

The Administrative Tribunal,

Considering the complaint filed by Ms M.A.Z. against the Pan American Health Organization (PAHO) on 15 September 2004, PAHO's reply of 2 February 2005, the complainant's rejoinder of 13 April and the Organization's surrejoinder of 25 July 2005;

Considering Article II, paragraph 5, 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 American citizen born in 1944, is a former staff member of PAHO. She joined the Organization in 1968 as a secretary at grade G.3 and attained grade G.6 in 1980. In January 1981 she was appointed to the Professional category as an Administrative Officer, at P.1, in the PAHO headquarters library. In 1989 her job title became Reference Librarian. In 1991 her post was reclassified to the P.2 level and she was promoted to that grade from 1 December 1991. She obtained a career service appointment in 1993. She also received meritorious step increases after 20, 25 and 30 years of service.

On 3 June 1998 the complainant requested a review of her post, wanting it reclassified at the P.3 level. As stated in a memorandum of 19 June 2000 addressed to the complainant's second-level supervisor, the outcome of the review was that the post was properly classified at P.2.

The complainant raised the issue again in 2001 and took steps to make changes to her post description. In a memorandum of 7 December 2001 to her second-level supervisor, she indicated her wish to have her post "re-audited and then reclassified". The complainant wrote to the Chief of Personnel on 28 January 2002 requesting reconsideration of her lack of career advancement and asking for technical assistance in the rewriting of her post description. An exchange of correspondence ensued during the year. On 15 February the Chief of Personnel acknowledged receipt of the complainant's letter of 28 January; he sent her an in-depth reply on 7 June 2002. She had sent the Chief of Personnel another letter on 6 May, and in a letter of 10 July 2002 she asked to have her post description reclassified "according to the [International Civil Service Commission (ICSC)] standards". On 7 October 2002 she wrote to him again, protesting at the lack of action.

On 11 November 2002 the Chief of the Classification Unit sent the complainant a draft "statement" of her duties. The complainant reviewed it and by letter of 14 November proposed certain changes. On 15 November the Chief of the Classification Unit e-mailed the complainant a revised statement of her duties, prepared by the complainant's first-level supervisor, adding that it was the version that would be presented to the Reclassification Committee. The complainant put forward objections in a letter of 18 November and enclosed a "revised final post description". The complainant was informed in writing on 26 December 2002 that the Reclassification Committee had met on 20 November to review her request for the reclassification of her post but had decided to defer its recommendation until a proper response could be given to the letter she had sent on 18 November as well as one sent on 20 November 2002.

By a memorandum of 7 February 2003, the Chief of Personnel informed the complainant that the Advisory Committee on Post Reclassification had met on 22 January 2003 to consider her request for a change in the grade of her post. He said that based on all the material pertaining to her request, including the updated post description and correspondence, the Committee had concluded that the duties and responsibilities of the post were commensurate with grade P.2. He also said that the Committee had submitted its recommendation to the Director of PAHO, who had agreed that the post was properly classified at P.2. The complainant's counsel wrote to the new Director of PAHO on 27 February 2003, exposing the background to the complainant's case and asking for a remedy to the situation.

On 7 April 2003 the complainant filed a notice of intent to appeal with PAHO's Board of Appeal; she alleged personal prejudice on the part of her supervisors and objected to the denial of "proper post reclassification". She wanted an independent panel to review her post. The Board of Appeal issued its report on 25 May 2004, recommending, inter alia, that the complainant's post should be reviewed by a new Reclassification Review Committee and that her claims should be reviewed by a Grievance Panel, given that a policy on harassment had become effective on 1 May 2004. It did not agree with the establishment of an independent reclassification panel.

As stated in a letter of 16 July 2004 to the complainant, the Director of PAHO found that "all appropriate procedures [had been] followed" and there was no basis for reopening the January 2003 classification of the complainant's post. The Director did not accede to the complainant's claims. That is the impugned decision. The complainant retired in August 2004.

B. The complainant, firstly, alleges prejudice and bias on the part of her first and second-level supervisors over a period of many years. She submits that it resulted in an ongoing refusal to support her in her efforts to get career advancement. The prejudice, she alleges, was manifested in various ways, inasmuch as her supervisors failed to keep her informed of issues that had an impact on her work; they demonstrated a lack of respect for both her and her position; they consistently refused to acknowledge that she was performing certain duties and would not recognise that the level of her responsibilities had significantly changed over time. She says that the problems commenced at the end of the 1980s, and the failure of her supervisors to address them led to an acrimonious and bitter working environment. She refers to years of "systematic harassment, bias and discrimination" on the part of her first-level supervisor, which her second-level supervisor did nothing to prevent. The Reclassification Committee, she contends, colluded with her supervisors but it failed to consider all the factual evidence and failed to evaluate her functions objectively. She also refers to a lack of technical assistance in the preparation of her post description. Furthermore, it had been brought to her notice that in the last classification exercise the Reclassification Committee had concluded that her post was "borderline" between P.2 and P.3. She assumes, however, that because of "unofficial" pressure from her supervisors the final outcome was not decided in her favour.

Secondly, the complainant contends that the Reclassification Committee failed to compare in a favourable way the functions she was performing with those of other professional staff carrying out similar duties in organisations within the United Nations common system. While in evaluating her post the Classification Unit may have adhered to the established "procedures", neither the Organization nor the Committee has shown that the evaluation performed was "objective". She states that she had had the functions of her post independently audited and they were deemed to be at the P.3 level. She had also submitted a standard post description for her type of post, obtained from the International Civil Service Commission, but all to no avail as the Organization appeared unwilling to take it into consideration.

The complainant seeks retroactive promotion to P.3 from January 2001; adjustment of pension contributions, with retroactive effect from the same date; adjustment of her salary – from level P.2 to P.3 – as from January 2001; damages, in respect of "more than ten years of systematic harassment and bias", in the amount of 50,000 United States dollars; and 20,000 dollars in costs.

C. In its reply PAHO denies the allegations of prejudice, bias and harassment levied by the complainant. Relying on the case law, it submits that she has failed to discharge the burden of proof. It adds that although she has submitted a voluminous amount of annexes with her brief, they do not corroborate any of the accusations she has put forward. Moreover, she has failed to show that there was any intent to block her career advancement. In fact, the opposite applies as the Organization went to great lengths to assist her in her career development. Her supervisors also took numerous steps to bring about good working relations. PAHO asserts that her allegations of 15 years of harassment, prejudice and bias are unfounded and unsubstantiated. The sole motivation for her allegations would appear to be the denial of her request for the reclassification of her post.

According to the Organization, it is the reclassification review that lies at the heart of the case. The complainant's attempts to have her post regraded at P.3 were unsuccessful because the criteria for reclassification were simply not met. Dedication and job performance are not determining factors; it is the duties and responsibilities of the post that matter. The ultimate decision on the needs of a post lies with the supervisor. The Advisory Committee on Post Reclassification found that the complainant's post of Reference Librarian was properly graded at P.2, based on a post description which reflected the needs of the Organization for that post. Her post was reviewed and assessed in accordance with criteria established by the International Civil Service Commission. PAHO holds that her statement

that her post was borderline between P.2 and P.3 is absolutely false; in fact, it was squarely within the P.2 level. It notes that the “independent” classifier referred to by the complainant was in fact her counsel, and thus it calls into doubt his independence. Lastly, it holds that her allegation that the Advisory Committee’s assessment lacked objectivity is completely unfounded.

D. In her rejoinder the complainant develops her pleas, maintaining her view that the bias of her supervisors hindered her efforts to obtain the reclassification of her post. In her opinion there remains the issue of delay, be it delay in replying to memoranda or delay in informing her of the status of her request. Citing the case law, she states that when an organisation permits an unsatisfactory and discordant environment to persist without rectification, it has failed in its duty to the staff member and is liable for damages.

E. In its surrejoinder PAHO maintains the position it held in its reply. It refutes any notion that it allowed harassment to go unchecked, and strongly objects to the complainant’s allegations that it thwarted her career. Although her career did not go as far as she wished, that does not render the Organization guilty of harassment and discrimination. PAHO justifies the delay in replying to certain letters in 2002, emphasising that the reasons were work-related and had been explained to her. It adds that she contributed in no small measure to some of the delays, through the many letters and e-mails she sent to press her case.

CONSIDERATIONS

1. The complainant is a former staff member of PAHO. She joined the Organization as a Secretary, at grade G.3, in 1968 and received various promotions thereafter. After completing a university degree, she was appointed Administrative Officer, at grade P.1, in 1981 and assigned to the PAHO library. Her post was later described as Technical Officer, at P.1, and later again as Reference Librarian at the same grade. She requested a reclassification of her post in 1990 and it was eventually reclassified as Reference Librarian, at P.2, in 1991. The complainant requested a further reclassification in June 1998 but was informed in June 2000 that her post was classified at the proper grade. She made further attempts in 2000 to have her duties re-evaluated and was informed on 7 February 2003 that it had been concluded that “the duties and responsibilities of [her] post [were] commensurate with the P.2 grade level”. The complainant then appealed to the Board of Appeal, seeking reclassification to P.3 with effect from January 2001, damages for harassment by her supervisors and costs. She retired in 2004.

2. In its report of 25 May 2004 the Board of Appeal recommended a further review of the complainant’s post by a new Reclassification Review Committee on the basis of a post description which was submitted by the complainant on 2 July 2002 and subsequently amended. It also recommended the payment of her legal costs in the amount of 15,000 United States dollars. However, it recommended against the payment of damages for harassment “given the difficulty in proving intent and the lack of a policy on harassment [prior to May 2004]”. Instead, it recommended that the claim be referred to the Grievance Panel established pursuant to the recently announced policy. The Director of PAHO informed the complainant on 16 July 2004 that she had decided not to accept the recommendations of the Board of Appeal, giving her reasons. It is that decision that is the subject of this complaint by which the complainant seeks promotion to P.3 with effect from January 2001 and consequential adjustments in salary and pension contributions. She also seeks damages for “more than ten years of systematic harassment” and reimbursement of legal costs.

3. As the Director pointed out in the letter conveying her decision of 16 July 2004, the Board of Appeal did not identify any error in the classification review exercise. Rather, its recommendation that her post be the subject of a further reclassification review appears to be based on a report from the former Ombudsman. It was said in that report that the complainant was receiving “unfair treatment and [...] clear opposition to her attempt [to provide] background information in support of her request [for reclassification]”. The former Ombudsman also referred to “difficulties in the entire process and lack of support from [the complainant’s] first-level supervisor due to personal conflicts”. He added that “interpersonal relations were not being taken into account” and said that the Reclassification Committee had concluded that the post was “borderline between P.2 and P.3”.

4. Similarly, before this Tribunal, the complainant does not claim error by the Reclassification Committee by reference to the material before it. Rather, she claims that there was not an objective evaluation of the functions of her post because her first and second-level supervisors refused to record her higher functions. She also points to other Reference Librarian posts graded P.3 within the United Nations common system and argues that, given the borderline nature of the evaluation, these matters should now result in reclassification with effect from January

2001.

5. PAHO disputes that the Reclassification Committee regarded the complainant's post as borderline. In this regard, it states that the post was 84 points short of the P.3 grade. As there is nothing to substantiate the former Ombudsman's statement as to the borderline assessment, PAHO's statement should be accepted. Further, although the complainant points to P.3 posts for Reference Librarians in the United Nations common system, PAHO points out that there are also Reference Librarian posts at grade P.2. In these circumstances, the main issue is whether, as claimed, the complainant's first and second-level supervisors refused to record the higher level functions of her post.

6. It is convenient to note the steps leading to the decision of 7 February 2003 that the complainant's post was properly graded at P.2. Although the complainant may have raised the matter at some earlier time, her second-level supervisor informed her in October 2001 that she would approach the Director of PAHO to have the earlier decision of June 2000 reviewed. Her efforts were unsuccessful and, in December 2001, she informed the complainant that she could apply for another classification review, on the basis of either the existing post description or a new one. In January 2002, the complainant wrote to the Chief of Personnel claiming that her relations with her first-level supervisor had been extremely difficult since 1987 and complaining of lack of support from both her first and second-level supervisors in getting her post reclassified.

7. The Chief of Personnel acknowledged the complainant's letter in February 2002, but did not reply in detail until June 2002. In his reply he explained the classification review procedures and asked for "a new post description" from the complainant. He also stated that he would work closely with the complainant and her supervisors to ensure its accuracy. The complainant and a member of the Staff Association met with the Chief of Personnel on 2 July and provided him with a new post description. The complainant wrote on 10 July 2002 confirming that the post description was accurate but stating that it was not written "technically". She sought assistance in its technical writing but said she did not wish "to start the classification process all over again". In the same letter, she complained of "lack of support, harassment, prejudice and systematic blocking of [her] career development" and asked what would be done to ensure that such action would be stopped. She concluded her letter by saying that the Chief of Personnel had indicated that she would receive the definitive result of the Reclassification Committee's evaluation by 30 September 2002.

8. Nothing having happened in the meantime, the complainant wrote to the Chief of Personnel on 7 October indicating that she would take the matter further unless she received information indicating a "satisfactory resolution of the discrimination and bias". He replied on 16 October informing her that it was necessary for her supervisors to be involved in the review process and stating that the Reclassification Committee would meet on 20 November 2002. He also told her that the Chief of the Classification Unit would conduct a desk audit and would meet with her and her supervisors to ensure the accuracy of her post description.

9. It is not clear when the desk audit was conducted. However, the Chief of the Classification Unit provided the complainant with a revised statement of her duties on 11 November 2002. On 14 November both the complainant and her first-level supervisor provided their comments on and amendments to that statement. On 15 November the complainant was provided with a revised copy reflecting her first-level supervisor's comments and amendments. She was told that, as it was the supervisor's responsibility to assign functions, the statement, as revised by her supervisor, would be presented to the Reclassification Committee.

10. The complainant wrote to the Chief of the Classification Unit on 18 November 2002 claiming that her input had been "a mere sterile exercise in writing" and stating that, if her comments and additions were not to be part of the record provided to the Reclassification Committee, she did not wish to have her post evaluated. She attached a revised statement of duties which she said represented the "bare bones" changes necessary for a proper evaluation. She wrote again on 20 November referring to an organisation chart prepared by her supervisor which showed her post on the same line as general service staff. This, she said, demonstrated "years of downward pressure against [her] person and [her] career aspirations". She requested that, if the chart were to be presented to the Committee, her comments should also be submitted.

11. The Reclassification Committee met on 20 November 2002 but deferred consideration of the complainant's request for reclassification until her letters of 18 and 20 November could be answered. The Chief of the Classification Unit replied to those letters on 26 December. Relevantly, she stated that all of the complainant's comments and the duty statement that she had prepared had been forwarded to the Committee. She also said that,

“in the final analysis [...] there [was] very little difference between the [...] descriptions prepared by [the complainant] and [her] supervisor”. As already indicated, the complainant was informed on 7 February 2003 that it had been decided that her post was properly classified at the P.2 level.

12. A comparison of the statements prepared by the complainant and her supervisor reveals considerable agreement as to the duties of the complainant’s post and discloses only four differences. The first difference relates to the functions specified under the heading “Reference and information services”. The complainant identified one of her functions in that area as “[p]articipat[ing] in library decision making”. That function was not included in her supervisor’s statement. Nor was it included in the draft prepared by the Chief of the Classification Unit in November 2002. The other three differences concern the generality with which the functions of the post are described. Thus, for example, the supervisor specified one function as:

“Develop and implement the Library Home Page in coordination with the Webmaster.”

The complainant, on the other hand, described the duties as:

“Plan, design, develop and implement web-based virtual content and products to deliver and disseminate reference information services (Headquarters and Field)”;and

“Provide on-line access to staff, according to publishers’ policies and guidelines.”

13. Given that the complainant accepted that the post description submitted in July 2002 was accurate, that there was substantial agreement between her and her supervisor as to the statement of duties, that the complainant’s comments and amendments were submitted to the Reclassification Committee and that the final evaluation was 84 points short of the P.3 level, the argument that the decision of 7 February 2003 was the result of the failure of her supervisor to specify the higher functions of her post must be rejected. So, too, given the considerable agreement between the complainant’s statement of duties and that of her supervisor and the fact that a desk audit was conducted by the Chief of the Classification Unit, it cannot be concluded that her supervisors failed to specify the higher functions of her post.

14. So far as concerns the complainant’s argument that the Reclassification Committee failed to make an objective evaluation of her post, there is nothing to suggest that its deliberations involved any reviewable error. Moreover, it is well settled that in classification disputes, this Tribunal will not substitute its assessment for that of the relevant classification authority (see Judgments 1067, 1152 and 1281). Further, there is no basis on which lack of objectivity can be imputed to the Committee. Accordingly, the complainant’s claim for reclassification of her post must be rejected.

15. As already indicated, the complainant claims that she was the victim of harassment dating from 1987 when her first-level supervisor was appointed. At or about the same time, the library was restructured and it was envisaged that it would undergo further changes with the introduction of computer technology.

16. The first indication of any difficulty between the complainant and her first-level supervisor is to be found in her 1988 performance appraisal report. In that report, the supervisor noted that the complainant had worked for most of the period under review “without clear definition of [her] functions”. The supervisor rated her performance as outstanding in two areas and as satisfactory in all other areas. The complainant objected to the description of her performance as “satisfactory”, claiming that it did not reflect the quality of the work performed by her in the difficult circumstances associated with the restructuring. She also claimed that it minimised her professional contribution to the library. In the same report, her then second-level supervisor noted that the complainant had completed a degree in management and said that the potential for her development would depend on matching her training and experience to the needs of the library.

17. In October 1988, there was a meeting between the complainant and her first-level supervisor to exchange ideas about “staffing and new definition of functions”. It appears that they had different views as to priorities and future management. In this last regard, the complainant stated in an *aide memoire* dated 7 October 1988 that it seemed that the proposal of her supervisor “reflect[ed] some kind of hierarchical scheme” and that she, the complainant, believed that delegation of authority would be preferable, “particularly from the management point of view”. Shortly afterwards and without reference to either her first or second-level supervisor, the complainant requested a transfer “to another area [...] commensurate to [her] background, education and experience”.

18. The complainant's request for a transfer resulted in discussions between her and her second-level supervisor. The discussions appear to have led to the preparation of a draft post description in April 1989. In June, the second-level supervisor discussed the complainant's situation with his Area Chief, and prepared a memorandum on the subject. In that memorandum, he noted several problems as perceived by the complainant, including:

“Assignment of inadequate functions [...]

[...]

Frustration for not having supervisory functions

[...]

Diminished role within the library.”

He also stated in that memorandum that the complainant had difficulty in matching “her needs, aspirations and ambitions” with “the technical needs and administration of the [...] library”. Eventually, in June 1989, the complainant withdrew her request for a transfer.

19. As already indicated, the complainant applied for reclassification of her post in 1990. Her second-level supervisor was asked for further information in February 1990 but did not reply until June, apparently because of the need to check whether certain functions associated with new systems and technology were performed on a regular basis. Further information was requested from him in July, it being said that “[n]ormally, the functions of a position can only be evaluated on the basis of their having been performed for a reasonable period of time”. He supplied the information in September. Further information was again requested in May 1991 and provided by the second-level supervisor in July 1991. It is not clear what happened between then and mid-1992 when a new post description was issued following the reclassification of the complainant's post at grade P.2.

20. It is stated in the complainant's internal appeal that her first-level supervisor “intervened negatively” to “block” the reclassification of her post in 1990. The complainant claimed that this was repeated with respect to the two subsequent classification reviews and that “there formed a cabal between [her] first and second-level supervisors to employ all tactics, delays, and administrative tricks to keep [her] from being recognised for the duties she was actually [performing]”. Contrary to that claim, there is no evidence of the first-level supervisor intervening in the first classification review. Moreover, the delays associated with that review seem to be referable to the technological and structural changes then under way. Certainly, the circumstances relating to the first review provide no basis for characterising as harassment the two subsequent refusals to reclassify the complainant's post.

21. It has already been pointed out that there is no basis for a conclusion that the complainant's supervisors failed to specify the higher functions of her post for the purposes of her final classification review. And as the last classification review exercise resulted in the maintenance of the P.2 grade established in 1991, there is no basis for concluding that there was any misstatement of the duties and responsibilities in relation to the second classification review. Accordingly, and to the extent that the claim of harassment depends on matters relating to the classification reviews, it must fail. However, the claim is not limited to those matters.

22. The complainant also contends that her supervisors blocked her career development by limiting the scope of her duties and responsibilities. In this regard, she has produced various documents which show that, as Reference Librarian, the complainant was given little delegated authority and only limited supervisory functions. They also show that she was not always informed of matters pertaining to library operations for which she was not directly responsible and that, on at least one occasion, work that might have enhanced her position was assigned to a consultant. The documents also show that, from 1989 onwards, the complainant took the view that her first-level supervisor should have adopted a different and less hierarchical management style and, also, should have organised certain functions differently. Thus, for example, in 1998 the complainant met with her first and second-level supervisors and complained with respect to the use of consultants, the inefficient utilisation of resources and the “send[ing] of negative e-mails” when she, the complainant, was “trying to suggest improvements”.

23. The fact that the complainant, who held management qualifications, would have done things differently may have led her to believe that the various actions and decisions which impacted on the range and nature of her functions were taken for the purpose of blocking her career development. However, it is clear from the documents

provided by the complainant that the actions and decisions were taken in a context in which technological advances necessitated changes within the library and in which resources were limited. It was for the complainant's supervisors to manage that change and those resources and, in the course of so doing, to assign functions to the complainant as they considered appropriate for the efficient management of the library. There is nothing to suggest that any of the actions which impinged on the nature and range of the complainant's duties were taken for other than legitimate management purposes. That being so, the complaint must be dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 3 November 2005, Mr Michel Gentot, President of the Tribunal, Ms Mary G. Gaudron, Judge, and Mr Agustín Gordillo, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 1 February 2006.

Michel Gentot

Mary G. Gaudron

Agustín Gordillo

Catherine Comtet