

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

*Registry's translation,
the French text alone
being authoritative.*

B.

v.

UNESCO

124th Session

Judgment No. 3834

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms D. B. against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 15 December 2014, UNESCO's reply of 8 April 2015, the complainant's rejoinder of 20 July, corrected on 22 July, UNESCO's surrejoinder of 29 October and the complainant's further submissions of 19 November 2015, on which UNESCO declined to comment;

Considering Article II, paragraph 5, 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 rejection of her request for reclassification of her post.

In January 2003 UNESCO issued Administrative Circular No. 2177 entitled "The revised classification standard for posts in the General Service category". This standard was to serve as the basic working tool for the Job Evaluation Committee (JEC), which was responsible for determining the grade of posts by evaluating the updated job descriptions of staff members in the category concerned, before making a recommendation to the Director-General on the classification of each post. A Job Evaluation Recourse Committee (JERC) to hear and review complaints against reclassification decisions taken on the basis of the

revised standard was established by administrative Circular No. 2195 of 24 December 2003.

On 16 December 2003 the complainant, who held a post at grade G-5, was informed that, on a recommendation from the JEC, a decision had been taken to maintain her post at that grade. She challenged that classification on the grounds that she had taken on new duties and responsibilities in August 2002. The classification was confirmed by a decision of 3 November 2004, which was taken on the basis of a recommendation from the JERC. On 3 December 2004 the complainant submitted a protest to the Director-General against that decision. She then challenged in turn the implicit and the explicit decision rejecting that protest. In the meantime, her second-level supervisor had requested a desk audit of her post and, when doing so, he had emphasized that her “counterpart” in another unit was performing “absolutely similar” duties at grade G-7.

On 12 September 2005 the complainant and her supervisor met with a member of the Classification and Compensation Section and the Deputy Director-General to “clarify [her] duties and the level of [her] responsibilities” and in order that her case might be reviewed prior to its examination by the Appeals Board. On 23 December 2005 the complainant was informed of the Director-General’s decision to reclassify her post at the G-6 grade with retroactive effect from 1 March 2005. As the complainant considered that she had not obtained satisfaction, she stated that she would not withdraw her appeal before the Appeals Board. On 23 January 2006 she submitted a new protest and requested a desk audit for the purpose of reclassifying her post in the appropriate grade. Having received no reply, on 17 March 2006 she again submitted to the Appeals Board a Notice of Appeal in which she sought the cancellation of the decisions of 3 November 2004, 23 December 2005 and 23 February 2006 (the date of the implicit decision to reject her second protest) and the reclassification of her post at grade G-7 with retroactive effect from 1 August 2002.

After a desk audit of her post had been conducted in spring 2009, the complainant was informed by a letter of 4 September that the

Director-General had decided to maintain her post at grade G-6. She retired on 31 December 2009.

After joining the complainant's various appeals and hearing the parties, the Appeals Board issued its report on 15 July 2014. It found that several steps had been taken between 2003 and 2009 to redress the complainant's administrative situation and recommended, *inter alia*, that the Director-General should find that the challenged decisions were not flawed, that the decision to reclassify the complainant's post at grade G-6 had been taken in the exercise of the discretionary authority of the executive head of the Organization in order to take account of her special situation, that the grade G-7 post on which the complainant had based her arguments had been downgraded to G-5 and that its incumbent had retained the G-7 grade only in a personal capacity.

By a letter of 11 September 2014, which constitutes the impugned decision, the complainant was informed of the Director-General's decision to follow the Appeals Board's recommendations and therefore to "confirm the level of the grades" which she had held before her retirement.

The complainant asks the Tribunal to set aside the impugned decision and seeks the reclassification of her post at grade G-7 with retroactive effect from 1 August 2002, the payment of the additional salary and benefits accompanying the requested reclassification, including the actuarial equivalent of her loss of pension rights, and redress for all the injury she claims to have suffered.

UNESCO asks the Tribunal to dismiss the complaint as unfounded.

CONSIDERATIONS

1. The complainant seeks the cancellation of the decision not to reclassify her post.

2. In accordance with the Tribunal's case law, a decision concerning the classification of a post is subject to only limited review. The Tribunal will set aside such a decision only if it has been taken without authority, has been made in breach of the rules of form or procedure, was based on an error of fact or law, has 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, Judgment 3589, under 4, and the case law cited therein).

3. One of the numerous pleas raised by the complainant falls within the scope of the power of review defined above, since it concerns a procedural flaw, and is of decisive importance in this case. The plea in question is that the desk audit of the complainant's post, carried out in 2009, was based on an incorrect job description.

4. In light of the evidence in the file, the Tribunal considers that this plea is well-founded. Indeed, UNESCO itself has acknowledged that the desk audit in question was conducted on the basis of the job description submitted by the complainant on 8 December 2005, whereas the Organization does not deny that the complainant's duties and responsibilities increased between 2005 and 2009. Thus, the job description which was taken into account was inappropriate for the purposes of an objective audit. The impugned decision is therefore unlawful for this reason.

5. It follows from the foregoing that the impugned decision must be set aside, without there being any need to examine the complainant's other pleas.

6. The Tribunal cannot order the Organization retroactively to reclassify the complainant's post, as she requests, since it is not within the Tribunal's competence to issue injunctions against organisations (see Judgment 3506, under 18).

7. As the complainant has now left the Organization, it is not appropriate, in these circumstances, to refer the case back to UNESCO for evaluation with a view to reclassifying her post.

8. Having regard to all the facts of the dispute, the Tribunal considers that the various forms of injury suffered by the complainant

may be fairly redressed by awarding her compensation, which shall be set *ex aequo et bono* at 40,000 euros.

DECISION

For the above reasons,

1. The impugned decision is set aside.
2. UNESCO shall pay the complainant 40,000 euros in compensation for injury under all heads.
3. All other claims are dismissed.

In witness of this judgment, adopted on 1 May 2017, Mr Claude Rouiller, President of the Tribunal, Mr Patrick Frydman, Judge, and Ms Fatoumata Diakité, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 28 June 2017.

(Signed)

CLAUDE ROUILLER PATRICK FRYDMAN FATOUMATA DIAKITÉ

DRAŽEN PETROVIĆ