

The Administrative Tribunal,

Considering the second complaint filed by Ms C.M. D. against the Organisation for the Prohibition of Chemical Weapons (OPCW) on 5 August 2003 and corrected on 30 October 2003, the Organisation's reply of 6 February 2004, the complainant's rejoinder of 31 March and the OPCW's surrejoinder of 14 May 2004;

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. Facts relevant to this case are to be found in Judgment 2224, delivered on 16 July 2003, by which the Tribunal dismissed the complainant's first complaint. It may be recalled that the complainant, an Australian national born in 1954, was recruited by the OPCW for a post at grade GS-4 under an 11-month temporary assistance contract which took effect on 1 April 1999. On 28 April 2000 she accepted a three-year fixed-term appointment at grade GS-4, step 1, which began on 4 January 2000. Both before and after signing her contract she contested the grade and step assigned to her, eventually filing an internal appeal on which the Appeals Council issued its report on 11 June 2002. The Acting Director-General's decision on that appeal was communicated to the complainant in a letter of 5 July 2002. He concluded that grade GS-4 was the correct grade for her post, but that she qualified for two additional steps because photographic duties, for which she had two years' relevant experience, had been added to her job description. He had therefore decided that her entry level in her fixed-term post should be corrected to grade GS-4, step 3, effective 4 January 2000. That is the decision which the complainant challenged unsuccessfully in her first complaint.

Shortly before she received that decision, the complainant wrote a letter to the Acting Director-General, dated 3 June 2002, asking for his "assistance in reaching a final administrative decision on the issue of reclassification" of her post. The Acting Director-General replied to this request by a memorandum dated 5 July 2002. He recalled the steps which had been taken by the Organisation on this matter and, referring expressly to the letter by which he had informed her of his decision on her appeal, indicated that her post should remain at grade GS-4 and that he had decided that she should be granted two additional steps.

On 28 October 2002 the complainant lodged a second internal appeal, indicating that it was directed against the decision communicated to her in the Acting Director-General's memorandum of 5 July 2002 – his reply to her letter of 3 June 2002. She contended that his decision was illegal because it was insufficiently substantiated, and that the Organisation had failed to comply with its duty to process promptly her claim to upgrading. In its report dated 18 March 2003 the Panel convened by the Appeals Council recommended that the complainant be provided with a job description that completely and accurately reflected the scope of her duties, although it noted that she considered that condition to be satisfied by the job description produced as an annex to her brief in her previous appeal. The Panel also recommended that an external authority chosen with the agreement of both parties be engaged to classify her post; that both parties agree in advance to accept the classification determined by that external authority; and that the complainant be compensated, in the event that the new classification was favourable to her, for the period during which she had performed the same duties at a lower grade.

By a letter of 13 May 2003 the Acting Head of the Human Resources Branch informed the complainant that the Director-General was unable to accept the logic of the Panel's conclusions and recommendations on her second appeal. The following reasons were given: the recommendation regarding her job description was "incomprehensible", given that she agreed, as the Panel had noted, that her existing job description contained all her duties; the appointment of an external authority to classify her post would contravene Staff Regulation 2; and the Director-General saw no legal grounds for obtaining a further classification of her post, which had only recently been confirmed by an external authority to be a GS-4 post on the basis of the same job description. That is the decision the complainant impugns.

B. The complainant contends that the impugned decision is illegal in that it does not comply with the duty to substantiate a decision. She points out that the Organisation itself, in its submissions to the Appeals Council, indicated that the decision was based solely on the results of a “non-implemented classification exercise”, which it had described as being merely “indicative”, and asserts that in other international organisations her duties are classified at the GS-7, P-2, or P-3 level.

Citing Judgment 1594 she also argues that the impugned decision is illegal because the Organisation failed to honour its obligation to process promptly a claim to upgrading. In her view, that obligation “is nothing else than the application, to the field of reclassification, of the general obligation [...] according to which an organisation has to respect the dignity of its staff members, and not cause them unnecessary hardship”. She submits that the issue of the reclassification of her post was first raised in February 2000 and that the Organisation’s attitude gave rise to an expectation that reclassification would be undertaken as soon as possible. Yet for more than two years the OPCW failed to reclassify her post or even take a decision enabling her to defend her rights, despite the fact that it was aware that additional duties had been given to her.

The complainant considers that the impugned decision has caused her a substantial financial injury, in terms of salary and pension entitlements, and that it has affected her career prospects. She adds that she has also suffered moral damage as a result of the stressful situation created by the feeling that the Organisation was not dealing with her case fairly.

She asks the Tribunal to set aside the Director-General’s decision of 13 May 2003 and to appoint an independent expert to reclassify her post or, alternatively, refer the matter back to the Organisation for a new decision on her request for reclassification. In addition, she asks that the OPCW be ordered to implement the result of such reclassification with retroactive effect from January 2000, and to pay her interest at the rate of 8 per cent per annum on the sums due to her as a result of that measure. She also claims 15,000 euros in moral damages and a further amount to cover her legal costs.

C. In its reply the Organisation submits that the impugned decision was properly motivated and objectively explained in the letter of 13 May 2003. It maintains that the complainant’s post was correctly classified at the GS-4 level on the basis of a job description which she had confirmed as including all her duties, and asserts that she has not shown the existence of any flaw or defect in that classification that would warrant a review by the Tribunal of a decision taken by the Organisation in the exercise of its discretion.

The OPCW also points out that the complainant has suffered no injury, given that she was awarded two additional steps in respect of her additional duties, and that she has failed to prove any damage to her career prospects. It considers that since the present complaint is, in substance, the same as the complaint dismissed in Judgment 2224, the matter at issue is *res judicata*.

D. In her rejoinder the complainant presses her pleas. Rejecting the argument that the case is *res judicata* she asserts that her first complaint concerned the number of steps that she wished to be granted, whereas the present case concerns the reclassification of her post.

E. In its surrejoinder the Organisation maintains its position.

CONSIDERATIONS

1. By a letter dated 5 July 2002 the Acting Director-General informed the complainant of his decision to correct her entry level in her fixed-term post to grade GS-4, step 3, with retroactive effect from 4 January 2000. Considering that her entry level ought to be higher, the complainant challenged this decision in a first complaint, which the Tribunal dismissed in Judgment 2224.

2. The same decision was also conveyed to her in a memorandum from the Acting Director-General, likewise dated 5 July 2002, which was sent in response to a request by the complainant for a “final administrative decision on the issue of reclassification” of her post. This memorandum refers to the above-mentioned letter as being dated 3 July 2002, although it bears the same date of 5 July.

3. Whatever their dates may be, it is clear that the memorandum conveys exactly the same decision as the letter. The former, which is entitled “Request for reclassification of post”, states in pertinent part: “I am therefore

pleased to inform you that I am instructing the Human Resources Branch to initiate a correction of your entry level in your fixed-term post to GS-4 step III effective 4 January 2000". The latter presents the same information in almost identical terms: "I am instructing the Human Resources Branch to initiate a correction of your entry level in your fixed-term post to GS-4 step III, instead of step I, effective 4 January 2000".

4. The complainant initiated a second appeal, again seeking the reclassification of her post but identifying the memorandum of 5 July 2002 as the contested decision. The Director-General rejected her appeal by a decision of 13 May 2003, which the complainant now impugns.

5. The Director-General's decision of 13 May 2003 merely confirms that of 5 July 2002. The facts and reasoning on which it is based are the same as those examined by the Tribunal in Judgment 2224. It is true that in her second complaint the complainant purports to establish that the decision of 13 May 2003 is flawed in other respects, alleging in particular that it is insufficiently substantiated and that her request for reclassification was not processed promptly. But the fact remains that the decision she is challenging is really that of 5 July 2002.

6. In her second complaint, as in her previous one, the complainant is seeking to obtain a salary equivalent to that which she received from her previous employer. At the OPCW, this would correspond to grade GS-4, step 10. The only difference lies in her wording of the claim, which she now purports to introduce as a matter of "classification". However, the original decision as conveyed in the letter of 5 July 2002 already made explicit reference to classification in stating that "the classifiers who performed the second job classification exercise, taking the photographic duties into account, concluded that GS-4 is the appropriate grade for a post with such functions".

7. The case has always been about the same issue: the complainant wanted from the very beginning a salary corresponding to grade GS-4, step 10, and that has already been denied by the Organisation in a decision upheld by the Tribunal in Judgment 2224, which carries the authority of *res judicata*. She had no right to seek a new classification of her post.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 11 November 2004, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Vice-President, and Mr Agustín Gordillo, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 2 February 2005.

Michel Gentot

James K. Hugessen

Agustín Gordillo

Catherine Comtet