

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

**L.**  
**v.**  
**WHO**

**126th Session**

**Judgment No. 4030**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs M. L. against the World Health Organization (WHO) on 25 November 2015 and corrected on 10 December 2015, WHO's reply of 20 May 2016, the complainant's rejoinder of 21 July and WHO's surrejoinder of 21 October 2016;

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 challenges the decision to maintain her position at the same grade.

The complainant joined WHO on 1 June 2012 as Coordinator of Global Human Resources under a fixed-term contract at grade P.5.

In early 2014 she informed her first-level supervisor and the Director of the Human Resources Department (HRD) that she wanted the classification of her post to be reviewed. The classification request was forwarded to the HRD Classification Specialist.

On 6 November 2014 the Administration notified the complainant's first-level supervisor of the decision to maintain the complainant's post at grade P.5. The complainant was so informed on 7 November.

That same day she sent an email to members of the Administration notifying them of her intention to appeal the classification decision.

In an email of 25 November the Director of HRD informed the complainant that she had arranged to have the classification request reviewed independently by a classification expert from another United Nations agency and that she would inform the complainant of the outcome of that process before the expiry of the time limit for lodging a request for review with the Classification Review Standing Committee concerning the decision conveyed to her on 7 November. On 28 November the complainant replied that she had decided to proceed with an internal appeal. She filed a notice of intention to appeal with the Headquarters Board of Appeal (HBA) that same day challenging the decision of 6 November 2014 on the basis of incomplete consideration of the facts and improper application of the WHO post classification standards.

In an email of 8 December 2014 the Director of HRD informed the complainant that the independent classification expert had classified her post at grade P.5.

In its report transmitted to the Director-General on 11 August 2015 the HBA concluded that the complainant had failed to seek a review of the decision of 6 November 2014 by a Classification Review Standing Committee in accordance with the prescribed procedures. Thus, she had filed her appeal prematurely. The HBA recommended that the Director-General dismiss the appeal as irreceivable in its entirety. By a letter of 14 September 2015, which is the impugned decision, the Director-General informed the complainant that she had decided to accept the HBA's recommendation and to dismiss the appeal as irreceivable.

By an email of 15 September the complainant asked the Director-General to reconsider her decision. On 6 October she was informed that the Director-General would agree to waive the applicable time limit so that she could request a review of the contested classification decision with the Classification Review Standing Committee by 13 November 2015. The complainant declined that offer on 8 October.

The complainant asks the Tribunal to examine the "significant flaws" in WHO's classification process and the HBA process and to make recommendations to address those flaws. She seeks an order

that WHO undertake a classification process in accordance with its classification standards and principles and which excludes participation by the HRD Classification Specialist and the Director of HRD. If, as a consequence of that process, it is decided that her post should be classified at grade P.6, she seeks reclassification of her post as from 21 May 2014 and payment of the resulting difference in her remuneration, with appropriate interest. She claims 100,000 United States dollars as compensation for the time and effort she has spent preparing her case, and 100,000 dollars in moral damages.

WHO submits that the complaint is irreceivable for failure to exhaust the internal means of redress and that, in any event, it is devoid of merit. It asks the Tribunal to dismiss the complaint in its entirety.

#### CONSIDERATIONS

1. On 25 November 2015, the complainant, a staff member of WHO, filed a complaint with the Tribunal. She impugns a decision of the Director-General of 14 September 2015. By that decision the Director-General dismissed the complainant's internal appeal as irreceivable. That decision had been preceded by a report of the HBA transmitted to the Director-General on 11 August 2015 in which the HBA recommended that the complainant's appeal be dismissed as irreceivable in its entirety, substantially on the basis that the complainant had not explored all existing administrative channels for reviewing a position classification and that the appeal to the HBA was premature.

2. In these proceedings WHO contends that the complaint is irreceivable substantially on the basis that the complainant did not exhaust internal means of redress as required by Article VII, paragraph 1, of the Tribunal's Statute. It is convenient to consider this issue at the outset and outline those facts necessary to deal with this issue.

3. In early 2014, the complainant held the position of Coordinator of Global Human Resources graded at the P.5 level and was based in Malaysia. By an email of 17 February 2014 to her first-level supervisor

and the Director of HRD, the complainant requested that a classification review be conducted of her position. A review was conducted and by an email dated 7 November 2014 the complainant was sent a memorandum dated 6 November 2014 informing her of the result, namely that her position “be maintained at its current grade level with the current title of Coordinator”. By a notice of intention to appeal dated 28 November 2014, the complainant appealed to the HBA purportedly pursuant to Rule 5 of the HBA Rules of Procedure.

4. The basis for the conclusion of the HBA and the decision of the Director-General that the appeal was irreceivable was that Staff Rule 1230.8.1 provided that no staff member shall bring an appeal before a Board of Appeal “until all the existing administrative channels have been tried and the action complained of has become final”. That had not occurred in the present case because Staff Rule 230 provided that a staff member could request a re-examination of the classification of the post she or he occupied, and Annex 2.B of Section III.20 of the HR eGuide provided that where a classification decision was contested by the incumbent of the position concerned, a Classification Review Standing Committee was to be constituted and Annex 2.B set out the procedures, including time limits, for seeking a review.

5. The complainant did not contest before the HBA that she had not followed these procedures nor does she in these proceedings. The substance of her argument concerning non-compliance with the aforementioned procedures is that the processes and outcomes would not have been fair. But that does not provide a legal basis for not doing what Staff Rule 1230.8.1 required, namely that she should try all administrative channels before lodging an appeal with the HBA. Such a provision has an obvious purpose. Constituting an internal appeal body and the hearing of the appeal creates demands on the time of the members of the body and on the resources of the organisation more generally. That should be avoided if other and simpler procedures exist which may (but of course may not) resolve the staff member’s grievance.

6. The Director-General was entitled to take the approach she did in the impugned decision. In the result, the complaint is irreceivable because the complainant has not exhausted internal means of redress as required by Article VII, paragraph 1, of the Tribunal's Statute. The complaint will be dismissed.

DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 2 May 2018, Mr Giuseppe Barbagallo, President of the Tribunal, Mr Michael F. Moore, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 26 June 2018.

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

HUGH A. RAWLINS

DRAŽEN PETROVIĆ