

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

M.
v.
UNESCO

123rd Session

Judgment No. 3764

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr E. M. against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 6 February 2014 and corrected on 10 March, UNESCO's reply of 30 June, the complainant's rejoinder of 17 October 2014 and UNESCO's surrejoinder of 21 January 2015;

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 dismissal of his request for a review of the classification of his post.

At the material time, the complainant held the post of Metalworker/Locksmith. On 7 July 2009 the Chief of the Workshops Unit, who had headed the Metalwork Workshop since April 2007 and was hence the complainant's supervisor, informed him that, "[o]n [his] departure on annual leave and given the overload of work due to the office moves and the preparation for the General Conference", the complainant was to coordinate "the proper functioning of the [Metalwork] Workshop until further instructions".

On 25 September 2009 the complainant submitted a request to the then Director-General for his post to be reclassified as Locksmith Foreman. On 1 July 2010 he lodged a protest in which he asked the new Director-General to instruct the Bureau of Human Resources Management to conduct a desk audit of his post, which, according to the complainant, the former Director-General had ordered. Having received no response, he lodged a notice of appeal with the Appeals Board on 26 August 2010.

On 12 October 2010 the Bureau of Human Resources Management advised the complainant that a desk audit of the posts in the Metalwork Workshop would be undertaken as part of the Reclassification Reserve Exercise 2010-2011. The desk audit was undertaken by an external expert who produced a report on which the complainant commented on 29 July 2011. After a new job description was drawn up on 17 November 2011, the complainant was advised in a memorandum dated 16 December 2011 that the desk audit had confirmed that his post was correctly classified.

On 13 January 2012 the complainant lodged a further protest with the Director-General. He contested the decision of 16 December 2011, asserting that the desk audit process had been tainted with several flaws, and asked for an independent desk audit of his post. When this protest was dismissed, the complainant referred the matter to the Appeals Board on 8 March 2012. He asked that this appeal be joined with the one he had lodged on 26 August 2010, to which the Chairman of the Appeals Board agreed. In its report dated 28 June 2013, in addition to making two general recommendations, the Board recommended that the classification of the complainant's post be reviewed and that 1,000 euros be awarded to him in compensation.

By a letter of 5 November 2013, which constitutes the impugned decision, the complainant was informed of the Director-General's decision not to accept the two recommendations made in his regard.

On 6 February 2014 the complainant filed a complaint with the Tribunal seeking the setting aside of the desk audit report, of the decision not to reclassify his post and of the impugned decision to the extent that it dismissed the recommendations that were in his favour, the drawing up of a new job description, the payment of 15,000 euros as compensation for the moral and material injury that he claims to have suffered and an

award of costs. In his rejoinder, he also makes several claims seeking declarations in law.

UNESCO asks the Tribunal to make various declarations in law and to dismiss the complaint in its entirety.

CONSIDERATIONS

1. The complainant has filed a complaint with the Tribunal seeking the setting aside of the decision not to reclassify his post, of the desk audit report on the said post, and of the impugned decision to the extent that it dismissed the two recommendations put forward by the Appeals Board that were favourable to him. He also asks the Tribunal to order the drawing up of a new job description, the payment of 15,000 euros as compensation for the moral and material injury that he claims to have suffered and an award of costs. Lastly, in his rejoinder the complainant invites the Tribunal to rule that: (a) his complaint against the impugned decision taken by the Director-General to dismiss the recommendations of the Appeals Board that were in his favour is receivable and well founded in both fact and law; (b) the impugned decision is unlawful because it is tainted with errors of fact and law, omissions of essential facts and major formal or procedural flaws; (c) having dismissed a recommendation that was favourable to the complainant put forward by an internal appeals body, the Director-General, as the final decision-maker, should have given clear and cogent reasons for her decision, in accordance with the Tribunal's case law; (d) under the Tribunal's case law, the defendant Organization had the duty in its pleadings before the Tribunal not to rely on grounds which it failed to invoke in the impugned decision; (e) the desk audit of his post, the updating of his job description, the job evaluation and the classification of his post show formal or procedural flaws; (f) he has suffered substantial moral, professional and material injury that, in accordance with the Tribunal's case law, requires fair compensation; (g) he has the right to substantial damages for the excessive, unacceptable delays that have characterised the internal appeal procedure throughout.

2. The Organization asks the Tribunal to find that the desk audit of the complainant's post was not flawed in any manner, that the decision on the classification of his post resulting from the desk audit process was taken in compliance with the applicable rules and shows no flaw, that the complainant has not suffered any material or moral injury, and that it rule that the complaint is unfounded in fact and in law and dismiss it in its entirety.

3. It should be recalled that it is not for the Tribunal to make declarations of law (see Judgment 2649, under 6). The parties' claims seeking various declarations in law by the Tribunal should really be regarded merely as pleas in support of their claims for the setting aside of decisions and the award of compensation. A long line of precedent has it that such claims seeking declarations in law are irreceivable where, as in this case, they are devoid of legal effect *per se* (see, for example, Judgments 1546, under 3, 2299, under 5, and 3206, under 8). These claims seeking declarations in law must be dismissed on this ground.

4. As far as the decision not to reclassify his post is concerned, the complainant submits that following the memorandum dated 7 July 2009, in the absence of instructions to the contrary from his supervisor, he continued to discharge the duties and responsibilities that were entrusted to him "until further instructions" to the Administration's satisfaction. He adds that although the post of Locksmith Foreman no longer exists *per se* since it was downgraded, the duties attaching to the post still exist. Lastly, he considers that the failure to reclassify his post was due to an "arbitrary" note sent by his supervisor on 5 November 2010, in which the latter made unfounded allegations against him and stated that he himself had performed the duties of head of the metalwork workshop since 2007.

5. According to the Organization, the duties and responsibilities in question were never assigned to the complainant on a permanent basis. It adds that he assumed them as part of his usual duties, in full compliance with the applicable rules. Furthermore, the post of Locksmith Foreman and some of the functions attaching to it have not existed *per se*

since 1 January 2008. Lastly, the classification decision was taken by a person who was “competent and expert in this matter” at the end of a technical process that was conducted in compliance with the applicable rules, and is therefore based on the desk audit report and the resultant job description.

6. It is for the competent body and, ultimately, the Director-General to determine each staff member’s grade. Several criteria are used in this exercise. Thus, when a staff member’s duties attach to various grades, only the main ones are taken into account. Moreover, the classification body does not rely solely on the text of the Staff Regulations and Staff Rules and the job description but also considers the abilities and degree of responsibility required by each. In all cases grading a post requires detailed knowledge of the conditions in which the incumbent works. It is therefore a discretionary decision with which the Tribunal will not ordinarily interfere unless it was taken without authority, was made in breach of the rules of form or procedure, was based on an error of fact or law, was made having overlooked an essential fact, was tainted with abuse of authority or if a clearly mistaken conclusion has been drawn from the facts (see Judgments 252, under 1, and 3589, under 4).

7. The complainant alleges that the impugned decision shows formal or procedural flaws. In particular, he disputes the validity of the desk audit report of his post, pointing out that it was not signed by the external expert who wrote the report, or by his supervisor.

8. Paragraphs 21 to 23 of item 3.1 of the UNESCO Human Resources Manual concerning desk audits read as follows:

- “21. A desk audit is a technical review initiated by [the Bureau of Human Resources Management], in order to confirm the accuracy of an approved Job description, by clarifying the functions and verifying that they are properly described. A desk audit is conducted with the supervisor and with the incumbent of the post and other interlocutors, as required.
22. When the desk audit is completed, a desk audit report containing clarifications of the duties performed is signed by the incumbent of the post and the supervisor(s), confirming that the functions are adequately

described. A copy of the full report is provided to the incumbent and the supervisor(s).

23. Upon completion of the desk audit, a job evaluation is conducted, [...], the classification level is established and the post classified accordingly.”

Although paragraph 22 does not explicitly stipulate that the desk audit report must be signed by its author, it is self-evident that this formality is mandatory. UNESCO does not dispute this principle. Yet in this case the desk audit report was not signed by the external expert who wrote it, and her signature was replaced by that of a member of the Bureau of Human Resources Management who signed it “for” her.

Furthermore, neither was the report signed by the complainant’s supervisor, even though paragraph 22 cited above states that the supervisor’s signature serves to “confirm [...] that the functions [performed by the incumbent] are adequately described”. The Tribunal observes that the Organization does not explain the reasons for this omission anywhere in its submissions.

The Tribunal hence considers that the report is tainted with two substantial flaws such as to cast doubt on its authenticity and the accuracy of its content. It is to no avail that the defendant submits that the complainant confirmed the accuracy of the description of his functions set out in the report, given that he added numerous, extensive reservations when signing this document.

Paragraph 23 cited above indicates that the post is classified on the basis of the desk audit. The Tribunal consequently considers that the impugned decision is rendered unlawful by the flaws in the desk audit report. This decision must therefore be set aside, without there being any need to examine the complainant’s other pleas.

9. Given the time that has passed since the report was written and the practical difficulties of conducting a new desk audit addressing the factual situation at the time, the Tribunal will not remit the case to UNESCO for such an audit.

In the circumstances, the alleged material injury resulting from a possible error in the classification of the post cannot be considered to

have been established. No compensation will therefore be awarded to the complainant on that count.

Conversely, the flaws in the desk audit report identified above caused the complainant moral injury, which may be redressed by an award of 10,000 euros in compensation.

10. The complainant further seeks compensation for the moral injury arising from the Organization's delay in dealing with his case. The Tribunal observes that more than four years elapsed between the beginning of the classification procedure and the final decision, which is indeed an unacceptable delay. The Tribunal will award the complainant an additional sum of 3,000 euros on this ground.

However, the Tribunal considers that the complainant has not proved the injury that he alleges was caused to his career, dignity and reputation. No compensation will therefore be awarded on that count.

11. As he succeeds in part, the complainant is entitled to costs, which the Tribunal sets at 500 euros.

DECISION

For the above reasons,

1. The decision of 5 November 2013 is set aside.
2. UNESCO shall pay the complainant compensation in the amount of 13,000 euros for moral injury.
3. It shall also pay him costs in the amount of 500 euros.
4. All other claims are dismissed.

In witness of this judgment, adopted on 4 November 2016, Mr Claude Rouiller, President of the Tribunal, Mr Patrick Frydman, Judge, and Ms Fatoumata Diakit , Judge, sign below, as do I, Dra en Petrovi , Registrar.

Delivered in public in Geneva on 8 February 2017.

(Signed)

CLAUDE ROUILLER PATRICK FRYDMAN FATOUMATA DIAKITÉ

DRAŽEN PETROVIĆ