

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

116th Session

Judgment No. 3294

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms L. R. against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 10 June 2011 and corrected on 2 August, UNESCO's reply dated 17 November, the complainant's rejoinder of 23 December 2011 and UNESCO's surrejoinder of 10 April 2012;

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 and the pleadings may be summed up as follows:

A. The complainant joined UNESCO in 1996. On 1 March 1997 she was appointed to a secretarial post at grade GS-2/GS-3, which she had been holding as a supernumerary for several months, in the Bureau of the Budget.

After the new General Service post classification standard entered into force on 1 January 2000, the six-grade scale (GS-1 to GS-6)

hitherto in force at UNESCO was replaced by a seven-grade scale (G-1 to G-7). The complainant's post was reclassified at grade G-4 at that juncture.

In January 2003 UNESCO issued Administrative Circular No. 2177 entitled "The revised classification standard for posts in the General Service category". This standard was to serve as the basic working tool for the Job Evaluation Committee (JEC), which was responsible for examining the grade of posts in the General Service category on the basis of updated job descriptions, before making a recommendation to the Director-General on the classification of each post. Administrative Circular No. 2195 of 24 December 2003 established a Job Evaluation Recourse Committee (JERC) to hear and review complaints submitted by staff members against the reclassification decisions taken on the basis of the revised standard.

In an e-mail of 10 February 2003 the Director of the Bureau of Human Resources Management asked the Director of the Bureau of the Budget to supply her with 11 job descriptions, including that of the complainant's post, because the JEC was about to start work. She repeated her request on 21 March. On 5 July the Director of the Bureau of the Budget informed the Director of the Bureau of Human Resources Management that, as her services had mistakenly drawn up generic instead of specific job descriptions, they were correcting them "as a matter of urgency". On 30 October 2003 she sent her several job descriptions and explained that, as the complainant's secretarial post was due to be abolished, the plan was to reassign her to another post – the job description of which she provided – in the Bureau of the Budget. The complainant's old post was abolished on 31 December 2003 and the following day she was reassigned to the post which had been found for her, still at grade G-4.

On 25 February 2004, after being informed by a memorandum of 18 December 2003 that the JEC had been unable to evaluate her former secretarial post because it had not received the updated job description thereof, the complainant asked the Director of the Bureau of Human Resources Management to forward her complaint to the JERC. The

latter concluded that it was not within its mandate to consider the complainant's administrative position and referred the matter back to the Bureau. The complainant was informed of this by a memorandum of 24 June.

On 22 July the complainant, acting on the basis of paragraph 7(a) of the Statutes of the Appeals Board, submitted a protest to the Director-General in which she complained that her post had not been evaluated. She therefore asked him to "decide on [its] grade". In the belief that her protest had not been answered, on 20 August she sent a notice of appeal to the Secretary of the Appeals Board. In the detailed appeal which she filed on 20 September 2004 she asserted that all the posts of secretary to directors of central services were at grade G-7 and on that basis she requested reclassification of her former post at that level. She also asked to be promoted retroactively to that grade as from 1 January 2003. In the meantime, the Director ad interim of the Bureau of Human Resources Management had sent the complainant a memorandum dated 20 August 2004 which, she says, she did not receive until September. In response to her protest of 22 July he assured her that her former secretarial post would be evaluated and he advised her that the Bureau had already been instructed to conduct an audit.

The complainant was informed by a memorandum of 3 November 2004 that her post had been evaluated and retroactively reclassified at grade G-5 as from 1 January 2004. On 1 November 2005 she was transferred to the Africa Department. The Deputy Director-General, whom she had met on 31 August in the course of a mediation procedure, advised her in a memorandum of 23 December 2005 that the Bureau of Human Resources Management had completed the assessment of her previous post and that the Director-General had decided to promote her to grade G-5 with effect from 1 January 2003. In a memorandum of 12 January 2006 the complainant pointed out that the Deputy Director-General had mixed up her two former posts and she repeated her request that the post which she had held until 31 December 2003 should be reclassified at grade G-7. On 14 February 2006 the Deputy Director-General replied that the aforementioned memorandum had indeed concerned that post.

In an e-mail of 23 June 2006 the complainant was offered an interview to clarify the duties which she had performed during the period 2002–2003. She accepted this offer and was interviewed by a consultant on 3 July. On 14 November 2006 the Director of the Bureau of Human Resources Management informed her that the classification of the post she had held at that time had been confirmed.

In the meantime, on 30 January 2006, the Organization had submitted its reply to the complainant's appeal to the Secretary of the Appeals Board. UNESCO principally contended that the appeal was irreceivable. It also submitted that the complainant had never performed duties matching grade G-7.

In its report dated 2 December 2010 the Appeals Board found that, after UNESCO's adoption of the new General Service post classification standard, most of the posts of secretaries to directors of central services had been classified at the G-6/G-7 level. It did not recommend that the Director-General should accede to the complainant's request seeking the reclassification of her former secretarial post at the G-7 level, because it had been abolished, but it did recommend that she should be transferred to a post at that level, or that she should be given priority when such a position became open and that she should receive the difference in salary between the G-5 and G-7 levels for 2003. The Director ad interim of the Bureau of Human Resources Management informed the complainant by a letter of 10 March 2011, which constitutes the impugned decision, that the Director-General had decided not to follow these recommendations on the grounds that "the thorough review" carried out by "external classifiers" in July 2006 had shown that her former secretarial post could be classified no higher than the G-5 level.

B. The complainant rejects the argument that the decision not to reclassify her former secretarial post was based on a thorough review conducted in July 2006. She says that she was never informed that the meeting on 3 July 2006 – which in her opinion was informal – formed part of the desk audit, and she is sceptical about the independence and

objectivity of the consultant who interviewed her that day. She adds that she had not seen the minutes of the meeting until she read the surrejoinder which UNESCO submitted to the Appeals Board.

By producing two attestations from colleagues the complainant endeavours to prove, first, that the post in question was never evaluated and, secondly, that she was harassed by the Director of the Bureau of the Budget between 2003 and 2005. She maintains that the post which she held until 31 December 2003 was abolished in order to prevent her from obtaining promotion to grade G-7, the grade which, she says, was given to all secretaries to directors of central services. She submits she was arbitrarily reassigned to a post classed at a lower grade than her previous position.

The complainant asks the Tribunal to set aside the impugned decision and to award her 72,159 euros in compensation for the professional and material injury due to the non-reclassification of her former secretarial post, as well as 5,000 euros in compensation for moral injury and 3,000 euros in costs.

C. In its reply UNESCO argues that the complaint is irreceivable, because the Appeals Board had no competence to rule on the level of the complainant's post or on decisions which had become final, such as the decision to reassign the complainant after her post had been abolished at the end of 2003. It adds that the claim for compensation is irreceivable insofar as it is related to allegations of harassment, because the complainant has never filed a harassment complaint. In UNESCO's opinion, the complainant's protest of 22 July 2004 has become moot because, as she requested, her secretarial post was evaluated and she was notified of the outcome by the decisions of 23 December 2005 and 14 November 2006, which she has never challenged.

UNESCO submits that the complainant has not proved that the impugned decision was unlawful. It considers that both of her posts in the Bureau of the Budget were evaluated in compliance with the Staff Rules and the revised classification standard, and it emphasises

that, although this was not compulsory, a consultant also carried out a desk audit which, it says, the complainant had requested. In UNESCO's view, the complainant's objections casting doubts on the consultant's impartiality are contradictory and irrelevant.

UNESCO also maintains that the complainant has not supplied any evidence to support her argument that her post should have been classed at the G-7 level like all the posts of secretaries to directors of central services. It explains that the complainant may obtain promotion to grade G-7 only by taking part in a competition.

D. In her rejoinder the complainant states that she had no need to file a harassment complaint, because a number of colleagues had already done so. She acknowledges that she did not formally challenge the decision to reassign her after her post was abolished at the end of 2003, but says that she nonetheless expressed her objections. She adds that she did indeed challenge the decision of 23 November 2005, but not that of 14 November 2006, because it "made no sense".

On the merits the complainant presses her pleas. She submits that, contrary to UNESCO's statement, it is possible to reach grade G-7 without entering a competition. In this connection, she mentions the example of a colleague who moved from grade G-5 to grade G-7 after the reclassification exercise.

E. In its surrejoinder UNESCO maintains its position. It states that there is no rule that secretaries to directors of central services must be classified at grade G-7 and that it is clear from the minutes of the meeting of 3 July 2006 that "only a small proportion" of the complainant's duties matched those performed by the aforementioned secretaries. It draws attention to the consistent case law according to which the Tribunal exercises only limited review over decisions regarding post classification. In addition, UNESCO submits that the allegedly late production of the minutes in question did not deprive the complainant of an opportunity to put her case, since she had access to that document before being heard by the Appeals Board.

CONSIDERATIONS

1. The complainant joined UNESCO in July 1996 as a supernumerary at grade GS-2/GS-3. On 1 March 1997 she was appointed to secretarial post BB-912, at grade GS-3, in the Office of the Director of the Bureau of the Budget (DIR/BB) and was given a two-year fixed-term contract. She was promoted to grade GS-4 on 1 July 2000. On 31 December 2003 post BB-912 was abolished and the complainant was transferred to post BB-913. She was promoted thereafter to grade G-5. She was ultimately transferred to post AFR/012, at grade G-5, in the Africa Department (ADG/AFR).

2. The facts giving rise to the dispute now before the Tribunal may be summarised as follows.

As part of the post reclassification exercise the Director-General of UNESCO forwarded “generic” job descriptions to all bureau directors with the request that they should study these descriptions and provide updated versions thereof. The Director of the Bureau of the Budget, the complainant’s immediate supervisor, engaged an external consultant to draw up generic job descriptions of “BB” posts. These descriptions were forwarded to the JEC on 30 October 2003.

On 18 December 2003 the complainant was informed that, as the JEC had not received the updated job description of post BB-912, it had been unable to evaluate it. The Director of Human Resources Management advised her that a solution would be found to remedy the situation and this was in fact done.

The complainant filed a complaint with the JERC on 25 February 2004. In its report the JERC concluded that it was not within its mandate to consider the complainant’s administrative position. The complainant, who was informed of this finding on 24 June 2004, submitted a protest under paragraph 7(a) of the Statutes of the UNESCO Appeals Board on 22 July 2004.

In the belief that there had been no response to her protest within the prescribed time limit, she submitted a notice of appeal, dated

20 August, to the Appeals Board, which the Board received on 25 August 2004.

On 20 September 2004, having been apprised of UNESCO's reply to her protest of 20 August 2004, she filed a detailed appeal with the Appeals Board in which, in substance, she requested that her former post BB-912 should be classified at grade G-7 like all the posts of secretaries to directors of central services and that she herself should be promoted to grade G-7 with retroactive effect from 1 January 2003.

In its report dated 2 December 2010 the Appeals Board recommended that the Director-General should: (i) find that the appellant's request to have her previous post BB-912 reclassified at grade G-7 was "inapplicable", since the post had been abolished; (ii) transfer the appellant or give her priority in the event of a G-7 post being opened in her division or in another sector; and (iii) pay the appellant the difference in salary between a G-5 and a G-7 post for the period from 1 January to 31 December 2003.

The complainant was informed by a letter dated 10 March 2011 that the Director-General of UNESCO had decided not to follow the Appeals Board's recommendations and had rejected the "request to classify [her] post at grade G-7".

3. The complainant asks the Tribunal to "set aside the decision [...] of 10 March 2011" and requests "compensation for the moral, professional and material injury" which, she says, she has suffered, as well as an award of costs.

4. She submits that she has suffered moral injury because her dignity has been undermined and professional and material injury because her post was not reclassified. She states that she was harassed, unjustly accused, publicly called a liar and arbitrarily transferred "to a lower grade post than [her] previous responsibilities".

She comments that the post of secretary to the director of a central service, which she had held from 1996 to 2003, is at grade G-7, like all the posts of the other secretaries to directors of central services which were reclassified on 1 January 2003 and that the secretary to the

Director of the Bureau of the Budget, who had replaced her, was at grade G-7.

She adds that she was transferred to post BB-913 without being consulted and that she was warned that she would be leaving the Bureau of the Budget at only one working day's notice. She also complains that she was called to a meeting without being clearly informed that it was a desk audit and that she never saw the report drawn up at the end of the meeting.

5. UNESCO submits that the complaint is irreceivable with regard to the final, unchallenged decisions concerning the complainant's transfer or "the other separate issues of the classification of the post, its level and the promotion of the staff member holding it". It states that the same applies to the claim for compensation for the alleged denigration of the complainant ever since her recruitment and which has never formed the subject of an appeal, protest or harassment complaint.

UNESCO considers that the request for an evaluation of the complainant's post has become moot, because the classification of all her successive posts has been reviewed and the findings notified to the complainant in two decisions which have never been challenged in notices of appeal.

6. While the Tribunal concurs with UNESCO in respect of issues which are unrelated to the initial protest or the notice of appeal dated 20 August 2004 contesting the classification of post BB-912 and requesting its reclassification from G-4 to G-7, the contention that the original appeal has become moot cannot be accepted, since the complainant's "original appeal" cannot be deemed moot on account of decisions of which she was not notified until 23 December 2005 and 14 November 2006 respectively.

The Tribunal will therefore dismiss this objection to receivability raised by UNESCO.

7. As already stated, the impugned decision is that of 10 March 2011, which was taken at the end of an internal procedure related to the reclassification of post BB-912. The Tribunal must therefore

confine itself to an examination of the merits of this reclassification and the lawfulness of the procedure leading to it.

8. According to the case law, “[t]he classification of posts involves the exercise of value judgements as to the nature and extent of the duties and responsibilities of the posts. Accordingly, the Tribunal will not substitute its own assessment or direct a new assessment unless certain grounds are established. Consistent precedent has it that ‘the Tribunal will not interfere with the decision [...] unless it was taken without authority or shows some procedural or formal flaw or a mistake of fact or of law, or overlooks some material fact, or is an abuse of authority, or draws a clearly mistaken conclusion from the facts’ [...]” (see in, particular, Judgment 3016, under 7).

9. In the instant case it is clear from the submissions in the file that the reclassification of post BB-912 for the period in question was carried out in the course of a procedure that complied with the existing rules, by external classifiers who reached the conclusion that this post could not have a level higher than grade G-5.

10. The complainant challenges the classification of the post at grade G-5 by asserting that the post of secretary to the director of a central service which she held from 1996 until 2003 is at grade G-7 like all the posts of the other secretaries to directors of central services which were reclassified on 1 January 2003.

The complainant does not, however, supply any evidence of a rule or practice requiring that these posts should automatically be given grade G-7. On the contrary, each post in the directorates, sub-directorates and divisions was individually evaluated in the course of the reclassification exercise, and this is not disputed.

11. The complainant submits that the procedure for evaluating her post was tainted with a flaw in that she was called to a meeting without being clearly warned that it was a desk audit and that it was not until 22 December 2008, during the internal appeal procedure, that she saw the report drawn up at the end of that meeting.

However, the Tribunal notes that, as UNESCO points out, in light of the circumstances, the meeting in question, irrespective of the term employed, could only be an interview related to the classification of post BB-912, which the complainant had herself requested. The fact that the complainant did not receive the report of the desk audit until much later does not breach her rights, since she had the possibility of commenting on the report findings during the internal appeal procedure.

As the Tribunal already found in Judgment 3016, under 8, failure to notify immediately of the results of a desk audit cannot be considered improper.

12. It follows from the foregoing that, in the instant case, as there are no grounds for the Tribunal to interfere with a decision taken in the course of a post classification procedure, the complaint must be dismissed.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 14 November 2013, Mr Claude Rouiller, Vice-President of the Tribunal, Mr Seydou Ba, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 5 February 2014.

Claude Rouiller
Seydou Ba
Patrick Frydman
Catherine Comtet