of her

supervisors. She also alleged that the selection procedure concerning the post of Administrative Officer, for which she had been shortlisted, was flawed and asked that it be reviewed. In its report of 14 June 2006 the Regional Board of Appeal held that the reclassification procedures had been correctly followed. However, noting that the PCRC had concluded that some of the complainant's tasks were not clearly described in her post description, it recommended that the Regional Director consider having a desk audit conducted by a neutral party in order to "confirm the good will of the Organization towards the [complainant]". The Regional Director having decided to reject the Regional Board's recommendation on 10 July 2006, the complainant filed a notice of intention to appeal that decision with the Headquarters Board of Appeal on 19 July 2006; it was followed on 28 August by her statement of appeal. She requested that her post be reclassified and that the selection procedure for the post of Administrative Officer be reviewed.

In its report of 12 October 2007 the Headquarters Board of Appeal held that it was unable to judge with certainty whether the classification review or the selection procedure were tainted with prejudice or whether the complainant was merely the victim of an "unsupportive environment where rules and procedures were vague and applied arbitrarily". It concurred with the recommendation made by the Regional Board of Appeal that a desk audit be conducted, adding that it should be undertaken by a classification specialist external to EMRO and that, if the desk audit led to the conclusion that the complainant's post should be upgraded, the reclassification should be effective as of 25 February 2004. It also recommended that the selection procedure for the post of Administrative Officer be rerun.

On 12 October 2007 the complainant was informed that the report of the Headquarters Board of Appeal had been forwarded to the Director-General. Having received no final decision from the Director-General, the complainant notified her on 12 December 2007 of her intention to file a complaint with the Tribunal. She stated that, in accordance with Staff Rule 1230.3.1, the Director-General should have informed her of her final decision within 60 days of receipt of the

Board's recommendation. The complainant filed the present complaint on 12 February 2008 impugning the implied rejection of her appeal.

B. The complainant contends that the reclassification procedure was tainted with irregularities. She argues that the procedure was not neutral since the Regional Personnel Officer had participated in the PCRC discussions and had reviewed her duties and responsibilities. According to Annex C to Part II of the WHO Manual, the Human Resources Services may, on request, provide clarifications or information to the PCRC but should not participate in its deliberations. She adds that she has not been allowed to see the PCRC report because, according to the Administration, it is confidential. Moreover, the Regional Personnel Officer did not consult her and her first-level supervisor in order to clarify her duties following the Regional Board of Appeal's finding that two of the tasks listed in her post description were not clearly described. She also objects to the delay in processing her request for reclassification and draws attention to the fact that the Administration remained silent for 19 months following her initial request of 25 February 2004, despite her repeated reminders.

The complainant submits that the selection procedure for the post of Administrative Officer was flawed. In particular, she argues that the decision to appoint an external candidate in preference to an internal candidate who had been shortlisted – i.e. herself – contravenes Staff Regulation 4.4 which provides that vacancies shall be filled by promotion of staff members in preference to persons from outside. She also criticises the composition of the interview panel.

In addition, she alleges personal prejudice on the part of several persons, including the Deputy Regional Director, the Regional Director, the Assistant Regional Director and the Regional Personnel Officer, who took part in the reclassification or selection procedure. She explains that they were prejudiced against her because of the positions she had taken as a polling officer for the 1998 elections of the Staff Association Committee and as a member of the Regional Board of Appeal in 2000.

The complainant asks the Tribunal to order the reclassification of her post to grade P.2 and to grant her the salary and entitlements related to that grade with retroactive effect from the date of her initial request in February 2004. She also asks to be appointed to the post of Administrative Officer in the Office of the Deputy Regional Director with retroactive effect from 17 January 2006 and to be paid the corresponding salary and entitlements. Lastly, she seeks compensation for “moral damage[s] and stress”.

C. In its reply WHO contends that the complainant’s claim for reclassification is irreceivable on several grounds. It indicates that the complainant has received satisfaction and consequently shows no cause of action. Indeed, by a letter of 5 June 2008, the Director-General notified the complainant that she had decided to endorse the recommendations of the Headquarters Board of Appeal. Thus, she decided that a classification specialist from Headquarters would review the complainant’s post and that her reclassification would be effective as of 25 February 2004 if the review procedure lead to the conclusion that her post should be upgraded. The Organization contends that the claim for reclassification to P.2 is also irreceivable for failure to exhaust internal remedies, since the review procedure which started following the Director-General’s decision of 5 June 2008 has not yet been completed.

The Organization considers that the complainant’s claim to be appointed to the position of Administrative Officer is equally irreceivable. The selection procedure for that position was finalised and the complainant was notified that she had not been selected on 4 October 2006, which means that when she filed her appeal with the Regional Board of Appeal and then with the Headquarters Board of Appeal in July 2006 she had not yet received a final decision on that matter. In any event, she did not mention clearly in her statements of appeal that she was contesting the selection procedure.

WHO submits that the complainant’s request for reclassification was not made in conformity with Manual paragraph II.1.110, which provides that a request for reclassification should be sent to the Regional Personnel Officer through the supervisor. The memorandum

of 25 February 2004 by which the complainant requested that her post description be reviewed was addressed only to her first-level supervisor, the Director of Health Systems and Services Development. Since she had not sent a copy of her request to the Regional Personnel Officer, the latter could not have been aware of it and consequently was unable to proceed with the reclassification review. However, as soon as the Regional Personnel Officer became aware of it, the complainant's request was given high priority even though it was incomplete. The defendant acknowledges some delay in considering the report of the Headquarters Board of Appeal but denies any ill will on its part. It indicates that in her letter of 5 June 2008 the Director-General also informed the complainant that she had asked a senior official in EMRO to contact her to discuss the possibility of an amicable settlement in that respect.

The Organization asserts that the selection procedure for the position of Administrative Officer was correctly followed and that all candidates were treated equally. It explains that the composition of the panel complied with Circular No. 776 of 8 May 2006, according to which interviews should involve at least, the interested party, a director or a coordinator from another division and the Regional Personnel Officer. It adds that the Director-General informed the complainant on 5 June 2008 that the post had become vacant and that it would be re-advertised as soon as possible; thus, a new selection procedure would be carried out.

WHO rejects the allegations of personal prejudice. It points out that the facts on which the complainant relies to justify her allegations of personal prejudice took place more than eight years ago and had no bearing on the decisions at issue.

D. In her rejoinder the complainant develops her pleas. She states that the Director-General informed her by a letter of 25 July 2008 that she had decided that the complainant should be paid 2,500 United States dollars in compensation for the delay in considering the report of the Headquarters Board of Appeal and that she had asked the Human Resources Services to identify a suitable classification specialist to implement her decision of 5 June 2008. The complainant

emphasises that she has not accepted the Director-General's decision, which, in her view, was taken merely to "gain time to weaken and invalidate" her complaint.

The complainant asserts that her claims are receivable in their entirety. With regard to her reclassification request, she contends that it was made in conformity with Manual paragraph II.1.110, which provides that a staff member "may" send a copy of it direct to the Human Resources Services; consequently, she was not obliged to do so. However, she stresses that the Regional Personnel Officer was aware from the outset of her request of February 2004. She notes that the Headquarters Board of Appeal found that her request that the selection procedure for the position of Administrative Officer be reviewed was receivable because she had contested the selection procedure in her statements of appeal before both the Regional and the Headquarters Boards of Appeal. She asserts that the decision to appoint an external candidate to the above-mentioned position was made on 23 March 2006 and that she was aware of it when she submitted her statement of appeal to the Regional Board of Appeal in April.

She points out that, contrary to the recommendation of the Headquarters Board of Appeal, the post of Administrative Officer was re-advertised with different terms of reference. In her view, this is to ensure that she is not promoted. She also draws attention to the finding of the Headquarters Board of Appeal that there appeared to be a somewhat "intimidating environment with respect to personnel practices" in EMRO.

In support of her claim for moral damages, she alleges prejudice and harassment on the part of some of her supervisors.

E. In its surrejoinder WHO maintains its position. It indicates that a cheque for 2,500 dollars has been sent to the complainant in compensation for the delay in processing her appeal and that the cheque is still in her possession. Furthermore, the post description for the position of Administrative Officer had to be reviewed before the

vacant position could be re-advertised because the previous post description was out of date.

As to receivability, the defendant indicates that the letter of 25 July 2008 constitutes a final decision concerning the compensation awarded to the complainant for the delay in processing her appeal. It maintains that the claim concerning the selection procedure is irreceivable. The complainant's claim for moral damages is also irreceivable given that her allegations of harassment are new and unsubstantiated.

WHO further indicates that the classification review is about to be completed since the classification specialist appointed in the wake of the Director-General's decision of 5 June 2008 has submitted her report to the Regional Director, with whom the reclassification decision rests. The complainant's claim for a review of the classification of her post has consequently been satisfied.

CONSIDERATIONS

1. The complainant joined the Organization in 1974 as a clerk/stenographer and was offered a fixed-term appointment as a clerk/typist in 1976. Having been promoted several times she attained grade CR.07 in 2000.

2. In her complaint she seeks, firstly, the reclassification of her post to grade P.2 retroactively from the date of her request in February 2004 and payment of the corresponding salary and entitlements; secondly, to be appointed to the P.2 post of Administrative Officer with retroactive effect from 17 January 2006, and to be paid the corresponding salary and entitlements; and, thirdly, to be awarded compensation for "moral damage[s] and stress". After the filing of the complaint before the Tribunal sympathetic consideration had been given to her first and second claims in the Director-General's belated decision of 5 June 2008, to which was attached the report of the Headquarters Board of Appeal. An offer for an "amicable settlement" in respect of the delay in the appeals proceedings and payment of legal

costs up to 2,500 United States dollars upon submission of bills was also made in the decision.

3. On the first matter, the Tribunal observes that the complainant's request for reclassification was initially denied by the Administration and, later, by the PCRC. She filed a notice of intention to appeal with the Regional Board of Appeal on 19 March 2006 in which she requested inter alia that a desk audit be performed. In its report of 14 June 2006, the Board found that the reclassification procedures had been observed but that, as two of the complainant's tasks had not been clearly worded, the Regional Director might wish to have a desk audit conducted by a neutral party. The Regional Director declined to take that course and the complainant filed a notice of intention to appeal with the Headquarters Board of Appeal on 19 July 2006. The Board informed the complainant on 12 October 2007 that its report had been forwarded to the Director-General.

4. As she received no reply from the Director-General, the complainant filed her complaint with the Tribunal on 12 February 2008. She was later notified by letter of 5 June 2008 that the Director-General had decided to accept the recommendation of the Headquarters Board of Appeal that a desk audit be carried out by a classification specialist external to EMRO and that, should the desk audit result in an upgrading of her post, it would be reclassified with retroactive effect from 25 February 2004.

5. WHO argues that, given the Director-General's decision, the complainant shows no cause of action. After filing her complaint, the complainant accepted the Board's recommendations in a letter dated 6 July 2008, but she indicates, in her rejoinder, that at the time of dispatching it, she had received the letter of 5 June 2008 but not the final decision of the Director-General. In its surrejoinder the Organization does not contest this fact, although it argues that the Director-General's decisions "on the complainant's internal appeal, which have been, or are in the process of being, implemented, satisfy the complainant's central requests". The defendant also alleges, more

clearly, that no final decision has yet been made with respect to the grading of the complainant's post, and that the classification review procedure, as decided by the Director-General, must follow its course.

6. Nevertheless, WHO "recognizes and regrets the time taken to conclude the internal review of the [Headquarters Board of Appeal's] report" and has offered "to discuss the possibility of an amicable settlement in this respect". On 25 July 2008 the Director-General decided that the Organization would pay a lump sum of 2,500 dollars for "the time taken to consider the [Headquarters Board of Appeal] report" and offered to pay legal costs, as already stated in her letter of 5 June 2008. On 10 August 2008 it sent the complainant a cheque for 2,500 dollars for the delay, which the Organization asserts "is still in the complainant's possession" and, as the complainant said that she is not ready to accept this compensation until the dispute is resolved, the cheque has presumably lapsed.

7. Although the complainant has at all stages requested the reclassification of her post to grade P.2, the Tribunal can do no more than order a desk audit on the terms decided by the Director-General. In this respect, consistent precedent has it that classification exercises are to be conducted by the appropriate body and not by the Tribunal (see Judgments 2151, under 9, and 2807, under 5). It follows that the complainant's first claim is now without object. However, that does not mean that the complaint is irreceivable. The case law allows that, where it appears that a final decision will not be made within a reasonable time, a staff member may file a complaint with the Tribunal (see Judgments 1968, under 5, and 2170, under 9 and 16). By the time the complainant filed her complaint, four months had elapsed since she had been informed that the Headquarters Board of Appeal had finalised its report. At that stage, it did not appear that a decision would be taken within a reasonable time, and, indeed, it was not. Accordingly, and although the complaint is now without object insofar as the first claim is concerned, the complainant must be awarded costs, which the Tribunal sets at 1,500 dollars. She is also entitled to damages for the delay which the Organization itself acknowledges and regrets. The

Tribunal awards moral damages on this account in the amount of 5,000 dollars which is to include any monies already received by the complainant or credited to her bank account pursuant to the Director-General's decision in this regard.

8. With regard to the second matter, the Tribunal notes that the complainant applied for the post of Administrative Officer and that, on 23 March 2006, an external candidate was recommended for appointment. The complainant raised the question of her non-selection for the post in her statement of appeal of 17 April 2006 to the Regional Board of Appeal but the Board did not deal with that issue. Although the Administration argued to the contrary, the Headquarters Board of Appeal concluded that the appeal was receivable with respect to the decision not to appoint the complainant to the post of Administrative Officer. It recommended that a new selection process be carried out in accordance with the procedures in force in February 2006. In her decision of 5 June 2008, the Director-General informed the complainant that she had strong reservations as to the receivability of her appeal with respect to the selection procedure for the post of Administrative Officer. However, as the post was then vacant, she decided that it would be re-advertised once the post description had been revised in order to incorporate the changes that had occurred.

9. The Tribunal finds that the complainant's plea concerning the non-appointment to the post of Administrative Officer when it was first advertised is irreceivable. In this respect, although a recommendation was made on 23 March 2006 for the appointment of an external candidate, there is no evidence that a final decision had then been taken. Accordingly, it must be concluded that no final decision had been taken concerning the selection procedure, which could then be the subject of an internal appeal. Further, there is nothing in the complainant's notice of intention to appeal to the Regional Board of Appeal to suggest that she was then appealing a decision not to appoint her to the post. Since no further appeal had been lodged when the complainant was formally advised in October 2006 that she was not the successful candidate for the post of

Administrative Officer, internal remedies have not been exhausted and, on this point, the complaint is irreceivable.

10. Taking into consideration that the complainant is approaching retirement age, a speedy resolution of the issues between the parties would have been, and still is, advisable.

DECISION

For the above reasons,

1. WHO shall pay the complainant 5,000 United States dollars in moral damages in accordance with consideration 7, above.
2. It shall also pay her 1,500 dollars in costs.
3. All other claims are dismissed.

In witness of this judgment, adopted on 15 May 2009, Ms Mary G. Gaudron, Vice-President of the Tribunal, Mr Agustín Gordillo, Judge, and Ms Dolores M. Hansen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 8 July 2009.

Mary G. Gaudron
Agustín Gordillo
Dolores M. Hansen
Catherine Comtet