

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

K.

v.

CTBTO PrepCom

128th Session

Judgment No. 4143

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms L. K. against the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization (CTBTO PrepCom, hereinafter “the Commission”) on 27 October 2017 and corrected on 27 November 2017, the Commission’s reply of 13 March 2018, the complainant’s rejoinder of 18 May and the Commission’s surrejoinder of 22 June 2018;

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, a former official, challenges a letter from the Director of the Human Resources Services (HRS) rejecting her request for damages and legal costs arising from the fact that the Commission reclassified at grade P-4 the post of Treasurer, which she held at grade P-3 before her separation from service.

The complainant joined the Commission in 1997 under a fixed-term contract in the General Services category. On 1 February 2010 she was appointed to a Professional category post as Associate Treasury Officer, grade P-2. On 1 October 2010 she was appointed as Treasurer at grade P-3; she occupied that post until 31 January 2017, when she reached

the Commission's seven-year service limit for professional staff. Following the expiration of her contract, she was employed under a special service agreement as a consultant from 1 February to 1 August 2017.

On 13 October 2016 the Commission issued vacancy announcement VA150-36-2016 for the post of Treasurer at grade P-4. Following a recruitment process, in July 2017 the Commission informed staff that an appointment had been made to the post.

By a memorandum of 1 August 2017 to the Director of HRS the complainant questioned why the post of Treasurer was now graded at P-4, given that, in her view, the duties and responsibilities of that post were the same as those of the post she had held at grade P-3. On 3 August the Director explained that the post of Treasurer had been reclassified; it included new duties and prescribed different minimum qualifications which had not been required for the grade P-3 post she had encumbered.

In a letter of 10 August to the Director of HRS the complainant asserted that she had been paid at a P-3 level while discharging the duties and responsibilities of a P-4 level post. She sought payment of material and moral damages and costs. By a letter of 17 August 2017 the Director of HRS rejected her request. That is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision. She claims material damages in an amount equal to the difference in salary and emoluments to which she would have been entitled, for the period from 1 October 2010 to the date of her separation from service on 31 January 2017, had her post been classified at grade P-4 while she encumbered it, plus interest. She claims an additional 20,000 euros in material damages and she seeks moral damages and legal costs.

The Commission asks the Tribunal to find that the complaint is irreceivable on the basis that there is no final administrative decision open to appeal. In addition, the complainant failed to avail herself of the internal means of redress when the reclassification of the post was published and thus, any complaint is now time-barred. In the event that the Tribunal finds the complaint receivable, the Commission asks it to reject the complaint in its entirety. The Commission also seeks an award of costs against the complainant in an amount the Tribunal deems appropriate.

CONSIDERATIONS

1. The complainant, a former official, was employed with the Commission as Treasurer at grade P-3 from 1 October 2010 until she reached the Commission's seven-year service limit on 31 January 2017. Following the expiration of her contract as Treasurer, she worked as a consultant on a special service agreement from 1 February until 1 August 2017.

2. On 13 October 2016, the Commission published vacancy announcement VA150-36-2016 for the post of Treasurer, at grade P-4. On 28 July 2017 the Commission notified staff members by email that Mr R. had been appointed to that post. By a memorandum dated 1 August 2017 the complainant requested clarification from the Director of HRS as to why the post of Treasurer, which she had occupied at the P-3 level, had been advertised at the P-4 level. The Director of HRS responded in a memorandum dated 3 August 2017. She stated that "[a]lthough the Post Title and Organizational Settings of the post of Treasurer with CTBTO remain[ed] unchanged [...] the job description advertised under VA150-36-2016 [was] the outcome of a reclassification process which resulted in the incorporation of additional duties and responsibilities besides those listed under the job description for which [the complainant had been] selected". The Director noted that the minimum qualifications required for the revised post had also changed: instead of the previous requirement of a university degree and at least five years of professional experience, an advanced university degree and at least seven years of professional experience were required under the new post description.

3. On 10 August 2017 the complainant sent a letter to the Director of HRS in which she stated that she had also acted in a supervisory role as Treasurer, though this was not explicitly stated in her job description, as evidenced by the comments in her performance evaluations (PARs) and in the PARs of the staff she had supervised. She clarified that although she only had a bachelor's degree, she had accumulated over twenty years of practical experience and had taken

additional training and courses, all of which should be considered as equal to, if not surpassing, the requirements of VA150-36-2016. She noted that she only became aware of the reclassification of the post when she received the email of 28 July 2017. She asserted that she had been paid a P-3 salary while performing a P-4 job, in breach of the principles of equal pay for equal work, good faith, and mutual trust. She therefore requested compensation in the form of payment of the difference in salary and emoluments between grade P-3 and grade P-4 for the period from 1 October 2010 until 31 January 2017, and she sought moral damages and costs.

4. In a letter dated 17 August 2017 the Director of HRS rejected the complainant's request and stated that it could not be accepted for the reasons provided in the 3 August 2017 memorandum, in which it was explained that the job which the complainant had performed was not the same as the reclassified job advertised under VA150-36-2016. The Director of HRS also noted that the complainant had not raised this issue at any time during the period when she was performing the job of Treasurer.

5. The complainant filed the present complaint impugning the decision she claims was contained in the 17 August 2017 letter. She asserts that the rules regarding internal appeals only apply to serving staff members and as her contract ended on 31 January 2017, she was under no obligation to exhaust internal remedies before filing her complaint directly with the Tribunal. She grounds her complaint on the alleged violation of the principles of equal pay for equal work, good faith, and mutual trust. The complainant makes several claims for relief, which are set out above.

6. The Commission contests the receivability of the complaint on several grounds, but primarily on the basis that the complainant does not impugn a final decision. The Commission submits that the letter of 17 August 2017 from the Director of HRS cannot be considered a final decision within the meaning of Article VII, paragraph 1, of the Statute of the Tribunal. The complainant needed to request that the Executive

Secretary review the 17 August administrative decision and, if she was no longer able to avail herself of the internal appeal mechanisms, then she could have appealed to the Tribunal, but only against a decision by the Executive Secretary. The Commission asserts, correctly, that the complainant did not contest her grade at any point while she occupied the post, or during the reclassification exercise in September 2016, nor did she contest the publication of VA150-36-2016 (advertising the post at grade P-4) when it was issued on 13 October 2016, prior to the expiration of her appointment as Treasurer. The Commission contests the complainant's claim that she had only become aware of the P-4 grading of the post with the email dated 28 July 2017, noting that the complainant attached a printout of the vacancy announcement as an annex to her complaint, bearing the time stamp of 14 October 2016, one day after the publication of the announcement, while the complainant was still employed by the Commission and had access to the Joint Appeals Panel. The Commission also submits that the publication of VA150-36-2016 did not represent a breach or non-observance of the complainant's terms of employment, either as a staff member or as a consultant, and therefore any claims in that regard are without any sound legal basis. It also contests the merits of the complaint.

7. The Tribunal finds that the complainant fails to impugn a final administrative decision within the meaning of Article VII, paragraph 1, of the Tribunal's Statute. She did not file, within the prescribed time, an internal appeal contesting the classification of her post.

Regarding the Commission's counterclaim for costs, the following observations of the Tribunal in Judgment 3506, under 4, apply equally to the present case: "[w]ithout ruling out, as a matter of principle, the possibility of making such an order against a complainant (see, for example, Judgments 1884, 1962, 2211 and 3043), the Tribunal will avail itself of that possibility only in exceptional situations. Indeed, it is essential that the Tribunal should be open and accessible to international civil servants without the dissuasive and chilling effect of possible adverse awards of that kind. In the instant case, the [...] complaint cannot be regarded as manifestly vexatious, even though it was clearly irreceivable [...]"

DECISION

For the above reasons,

The complaint is dismissed, as is the Commission's counterclaim.

In witness of this judgment, adopted on 13 May 2019, Mr Giuseppe Barbagallo, President of the Tribunal, Mr Michael F. Moore, Judge, and Mr Yves Kreins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 3 July 2019.

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

YVES KREINS

DRAŽEN PETROVIĆ