

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

O.
v.
WHO

130th Session

Judgment No. 4307

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr A. O. against the World Health Organization (WHO) on 1 October 2018 and corrected on 18 October 2018, WHO's reply of 18 January 2019, the complainant's rejoinder of 22 February, corrected on 28 February, and WHO's surrejoinder of 30 May 2019;

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 reject his request for the reclassification of his post as well as his request for compensation for performing duties at a higher grade than his.

The complainant joined WHO in November 1989. At the material time, he was assigned to a G.3 grade post in the Administrative Support and Transport Unit (AST), Operational Support and Services (OSS). In 2013 OSS was restructured and certain mail operations were outsourced to a private company but the responsibility to sign for and record incoming mail delivered by courier, registered mail and diplomatic pouches remained with AST.

By an email of 9 August 2013, the complainant was requested to assume some of the tasks previously carried out by his former supervisor who, until his retirement in mid-2013, held the post of Despatch Goods & Mail Assistant in AST, at grade G.5. In January 2015 the complainant was reassigned to the Records and Archives Unit (RAS), OSS, along with some of his tasks which he continued to execute, in particular signing for and recording registered mail and mail delivered by courier, opening diplomatic pouches, and pre-routing mail processed by RAS. Some of his other tasks remained with AST and it was agreed that he would assist AST staff in the execution of those tasks upon request.

In a memorandum of 7 October 2015, the complainant provided his first-level supervisor with a list of the tasks performed by him in his current position and requested the reclassification of his position at a higher grade. In his handwritten comments on the memorandum, the supervisor expressed his agreement with the complainant's request for reclassification, indicating nevertheless which tasks were not under the responsibility of RAS.

On 28 January 2016 the complainant submitted a new post description in the Global Management System (GSM) and requested the reclassification of his post. In February 2016 he was informed that the post description he had submitted in GSM would be revised. Following a series of meetings, he was provided with a revised post description from which all AST-related tasks had been removed.

The complainant initially disagreed with this revised post description and on 9 March 2016 a desk audit of his post was carried out by a Classification Specialist. The draft Desk Audit Report was shared with the complainant and his first-level supervisor, and after several exchanges with the Classification Specialist regarding the content of the revised post description, the complainant and his supervisor signed the Desk Audit Report on 1 June 2016. In his evaluation, carried out on 7 June 2016, the Classification Specialist considered the complainant's post to be at grade G.3. The same conclusion was also reached by the Team Leader, Human Resources Department, Global Talent Management, Organizational Design and Classification (HRD/GTM/ODC) in an evaluation of the complainant's post carried out on 8 June 2016. Following the Classification Specialist's recommendation, the Coordinator, Human Resources Department,

Global Talent Management (HRD/GTM), decided to confirm the complainant's post at grade G.3. This decision was notified to the complainant in a letter of 15 June 2016. The complainant requested a copy of the Post Rating Summary and a signed copy of the Desk Audit Report but he was informed that the requested documents would be shared with him as part of an eventual review process.

On 26 August 2016 the complainant submitted a request for review of the 15 June 2016 classification decision to the Classification Review Standing Committee (CRSC). In its report of 15 November 2016, the CRSC recommended that the Director-General reject the complainant's post reclassification request but that she consider whether any compensation was due to the complainant for performing functions beyond his usual terms of reference during a specific period. The CRSC also recommended that the documents requested by the complainant be disclosed. By a memorandum of 16 February 2017, the complainant was informed that the Director-General had decided to maintain his post at grade G.3 and to reject his request for acting pay but to provide him with the requested documents. Attached to the memorandum were the Desk Audit Report and the Post Rating Summary.

On 15 March 2017 the complainant submitted a request for administrative review of the 16 February 2017 decision. In his decision of 8 May 2017, the Assistant Director-General, General Management, upheld the Director-General's decision to maintain the complainant's post at grade G.3 and awarded the complainant 500 United States dollars for the delay in disclosing to him the requested documents.

The complainant lodged an appeal with the Global Board of Appeal (GBA) on 17 July 2017. In its report of 8 May 2018, the GBA found that the contested decision was taken in accordance with the Staff Regulations and Staff Rules and it recommended that the appeal be rejected. By a letter of 4 July 2018, the Director-General notified the complainant of his decision to endorse the GBA's recommendation. That is the impugned decision.

The complainant asks the Tribunal to reverse the decision to maintain his post at the G.3 grade and to order its reclassification at the G.4 grade at a minimum, retroactively to 1 February 2015. He also asks the Tribunal to order WHO to carry out a classification review of his post as at 28 January 2016, i.e. before some of his tasks were removed from his post description, and to properly assess the compensation

owed to him by WHO for the period from August 2013 to January 2015 and award him such compensation. He seeks 50,000 Swiss francs in moral damages for WHO's failure to disclose material evidence in a timely manner resulting in a breach of due process and he also seeks any other compensation the Tribunal may deem fair and equitable.

WHO asks the Tribunal to dismiss the complaint in its entirety as devoid of merit.

CONSIDERATIONS

1. This complaint raises two central questions. One is whether the Tribunal should grant the complainant's request to reverse the decision, confirmed in the impugned decision of 4 July 2018, to maintain the post which he held at the material time at grade G.3. The complainant had sought to have the post reclassified at grade G.4. In this regard, in his claims for relief, the complainant states that "[i]n keeping with his request submitted to the [CRSC] that [it] unfortunately [...] did not address, [he] requests that the [GBA] recommend that a classification review should be carried out of his post as of 28 January 2016 prior to the removal of some of his tasks".

2. The second question which this complaint raises is whether the Tribunal should grant the complainant's claim in which he requests that WHO be ordered to pay him an amount which he alleges is due to him for assuming, from August 2013 to January 2015, tasks which his supervisor previously carried out in a G.5 post. The complainant asks the Tribunal to properly assess the amount that is due to him for the period. Staff Rule 320.4 states:

"A staff member with a continuing or fixed-term appointment may be officially required to assume temporarily the responsibilities of an established post of a higher grade than that which he occupies; such temporary arrangements shall not be continued for more than 12 months, unless otherwise decided by the Director-General. As from the beginning of the fourth consecutive month of such service, the staff member shall be granted non-pensionable extra pay normally equal to, but not exceeding, the difference between his current pay, consisting of net base salary, post adjustment and allowances, and that which he would receive if promoted to the post of higher grade."

3. The complainant did not fulfil the requirements for extra pay in accordance with Staff Rule 320.4. As the GBA found, and the evidence shows, the complainant was not assigned to carry out the supervisor's G.5 tasks nor perform an acting role. He performed the tasks identified in the email dated 9 August 2013 on alternate weeks with his colleague from August 2013 to January 2015, and he performed the outgoing mail tasks for a total of 11 days from December 2013 to January 2015. The complainant's claim for compensation for assuming the duties of a G.5 grade post is therefore unfounded.

4. It is convenient to deal with two of the complainant's claims for relief at this juncture. The first is his request to the Tribunal to reclassify the subject post at grade G.4 at a minimum, retroactively to 1 February 2015. This request is rejected as it is well settled in the Tribunal's case law that the Tribunal will not order the reclassification of a post, as such decisions are discretionary and involve specialist evaluation (see, for example, Judgment 3370, consideration 8, and the judgment cited therein).

5. The second is his claim for an award of 50,000 Swiss francs in moral damages "for the breach of [the] duty to timely disclosure of material evidence and resulting breach of due process [by WHO] in the [CRSC] proceedings to which he was entitled [...]". It is well established in the case law that a "staff member must, as a general rule, have access to all evidence on which the authority bases (or intends to base) its decision against him". Additionally, "[u]nder normal circumstances, such evidence cannot be withheld on grounds of confidentiality" (see Judgment 2700, consideration 6; see also Judgment 3264, consideration 15).

6. The facts show that on 22 July 2016 the complainant informed the Classification Specialist that he intended to request the review of the classification decision by the CRSC. On 10 August 2016 he requested a copy of the Post Rating Summary and also a signed copy of the Desk Audit Report. The complainant states that he again requested a copy of the Post Rating Summary on 18 August 2016 and the Classification Specialist replied on that date. The Specialist informed him that he had liaised with the Human Resources Policy and Administration of Justice Unit, but that his request to have the documents prior to the meeting of the CRSC was rejected. WHO

states that on 18 August 2016, the Classification Specialist, having consulted the Human Resources Policy and Administration of Justice unit, informed the complainant that the disclosure of the documents would be done as part of an administrative review process after the CRSC's review and recommendation, and the Director-General's decision thereon. This was wrong as the complainant was deprived of the benefit of those documents for the preparation of his request for review to the CRSC and for properly making his case in that process.

7. In its report of 15 November 2016, the CRSC found that the non-disclosure of the documents at the complainant's request for the CRSC's process was a breach of due process. In fact, the documents should have been disclosed to him at the time when the initial decision was made to maintain the post at grade G.3 (see, for example, Judgment 2700, considerations 6 and 7). WHO however provided the documents to the complainant with the memorandum of 16 February 2017, which informed him of the CRSC's recommendation and the Director-General's decision thereon. WHO also awarded him 500 United States dollars in moral damages for the delay in disclosing to him the requested documents. In his pleadings to the Tribunal, the complainant seems to suggest that the impugned decision should be set aside because of the breach of due process. However, inasmuch as the eventual disclosure of the documents permitted him to fully rely on them to pursue his internal appeal in the GBA's proceedings, the Tribunal will not set aside the impugned decision for that breach. Neither will it award the complainant additional moral damages for the breach as he has not justified why WHO's award should be increased.

8. Consistent precedent has it that the process of classifying posts in international organizations constitutes an act of technical evaluation, and, accordingly, it is not for the Tribunal to weigh, compare and/or determine the relative merits of ratings which are thereby accorded. The case law further states that the classification of a post involves an evaluation of the nature and extent of the duties and responsibilities of the post based upon the post description and is not concerned with the merits of the performance of the incumbent (see, for example, Judgment 4000, consideration 9). The case law has also consistently stated, for example, in Judgment 3589, consideration 4, that the grounds for reviewing the classification of a post are limited and ordinarily a classification decision would only be set aside if it

was taken without authority, had been 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 truly mistaken conclusion had been drawn from the facts. This is because the classification of posts involves the exercise of value judgements as to the nature and extent of the duties and responsibilities of the posts and it is not the Tribunal's role to undertake this process of evaluation. The grading of posts is a matter within the discretion of the executive head of the organization (or the person acting on her or his behalf).

9. WHO's applicable rules provide, under Article II of the Staff Regulations, that the Director-General is the ultimate authority with regard to the classification of posts and staff according to the nature of the duties and responsibilities required. The Director-General is thus empowered to promulgate rules to guide the procedures for post classification. Staff Rule 220 requires individual posts, other than those at the Ungraded level, to be classified in categories and level according to standards promulgated by the Director-General. The categories and level are to be related to the nature of duties and the level of responsibilities of the post. This requirement is further elaborated in eManual III.2.1, entitled "Position Classification", which at the material time stated in paragraph 30, as one of the basic principles of post classification, that the grading of a position depends upon the assigned duties and responsibilities of the post and not on the qualifications, job performance, seniority or other characteristics of the incumbent. Paragraph 30 also stated, in effect, that posts should be classified so that there is equal pay for work of equal value, that positions of approximately equal difficulty and responsibility should be placed in the same grade, and that a change in the grade of a post should result only when a significant and sustained change in the level of its duties and responsibilities has occurred.

Paragraphs 100, 110 and 120 of eManual III.2.1 provided the procedure by which a request was to be made for the classification of an existing post at the material time. It is apparent that there was eventual compliance with those provisions culminating in the desk audit of the post (at the complainant's request) by a Classification Specialist. The desk audit was undertaken pursuant to eManual III.20, Annex 2.A, as the complainant and his supervisor had disagreed about

the nature of the duties and responsibilities that were assigned to the subject post. The complainant, as well as his supervisor and the Classification Specialist, signed the Desk Audit Summary Report on 1 June 2016. On 7 June 2016 the Classification Specialist conducted a post evaluation, pursuant to Staff Rule 230 and the relevant provisions of eManual III.2.1, based on the signed revised post description. He concluded that the post was at grade G.3 at the 53rd percentile, while the Team Leader, HRD/GTM/ODC, who conducted another classification review, concluded that the post was at grade G.3 at the 41st percentile. The Coordinator, HRD/GTM, confirmed the post at grade G.3.

10. The complainant challenges the process which eventually established the duties and responsibilities of his post on arguments which, in the Tribunal's view, provide no proper bases for contesting that process. He argues, for example, that the process was procedurally irregular because his supervisor initially agreed that his post should have been reclassified but subsequently backtracked on his approval on the ground that he did not understand the post description as written due to language. He also argues that WHO has not refuted his assertion that on 28 January 2016 he was carrying out additional responsibilities which were subsequently removed. He insists that the post evaluation should have been conducted on the basis of a post description which reflected all of the duties which he carried out then. However, these statements are of no moment to the process given the exercise which was conducted in order to settle the duties and responsibilities of the post itself for the purpose of the desk audit and subsequent post evaluation. Importantly, at the end of that exercise, the complainant, his supervisor and the Classification Specialist signified their agreement with the revised post description when they signed the Desk Audit Summary Report on 1 June 2016. The Tribunal accepts that the Desk Audit Summary Report accurately reflects the duties and responsibilities of the subject post and rejects the complainant's contention (for which he provides no proof) that improper purpose influenced the revision of the post description. The Tribunal accepts that the post evaluation was subsequently correctly conducted on the basis of those duties and responsibilities.

11. The complainant's contention that the evaluation of the post was tainted by procedural irregularities also fails. His submission that the wording of the revised post description, which he had accepted,

was inaccurate is rejected. The post evaluation was correctly based on the duties and responsibilities of the revised post description to which he had agreed. The complainant also argues that during the evaluation process important factors related to his post, including the work he carried out and the type of supervision which he received, were overlooked and that there were discrepancies in the scores given to two factors: the Nature of Work and the Organizational Environment, which the Classification Specialist scored 2/i/b and 7/e, respectively. This argument also fails as the complainant had agreed to the duties and responsibilities attached to the post. Additionally, the complainant's further statement that "he firmly believed and maintains [that those factors] were underestimated and incorrectly evaluated" and that he sought to demonstrate this by reference to the text of the category immediately above each factor is speculative conjecture. Moreover, his submission that the Classification Specialist should have rated the Organizational Environment factor at 7/f, instead of 7/e, because it "more appropriately and more closely reflects the extent to which roles and responsibilities [were] delegated and controlled within the RAS and the degree of autonomy with which he decide[d] what need[ed] to be done to support his team" (to bring the subject post to the G.4 grade) is based on the complainant's subjective beliefs and does not show error on the part of the Classification Specialist or the Team Leader, HRD/GTM/ODC.

12. The arguments which the complainant proffers to support his challenge to the CRSC process may be summarized as follows: there was procedural irregularity and breach of due process because the CRSC did not have all the elements regarding the grading of his post but only the arguments of one party. While Information Note 22/2015 states that the CRSC will review the material to ascertain whether all the facts were taken into account by the classifiers and correct procedures were followed, the CRSC should also have insisted that all the documents which were made available to it were also shared with the complainant. He was neither consulted by the CRSC nor given an opportunity to present his case before it, so its consideration was one-sided and was neither fair/objective nor in line with the adversarial principle. This and the refusal to disclose key documents to him hampered his case and prevented him from testing the evidence and providing his own views before the CRSC gave its recommendation. In the Tribunal's

opinion, these arguments show the complainant's misapprehension of the CRSC's procedures set out in eManual III.20, Annex 2.B.

13. The CRSC procedure under Annex 2.B is non-adversarial. Annex 2.B permits a staff member to request the CRSC to review a post classification decision providing reasons for the request, as the complainant did in the present case. Annex 2.B requires the Classification Specialist to prepare all background papers and to convene a meeting of the CRSC to examine the case. At the CRSC's request, the Classification Specialist is also required to provide further clarification and information which the CRSC requests.

In its report, the CRSC stated that it received the original and revised post description, including a detailed comparison of the duties in both; the Desk Audit Report signed by the complainant, his supervisor and the Classification Specialist; the Post Rating Summary from the Job Evaluation System produced by the Classification Specialist who conducted the desk audit; the results using the Job Evaluation System produced by HRD/GTM/ODC; various communications including memoranda and emails; a folder with additional information submitted by the complainant; as well as the text of the categories immediately above those selected by the Classification Specialist from the Job Evaluation System, which the CRSC had itself requested. The complainant's suggestion that this latter request by the CRSC tainted its process is rejected. Annex 2.B permitted the CRSC to request further information from the Classification Specialist and there is nothing to suggest that those documents prejudiced its analysis.

14. The complainant contends that the impugned decision should be set aside because the GBA ignored essential facts and failed to draw appropriate conclusions from the evidence. In the main, his submissions seek to challenge the GBA's report on the grounds that it did not consider or appreciate that the duties and responsibilities contained in the post description, upon which the post evaluation was based, were inaccurate. Amongst other things, the complainant submits that the GBA was wrong to accept that the post description was accurate simply because he had signed the Classification Specialist's Desk Audit Summary Report which contained it. He also argues that the GBA wrongly failed to draw conclusions from the fact that the CRSC did not consider his former supervisor's tasks, which he had

assumed, and that his more advanced tasks were not properly described in the Desk Audit Report. In the Tribunal's view, however, the complainant vouched for the accuracy of the revised post description when on 1 June 2016 he signed the Classification Specialist's Desk Audit Summary Report, which contained it. He provides no convincing arguments that at that time he was misled as to its purport or significance.

The complainant also argues that the GBA showed bias in its approach by advertent to the Administration's submissions while neglecting his. He asserts that the GBA accepted the Administration's submissions concerning the ratings that the Classification Specialist assigned to the two factors, which he challenged but the CRSC confirmed, without analysing whether those findings by the Classification Specialist involved substantive or procedural flaws. However, these arguments are unsupported by reference to the GBA's analysis. Other allegations which the complainant makes, including his allegation of discrepancies in the GBA's reasoning, are unmeritorious and are peripheral to the central question whether the process was tainted by irregularity warranting setting aside the GBA's report, and, by extension, the impugned decision.

15. The complainant's contention that the impugned decision should be set aside because the Director-General made no attempt to analyse the GBA's reasons and recommendation in any detail fails. The Tribunal has consistently stated that the executive head of an organisation who rejects the conclusions and recommendations of an authority charged with making a prior recommendation is obliged to provide adequate reasons for rejecting them. This is to ensure that there will be no room for arbitrary, unprincipled, or even irrational, decision-making. However, when the executive head of an organisation adopts the recommendations of an internal appeal body, she or he is under no obligation to give any further reasons in his or her decision than those given by the appeal body itself (see Judgments 3994, consideration 12, and 2092, consideration 10). In the present instance, the case law did not require the Director-General to explain why he accepted and adopted the GBA's reasons and recommendation confirming the subject post at grade G.3.

16. In the foregoing premises, the complaint is unfounded and will be dismissed.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 9 July 2020, Ms Dolores M. Hansen, Vice-President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 24 July 2020 by video recording posted on the Tribunal's Internet page.

DOLORES M. HANSEN

GIUSEPPE BARBAGALLO

HUGH A. RAWLINS

DRAŽEN PETROVIĆ