

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

G.-Z.
v.
UNESCO

135th Session

Judgment No. 4610

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms M.-P. J. F. G.-Z. against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 10 February 2021, UNESCO's reply of 28 May 2021, the complainant's rejoinder of 8 July 2021 and UNESCO's surrejoinder of 7 October 2021;

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 non-reclassification of her post.

The complainant joined UNESCO in 1976. In 1995 she was appointed to the position of Senior Statistical Clerk, at grade GS-5, in the Development of Statistical Services Section of the Division of Statistics. On 1 January 2000 she was promoted to grade G-6 following the reclassification of her post. In April 2001, as part of the process which saw the abolition of the Division of Statistics and the creation of the Institute for Statistics in Montreal (Canada), the Organization reviewed the classification of the posts of certain staff members with a view to their redeployment to Headquarters in Paris (France). The complainant's post was assessed and its classification at level G-6

confirmed. On 5 June 2001 she and five other staff members asked for the grades of their posts and the level of their responsibilities to be reviewed by the Junior Personnel Advisory Board (JPAB). In August an external consultant carried out a desk audit of the posts in question which confirmed that the complainant's post should be maintained at grade G-6. On 1 October 2001 the complainant's post was abolished and she was redeployed at the same grade to the position of Senior Clerk in the Staff Pensions and Insurance Section of the Bureau of Human Resources Management.

On 9 January 2002 the complainant was notified of the results of the desk audit carried out in August 2001. On 6 March she lodged a protest and asked for a new audit to be carried out. On 10 April the external consultant reviewed his audit report, following which he confirmed that the classification should be maintained at level G-6. The complainant was informed of the result of that review on 19 April. On 29 April she lodged a notice of appeal against the decision of 9 January 2002, then, on 23 May, she lodged a new protest against the decision of 19 April, followed by a new notice of appeal on 21 June. She lodged her detailed appeals in July and October 2002 respectively. In its single opinion of 11 July 2003, the Appeals Board recommended to the Director-General that, inter alia, a new objective and exhaustive desk audit of the complainant's former post be carried out, based on an updated job description. That recommendation was accepted by the Director-General on 4 September 2003 and a new audit was carried out by the Bureau of Human Resources Management's Classification Officer in March and April 2004. In her audit report of 16 April 2004, the Classification Officer confirmed that the post should remain classified as G-6.

By email of 4 June 2004 addressed to the Classification Officer, the complainant enquired about a possible meeting of the JPAB to discuss the audit carried out. The same day, she received a response stating that the board was hoping to convene between the 14 and 19 June but that the exact date was yet to be confirmed. On 1 July 2004 the complainant was transferred at the same grade to the Classification and Compensation Section of the Bureau of Human Resources Management.

On 9 February 2006 she was given a personal merit-based promotion to level G-7, with retroactive effect from 15 November 2005.

On 3 March 2006 the complainant lodged a protest asking for the official results of the desk audit of her previous post. On 3 April 2007 she lodged a notice of appeal, then requested and obtained several extensions to the deadline for lodging her detailed appeal.

In January 2010 the Administration approved the payment of a special post allowance for the level P-2 tasks carried out by the complainant from 1 May 2006 to 30 April 2010 in setting up a project. On 30 April 2010 the complainant, who had reached retirement age, left UNESCO.

On 27 May 2016 the complainant made a first request for amicable settlement to the President of the Appeals Board.

On 29 June 2016 she lodged her detailed appeal in support of her notice of appeal of 3 April 2006, essentially seeking moral and material damages for the injury allegedly suffered as a result of the non-reclassification of her post.

On 10 June 2020 she again requested an informal settlement of her dispute. The Administration indicated that it was willing to negotiate but on the basis that the complainant “revise her requests downwards”. On 27 November 2020 the complainant’s counsel wrote to the President of the Appeals Board to inform her that, since the request of 10 June 2020 had not been addressed, his client considered that the Director-General had declined her offer and, therefore, that the offer had lapsed. Furthermore, he complained about the “unreasonable” delay in the Administration responding to the complainant’s appeal. He asked to be provided with that response no later than 31 January 2021 – that being the expiry date of the latest deadline given to the Organization by the Appeals Board following its numerous requests for extensions – failing which he would refer the matter directly to the Tribunal.

On 29 January 2021 the Appeals Board granted the Organization a further three-month extension to the deadline for filing its detailed reply, followed by another on 11 May 2021, this time until 30 July 2021.

In the meantime, on 10 February 2021, the complainant filed her complaint with the Tribunal, challenging what she considers to be a decision impliedly rejecting her appeal. Having retired on 30 April 2010, she does not consider it appropriate for that decision to be set aside but seeks the payment of material damages, calculated on the basis of the difference between the salary, allowances and other entitlements associated with grade G-6 and later G-7 and those associated with grade P-1/P-2, to which she claims she should have progressed “from 15 March 2001” – being the date of her first request for reclassification – until the date of her retirement. She also seeks compensation for lost opportunities to be promoted to grade P-3 and step increases, together with moral damages for the frustration and humiliation she allegedly suffered, made worse by the excessive response times on the part of the Organization. Lastly, she claims costs.

UNESCO, which finally submitted its detailed reply to the Appeals Board on 26 July 2021, regards the complaint as irreceivable in that the complainant has failed to clearly identify the impugned decision and has failed to exhaust internal remedies. It asks the Tribunal to dismiss the complaint on those grounds. Subsidiarily, it asserts that the complaint is unfounded.

CONSIDERATIONS

1. On her complaint form, the complainant sets out her four claims before the Tribunal as follows:
 - (i) the payment of material damages, calculated on the basis of the difference between the salary, allowances and other entitlements associated with grade G-6 and later G-7 and those associated with grade P-1/P-2, to which she claims she should have progressed “from 15 March 2001”, until the date of her retirement, including the amount representing lost pension entitlements;
 - (ii) the award of compensation for lost opportunities to be promoted to grade P-3 and step increases;

- (iii) the payment of an amount equivalent to six months' net base salary at level P-1/P-2, by way of moral damages for the frustration and humiliation she suffered, made worse by the excessive response times observed;
- (iv) the award of costs.

2. In her brief, the complainant explains that her complaint is directed against the “implied decision rejecting her protest of 3 March 2006”, which, furthermore, was the subject of an appeal to the Appeals Board which is still pending. However, she accepts that due to her retirement on 30 April 2010, it is not appropriate for that decision to be set aside, but considers that she is nonetheless entitled to the payments specified in the claims listed on her complaint form.

In that regard, the Tribunal notes that these financial claims are very different from the content of the complainant's protest of 3 March 2006 and the notice of appeal lodged on 3 April 2006 with the Appeals Board. First, the protest of 3 March 2006, addressed to the Director-General, was headed “[p]rotest about the result of desk audit for post UIS-292” and the complainant worded the first paragraph as follows:

“In accordance with [paragraph 7(a)] of the Statutes of the Appeals Board, I am writing to you to request the official results of the desk audit of the post I held at the Institute of Statistics from January 2000 until the end of September 2001, which took place on 3 March 2004 following your decision (DG/18/03/207) of 04/09/2003.”

That protest ended with the following sentence:

“Please could you arrange for these results to be sent to me.”

Secondly, the notice of appeal of 3 April 2006 bore the same heading and referred, in particular, to “[t]he informal protest of 3 March 2006 [...] to which I have not received a reply”.

3. In her complaint, the complainant states that she is impugning the “implied decision rejecting her protest of 3 March 2006”. However, that protest related only to a request to receive the official results of the desk audit of her former post. The Tribunal notes, in that regard, that the report of that audit, dated 16 April 2004, was indeed notified to the

complainant, at least by means of UNESCO's reply of 28 May 2021 before the Tribunal and, although it is true that the complainant makes no mention of either the existence or the receipt of that report in her complaint, the Tribunal notes that, in her rejoinder, she does not maintain that she had no knowledge of the audit report. It follows that the complaint is now moot in this respect.

4. In addition, the complainant contends first of all that the official results of the desk audit of her former post were never submitted to the Consultative Committee on Classification, in breach of the requirement under Staff Rule 102.3 which, according to her, applied at the material time. However, the Tribunal notes that that rule had been deleted on 16 January 1991 and that the aforementioned committee had then been abolished, as the complainant acknowledges in her rejoinder. This plea will therefore be dismissed.

5. The complainant also complains that the Organization never consulted the JPAB about the results of the audit report, in breach of Staff Rule 104.1(b), as in force at the material time, which read as follows:

- “(a) There shall be a Senior Personnel Advisory Board and a Junior Personnel Advisory Board which shall advise the Director-General on individual staff matters, as provided hereunder, in the light of the Staff Regulations and Rules, the administrative provisions in force and such further instructions as he may prescribe.
- (b) The Personnel Advisory Board, each for the category of staff with which it is concerned and except with regard to the cases specified in paragraph (c) below, shall give advice on the following matters:
[...]
- (v) claims submitted by staff members concerning the grading of their posts under Staff Rule 102.2 [...]

Staff Rule 102.2, referred to in subparagraph (v) above, provided that:

“Any staff member who considers that the nature of the duties or the level of responsibilities required of him are not compatible with the classification standards or criteria applicable to the grade of his post may, at any time, submit to the Director-General a request for the reclassification of the post,

provided that there has been a substantial modification in the structure and responsibilities of the unit to which the post belongs, and consequently in the responsibilities of the claimant.”

The Tribunal notes in this regard that it is clear from the submissions that at no time did the complainant formally submit a request for the reclassification of her former post based on the provisions of Staff Rule 102.2. Therefore, the aforementioned paragraph (b) of Staff Rule 104.1, of which a breach is alleged to have occurred, was not applicable in the present case.

6. It follows that the claim for the setting aside of the impugned decision, as identified by the complainant, must be dismissed.

The claims for damages based on the alleged unlawfulness of that decision must, as a consequence, also be dismissed.

7. Lastly, the complainant seeks compensation for the injury allegedly suffered as a result of the excessive delay in the internal appeals procedure. The Tribunal finds that the length of time involved in this procedure was indeed unreasonable. However, the evidence shows that the delay observed was essentially attributable to the conduct of the complainant herself, who only submitted her detailed appeal to the Appeals Board ten years after lodging her notice of appeal, and to the fact that the parties began negotiations in order to find an amicable settlement and only ended those negotiations, at the initiative of the complainant’s counsel, on 27 November 2020. In these circumstances, the Tribunal finds that there is no need to order the Organization to pay damages to the complainant on this basis.

8. It follows from the above that the complaint, to the extent that it has not become moot, must be dismissed in its entirety, without there being any need to rule on the objection to receivability raised by UNESCO based on a failure to exhaust all internal remedies.

DECISION

For the above reasons,

The complaint, to the extent that it has not become moot, is dismissed.

In witness of this judgment, adopted on 4 November 2022, Mr Patrick Frydman, Vice-President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 1 February 2023 by video recording posted on the Tribunal's Internet page.

(Signed)

PATRICK FRYDMAN JACQUES JAUMOTTE CLÉMENT GASCON

DRAŽEN PETROVIĆ