



**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2017-UNAT-805



**Gorelova
(Appellant)**
v.
**Secretary General
of the International Civil Aviation Organization
(Respondent)**

JUDGMENT

Before:	Judge Martha Halfeld, Presiding Judge Deborah Thomas-Felix Judge Sabine Knierim
Case No.:	2017-1090
Date:	27 October 2017
Registrar:	Weicheng Lin

Counsel for Appellant:	Laurence C. Fauth
Counsel for Respondent:	Christopher M. Petras

JUDGE MARTHA HALFELD, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against the decision of the Secretary General of the International Civil Aviation Organization (ICAO), dated 14 March 2017, to accept the recommendation of ICAO's Advisory Joint Appeals Board (AJAB) in Opinion No. 138 (Appeal No. 179). Ms. Elizaveta Gorelova filed the appeal on 29 June 2017, and the Secretary General of ICAO filed her answer on 22 August 2017.

Facts and Procedure

2. In July 1985, Ms. Gorelova was first appointed to the G-4 level post of Text Processing Operator, Russian Translation Section at ICAO Headquarters. Effective 17 September 1986, her post was regraded to the G-5 level. She separated from service in 1988 and was, on 28 March 1991, reappointed to the same post that she initially held (new appointment at step V). Following her selection as Secretary, Russian Translation Section, she was appointed on 20 March 1995 to a post at the G-5 level (step VIII) in the Bureau of Administration and Services/Language and Publications Branch (ADB/LPB). Effective 7 May 1996, she was granted a permanent appointment.

3. In response to a memorandum dated 26 August 2011, in which Ms. Gorelova had requested to have her post regraded, the Chief, Recruitment and Establishment advised her on 4 October 2011 that her revised post description submitted in 2007 by the former Chief of the Russian Section had been reviewed and the post was confirmed at the G-5 level. The 4 October 2011 Inter-Office Memorandum (IOM) further recalled a meeting held on 10 September 2009 during which an external job classification consultant hired to review the grading of Ms. Gorelova's post had informed her that her post was indeed correctly graded at the G-5 level.

4. On 2 November 2011, in a memorandum captioned "Request for review of my post of G-5 Secretary", Ms. Gorelova disputed the 2007 grading of her post as well as the results of the 2009 review process, and requested the ICAO Secretary General to review her post description. Ms. Gorelova conveyed her disagreement with the aforementioned assessment by the external classification consultant and stated that for "16 years [she] performed duties at a higher level

than those stipulated in [her] job description” and that she “believe[d] that [she] should be compensated for the years that [she] performed these higher-level duties”.

5. On 9 November 2011, the ICAO Secretary General replied stating that Ms. Gorelova’s post description had been reviewed on several occasions over the previous four years, and that on each occasion the determination was made that the post had been correctly graded. The ICAO Secretary General indicated that a proper and objective analysis of Ms. Gorelova’s post had been conducted and that all major elements of the post had been taken into consideration in the analysis. The ICAO Secretary General added that “[a]ny further review of positions within LPB will have to be done in the context of the changes and programmatic requirements of the Branch”, that “[a] restructuring exercise [was] currently on-going and posts [were] being reviewed and evaluated”, and that “[c]onsequently, [she would] be advised of [her] new post description shortly”.

6. On 9 May 2012, in a memorandum with the subject matter “Request for financial compensation” addressed to the Director of Administration (D/ADB), Ms. Gorelova wrote:

I wish to draw your attention to major discrepancies between the functions I fulfil in my job, my job description and my remuneration. Before the LPB restructuring process in 2011, I was the Secretary of the Russian Section. While a Secretary, I was trained in various new fields, including terminology. In the course of the restructuring process, I was assigned to the Terminology and Training Coordination Section. In August 2011, I started working as a Terminology and Information Support Clerk. However, the Vacancy Notice for this post was posted only in April 2012, and on April 23, I submitted my application for the post.

I would like to emphasize that prior to the re-numbering of posts in the General Service category, I was performing functions of a G-7, although I was at the G-5 level (levels before re-numbering). Consequently, as a G-4 Secretary within the Russian Section, I consistently and continuously performed the duties of a G-6 Supervisor (levels after re-numbering). For 16 years (since 1995) I was responsible for processing incoming and outgoing translation jobs through [the Electronic Documents and Enquiry Network (EDEN)], as well as for updating the job recording and tracking system and maintaining timely communications with the Document Control Unit, originators and source bureaus. After the new outsourcing translation policy was implemented, all the duties related to that process were automatically assigned to me. These duties were never performed by the secretaries in other Language Sections, as they were never part of their job descriptions and always considered to be G-6 level duties. In 2007, in spite of the fact that my job description was updated, my post remained at the G-4 level.

Therefore, I request appropriate and suitable financial compensation for the 16 years of work during which I was performing tasks at a higher level than those in my job description, without receiving the remuneration mandated by the ICAO Service Code.

I look forward to receiving a positive response with regard to my request.

7. By memorandum dated 16 May 2012, the D/ADB responded and conveyed to Ms. Gorelova that the post she formerly held in the Russian Section (prior to the restructuring exercise) had been thoroughly reviewed and repeatedly confirmed at the appropriate (G-5) grade level and that “[she had] received communication to this effect”. The memorandum further stated that “there [was] no basis to grant [her] financial compensation, and therefore, [her] request [could] not be considered”.

8. On 14 June 2012, Ms. Gorelova wrote to the ICAO Secretary General claiming “appropriate and suitable financial compensation for 17 years of work during which [she has] been performing tasks at a higher level than those in [her] job description”. In her letter, she noted that she had asked for a thorough review of the processes since 2009 but none had been conducted despite the IOM of 4 October 2011 stating that the post had been properly graded in 2007.

9. In response to the aforementioned memorandum, on 26 June 2012, the ICAO Secretary General stated, *inter alia*:

As I had previously advised in my letter of 9 November 2011, your duties and responsibilities were objectively reviewed on several occasions and on each occasion they were confirmed to be consistent with the requirements of your grade level. This was also communicated to you by the Director, Bureau of Administration and Service in a recent IOM dated 16 May 2012.

The ICAO Secretary General also advised that: “[I]n view of the above, there is no basis upon which I can grant you additional monetary compensation for work done that is consistent with the requirements of your post.”

10. By letter to the AJAB dated 18 July 2012, Ms. Gorelova submitted an appeal requesting the AJAB to award “suitable financial compensation for 17 years of work during which [she has] been performing tasks at a higher level than those in [her] job description”. In her letter of appeal, Ms. Gorelova provided an account of her work history and her uneasy relationship with the then-Chief, Russian Section. She further contended that she had been discriminated against

and mentioned that she had been unsuccessful in applying twice to vacancy notices for higher level posts. Ms. Gorelova confirmed that in 2009, upon her request, an independent review of her post description had been conducted. However, since her duties involved the coordination of workflow for the entire section and other responsibilities she could not agree with the assessment made at the time.

11. Her appeal was heard on 22 November 2016 *in absentia* as Ms. Gorelova had communicated her decision not to be present or represented at the AJAB meeting or to participate via teleconference.

12. The AJAB issued its Opinion No. 138 on Ms. Gorelova's appeal on 17 February 2017 finding that her appeal was time-barred. The AJAB found that the impugnable administrative decision was that of 9 November 2011. It considered that Ms. Gorelova had submitted her initial request regarding her job description on 2 November 2011, which was denied by the ICAO Secretary General on 9 November 2011. This denial constituted the original administrative decision triggering the 30-day time limit to seek administrative review as contained in ICAO Staff Rule 111.1(6). According to the AJAB, Ms. Gorelova failed to request review of this decision and was unable—in accordance with established jurisprudence—to “reset the clock” regarding the relevant statutory time limit when she simply reiterated the same request in her 9 May 2012 memorandum under a different title but with respect to the same set of facts. The AJAB thus concluded that Ms. Gorelova lost her right to appeal in accordance with ICAO Staff Rule 111.1(7) as a result of her failure to observe the 30-day time limit and it unanimously recommended that the ICAO Secretary General dismiss the appeal in its entirety.

13. On 14 March 2017, the ICAO Secretary General issued her decision concurring with the AJAB's findings “to the effect that, consistent with [ICAO Staff Rule] 111.1, paragraph 7, [Ms. Gorelova's] appeal is time-barred, and accept[ing] its unanimous recommendation that the Appeal be rejected in its entirety”.

Submissions

Ms. Gorelova's Appeal

14. Ms. Gorelova submits that the AJAB erred on a question of fact leading to a manifestly unreasonable decision, and erred in law in concluding that her appeal was time-barred.

15. In particular, she contends that the AJAB erred on questions of fact in several regards when it found that Ms. Gorelova's letter of 2 November 2011 and her letter of 9 May 2012 made identical claims on "exactly the same" facts. First, the AJAB failed to take into account that the ICAO Secretary General had advised in the letter of 9 November 2011 that a restructuring exercise was on the way, which would result in a new evaluation of her functions in her new assignment. Therefore, there were no objective grounds for Ms. Gorelova to conclude from the 9 November 2011 IOM that a decision had been taken not to review her post, which might have triggered the relevant time limits. Second, the AJAB incorrectly concluded that she had already made a compensation claim in her letter of 2 November 2011, whereas in fact she had simply requested a review of her post description and was advised that it would be undertaken in connection with the LPB restructuring exercise. Third, the AJAB failed to consider that new facts motivated and underpinned her request for compensation in her IOM of 9 May 2012 including irregularities in the LPB restructuring process.

16. Accordingly, she claims that the "original impugned decision was taken on 16 May 2012 denying a review and compensation for performance of duties at the higher level prior to and after the 2011 LPB restructuring exercise" and her appeal to the AJAB, dated 18 July 2012, was thus timely filed.

17. Based on the foregoing, Ms. Gorelova requests that the Appeals Tribunal (i) vacate the impugned decision; (ii) remand the matter to the AJAB for a consideration of the merits; (iii) order payment of moral damages for injury caused to her dignity in the amount of six months' net based salary; and, (iv) refer the case to the ICAO Secretary General to enforce accountability. In support of her request for a referral for accountability under Article 9 of the Appeals Tribunal Statute (Statute), she points to the "egregious delay in the internal appeals process calculated from the date of filing the AJAB appeal on 18 July 2012 until the final decision was notified on 4 April 2017: 4 years, 8 months and 17 days". She claims that "the ICAO internal appeals procedures are broken or her appeal was purposefully delayed" and the "ICAO's internal

appeal system would do well to be abolished”, which makes it an adequate case “for referral to the [ICAO] Secretary General for appropriate action to audit the internal appeal function of the organization”.

The ICAO Secretary General’s Answer

18. The ICAO Secretary General submits that the AJAB did not err in finding that the impugned administrative decision (i.e. that Ms. Gorelova’s post was correctly classified at the G-5 level) was communicated to Ms. Gorelova in a clear and definite way and with direct legal consequences in the ICAO Secretary General’s 9 November 2011 answer to her 2 November 2011 request for review. Such notification triggered the 30-day time limit to seek administrative review under ICAO Staff Rule 111.1(6). Inasmuch as “there is no dispute” that she “failed altogether” to meet this deadline, or to request a waiver of the deadline pursuant to ICAO Staff Rule 111.1(8), and considering that the Appeals Tribunal lacks the authority to waive deadlines for management evaluation under Article 7(3) of the Statute and administrative review by the ICAO is deemed equivalent to management evaluation, the appeal must be denied.

19. Moreover, the ICAO Secretary General contends that Ms. Gorelova has not demonstrated any error in fact or law relative to the AJAB’s finding that the request for review by the AJAB was time-barred.

20. Firstly, Ms. Gorelova’s claim that the AJAB did not consider the merits of her appeal is “demonstrably false”. Even though Ms. Gorelova did not participate in the hearing before the AJAB at her own choice, both her submissions and the ICAO Secretary General’s comments extensively speak to the merits of her claims and the AJAB’s opinion clearly shows that the merits of the appeal were in fact posited before the AJAB during the hearing.

21. Secondly, Ms. Gorelova’s assertion that the AJAB erred in concluding that she had already made a compensation claim in her 2 November 2011 letter is without merit as she had explicitly requested in the letter to “be compensated for the years that [she] performed (...) higher level duties”.

22. Thirdly, Ms. Gorelova’s claim that the AJAB failed to take into account the restructuring exercise referred to in the ICAO Secretary General’s 9 November 2011 letter is “completely unsupported” and “obviously controverted by the record”. In addition, her contention that the 2011 LPB restructuring exercise provided new facts that motivated her 9 May 2012 “request for

compensation”—ostensibly distinguishing it from her 2 November 2011 request—is not credible as she did not relate her request to the restructuring exercise but merely repeated her previous request. The 16 May 2012 response simply reiterated the Administration’s position on the correct classification of Ms. Gorelova’s post and merely confirmed the earlier decision communicated to her in November 2011 and can thus not be considered to reset the deadline for challenging the contested administrative decision.

23. The ICAO Secretary General further asserts that Ms. Gorelova’s claim for relief pursuant to Article 9 of the Statute should be denied. The timing of the docketing of her appeal was determined consistent with ICAO Staff Rule 111.1(3) which requires the AJAB to give urgent treatment and priority to appeals directed against certain other decisions that are deemed to be of special gravity. Even assuming, *arguendo*, that her claim of delay was well-founded, all the underlying information could have been presented and was well known to her at the time of the 22 November 2016 AJAB hearing in which she deliberately chose not to participate. Since evidence that was known to either party and should have been presented to the AJAB cannot be accepted by the Appeals Tribunal pursuant to Article 2(5) of the Statute and its established jurisprudence, the fresh claims in Ms. Gorelova’s appeal brief before the Appeals Tribunal challenging the timeliness of the AJAB’s docketing of her request for administrative review are inadmissible.

24. In light of the foregoing, the ICAO Secretary General requests that the Appeals Tribunal dismiss the appeal in its entirety.

Considerations

Preliminary issue – jurisdiction and competence of the Appeals Tribunal

25. Article 2(10) of the Statute establishes the Appeals Tribunal’s jurisdiction to sit in this case, and states:

... The Appeals Tribunal shall be competent to hear and pass judgement on an application filed against a specialized agency brought into relationship with the United Nations in accordance with the provisions of Articles 57 and 63 of the Charter of the United Nations or other international organization or entity established by a treaty and participating in the common system of conditions of service, where special agreement has been concluded between the agency, organization or entity concerned and the Secretary-General of the United Nations to accept the terms of the

jurisdiction of the Appeals Tribunal, consonant with the present statute. Such special agreement shall provide that the agency, organization or entity concerned shall be bound by the judgements of the Appeals Tribunal and be responsible for the payment of any compensation awarded by the Appeals Tribunal in respect of its own staff members and shall include, inter alia, provisions concerning its participation in the administrative arrangements for the functioning of the Appeals Tribunal and concerning its sharing of the expenses of the Appeals Tribunal. Such special agreement shall also contain other provisions required for the Appeals Tribunal to carry out its functions vis-a-vis the agency, organization or entity. Such special agreement may only be concluded if the agency, organization or entity utilizes a neutral first instance process that includes a written record and a written decision providing reasons, fact and law. In such cases remands, if any, shall be to the first instance process of the agency, organization or entity.

26. Article 2 of the Agreement concluded between the United Nations and ICAO on 6 January 2010 prescribes:

1. The Appeals Tribunal shall be competent to hear and pass judgement on an application filed by staff members of the Organization:

(a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms “contract” and “terms of appointment” include the provisions of the International Civil Aviation Organization Service Code, other pertinent regulations and rules of the Organization and all relevant administrative issuances in force at the time of the alleged non-compliance.

...

6. An application shall not be receivable unless the person concerned has previously submitted the dispute to the neutral first instance process provided for in the Staff Regulations of the Organization and the latter has communicated its opinion to the Secretary General, except where the Secretary General and the applicant have agreed to submit the application directly to the Appeals Tribunal.

27. In turn, ICAO Staff Rule 111.5 reads, in relevant part, as follows:

1. A staff member shall have the right to appeal to the United Nations Appeals Tribunal:

a) under Regulation 11.5 of the Service Code, against a decision of the Secretary General given in pursuance of Regulation 11.2; that is to say, after review, findings and recommendations of an

Advisory Joint Appeals Board (unless the Secretary General and the applicant have agreed to submit the application directly to the Tribunal);

...

2. The conditions governing appeals are specified in the Statute of the Tribunal and the Agreement between the United Nations and ICAO, signed on 23 December 2009 by the Secretary General of ICAO and on 6 January 2010 by the Secretary General of UN, which is deemed to constitute, *mutatis mutandis* (with the necessary changes), a part of the ICAO Service Code. Appeals are required to be lodged and conducted in conformity with the Statute and Rules of the Tribunal and of the Agreement, copies of which are available on request from the Staff Services Section.

28. ICAO Staff Regulation 11.1 and ICAO Staff Rule 111.1 prescribe the filing of appeals with the AJAB. The relevant ICAO Staff Regulations provide as follows:

11.1 Every staff member shall have the right to a review in accordance with the rules established pursuant to this Article in the following cases:

- 1) any disciplinary measure imposed under Article X as well as summary dismissal under Regulation 9.3;
- 2) an order of discharge under Article IX, Regulation 9.6 or 9.7;
- 3) any administrative decision which it is alleged constitutes non-observance of a contract of employment, or of the terms of the ICAO Service Code, or non-observance of established administrative practices in such a way as adversely to affect the individual.

11.2 The Secretary General shall establish rules not inconsistent with these regulations providing for the aforesaid review, which rules shall include provision for an Advisory Joint Appeals Board that will submit its findings and recommendations to the Secretary General for his decision. Subject to the provisions of Regulation 11.5 of this Article, such decision of the Secretary General shall be final.

...

12.5 A claim arising from the employment of a staff member shall not be considered unless made in writing within one year of the date of accrual of the entitlement claimed. However, the Secretary-General may, at his discretion, consider claims made beyond that period.

29. ICAO Staff Rule 111.1 stipulates:

Formal review and appeal

2. In accordance with Article XI of the Staff Regulations, a staff member shall have the right to a review by the Secretary General of any decision falling under Regulation 11.1, and a subsequent right under Regulation 11.2 to lodge an appeal against the result of such review with the Advisory Joint Appeals Board (in this Rule referred to as “the Board”). In compliance with Regulation 11.5 and Rule 111.5, the decision referred to in Regulation 11.2 may be appealed to the United Nations Appeals Tribunal. When informing a staff member following either review or appeal action, the Secretary General shall, where appropriate, advise the staff member as to possible further recourse actions.

In the present case the aforementioned requirements for the Appeals Tribunal’s jurisdiction are fulfilled, as the appeal was filed against a decision by the ICAO Secretary General dated 14 March 2017 (and communicated via a letter dated 4 April 2017), in accordance with the recommendation of the AJAB dated 17 February 2017.

Main issue: receivability of the appeal to AJAB

30. The AJAB held that Mr. Gorelova’s appeal was time-barred. We will now examine the merits of this ruling.

31. ICAO Staff Rule 111.1 establishes, in relevant paragraphs, the procedure to challenge an administrative decision:¹

5. (...) A staff member who wishes to appeal the decision referred to in Regulation 11.1 shall, as a first step, address a letter to the Secretary General requesting that the decision be reviewed. *Such a letter shall be sent within 30 calendar days of the time the staff member received notification of the decision in writing.*

6. If the staff member wishes to appeal against the answer received from the Secretary General, the appeal in writing shall be submitted to the Secretary of the Board within 30 calendar days from the date of receipt of the answer; *if no reply has been received from the Secretary General within 30 calendar days of the date the letter was received by him, the appeal shall be submitted within the following 30 calendar days.* A copy of the letter of appeal shall be sent by the staff member to the Secretary General.

¹ Emphases added.

7. A staff member who fails to observe the time limits indicated in 5 and 6 *shall lose the right to appeal*, unless the delay is waived under 8 below.

8. The staff member may request that in view of exceptional circumstances, the delay in filing the appeal be waived. The Board shall examine such request as a preliminary issue and make its recommendations thereon to the Secretary General for his decision.

32. An administrative review within ICAO has the same purpose as a management evaluation or a decision review for the purposes of filing an application before the United Nations Dispute Tribunal (UNDT) or the Dispute Tribunal of the United Nations Relief and Work Agency for Palestine Refugees in the Near East (UNRWA DT), respectively.² That is to say that it is generally a necessary step to challenge administrative decisions before taking the judicial path.

33. Indeed, judicial review is normally the last stage of the resolution system, as the Administration should have an opportunity to review its own decisions, rather than having them directly challenged before the judicial system. This responds to the needs not only of judicial economy, but also of fairness and celerity; hence, efficiency.

34. In the present case, it is uncontested that Ms. Gorelova did not request administrative review of the first decision which had considered that the grade of her post was correct, i.e., the decision taken on 9 November 2011.³

35. The decision, issued on 9 November 2011, stated, *inter alia*, as follows:

[W]ithin the last four years the Organization has reviewed your post on several occasions and you have been advised that, based on the duties and responsibilities you have been carrying out, the post has been appropriately graded at the G-5 level. (...)

² Article 8(1)(c) of the UNDT Statute and Article 8(1)(c) of the UNRWA DT Statute.

³ We note that the Administration considered that this decision was the first one, although Ms. Gorelova had already requested review of her post description on 26 August 2011 and received a decision confirming her at the G-5 level on 4 October 2011. See also IOM of 4 October 2011, which asserts that, although 40 per cent of her time was allocated to the electronic processing of translation jobs, which were assigned to the supervisors in other LPB Sections, these constituted only part of the overall functions and responsibilities assigned to supervisors. Besides, Ms. Gorelova was not assigned to other supervisory responsibilities and 60 per cent of the time “was allocated to secretariat, transcription/text processing, and office-related tasks which are typical of secretarial posts”.

[A] proper and objective analysis of your post had been conducted, within the context of organizational requirements, and (...) all major elements of your post had been taken into consideration in the analysis.

Any further review of position with LPB will have to be done in the context of the changes and programmatic requirements of the Branch. A restructuring exercise is currently on-going and posts are being reviewed and evaluated. Consequently, you will be advised of your new post description shortly.

36. The decision was a response to the IOM dated 2 November 2011, in which Ms. Gorelova referred to an exchange of correspondence dating back to 2009. In the same document, Ms. Gorelova also expressly indicated that she had been performing “duties at a higher level than those stipulated in [her] job description”, which corresponded to duties of a G-7 supervisor, and that she was “once again asking for a review of [her] post description”. Ms. Gorelova also described the tasks, which she considered to be of higher level, as being the following:

[P]rocessing in/outcoming translation jobs electronically using the EDEN system and updating a job record and tracking system; maintaining timely communications with Document control, originators and reference officers; outsourcing the jobs and coordination with external translators.

37. The following and, as far as we know, third request, dated 9 May 2012, was based on the same alleged activities and triggered the decision taken on 16 May 2012, which also remained unchallenged. Obviously, this request cannot be considered to be a submission for administrative review. First, there is no mention whatsoever of this term in it. Second, it was submitted well beyond the deadline set in Staff Rule 111.1(5).

38. Further, Ms. Gorelova submitted a fourth request on 14 June 2012, in the form of an IOM, in which she claims she had been performing similar activities. The response to this IOM dated 26 June 2012, was subject to the appeal before the AJAB.

39. Having not requested administrative review of the contested administrative decision dated 9 November 2011, paragraph 7 of ICAO Staff Rule 111.1 transcribed above applies and the appeal to the AJAB was indeed time-barred under Staff Rule 111.1(6) and also, as she failed to request administrative review under Staff Rule 111.1(5), the appeal to the AJAB was not receivable *ratione materiae*.

40. As we have stated in *Siciliano*,⁴

... Mr. Siciliano appeals the decision (...) to suspend him without pay. The ICAO Secretary General challenges the receivability of Mr. Siciliano's appeal of that decision on the ground that he failed to request its review as required by ICAO Staff Rule 111.1(5) and also failed to request a waiver of time to file his appeal before the AJAB pursuant to Staff Rule 111.1(8).

... ICAO's Staff Rule 111.1(5) provides, *inter alia*, that:

... A staff member who wishes to appeal the decision referred to in Regulation 11.1 shall, as a first step, address a letter to the Secretary General requesting that the decision be reviewed. Such a letter shall be sent within 30 calendar days of the time the staff member received notification of the decision in writing.

... ICAO's Staff Rule 111.1(7) provides that a staff member who fails to observe the time limits indicated shall lose the right to appeal, unless an application is made for the delay to be waived. Mr. Siciliano, like any staff member who wishes to appeal a decision, had to complete the first step of making a formal request for a review of the decision to suspend him without pay. He has not done so and has thus waived his right to appeal that decision.

... In the circumstances, that aspect of Mr. Siciliano's appeal is not receivable.

41. One could argue that Ms. Gorelova requested compensation for the first time in her memorandum of 9 May 2012. Based on that premise, the 16 May 2012 letter would be the relevant administrative decision and her failure to request administrative review of the 9 November 2011 decision would not be relevant for the receivability of the appeal to the AJAB. That argument, however, does not stand. First, because her request dated 2 November 2011 already expressly mentioned that she "should be compensated for the [previous] years", as a consequence of her main demand for review of her post description. Secondly, because, although her subsequent request was phrased differently (compensation for performance of tasks at a higher level than those of her job description), it was based on the same factual and substantive situation that had already been assessed under her previous, unsuccessful request for review of her post description.

⁴ *Siciliano v. Secretary General of the International Civil Aviation Organization*, Judgment No. 2016-UNAT-702, paras. 49-52.

42. There could indeed not be any compensation granted without a prior decision that her post description was incorrect.⁵ In other words, Ms. Gorelova's premise appears to be incorrect, since the compensation requested was a natural consequence of a claim of rectification in her post description, which had, however, been continuously rejected. The relief claimed by Ms. Gorelova is hence intertwined with the unchallenged previous decision of the Administration that her post had been correctly graded.⁶

43. In this respect, we have already stated in *Kazazi*:⁷

... [T]he Appeals Tribunal has consistently held that the reiteration of an original administrative decision, if repeatedly questioned by a staff member, does not reset the clock with respect to statutory timelines; rather the time starts to run from the date on which the original decision was made. For this reason, a staff member cannot reset the time for management review by asking for a confirmation of an administration decision that has been communicated to him earlier. Neither can a staff member unilaterally determine the date of an administrative decision.

44. In view of the foregoing, we agree with the AJAB that the letter dated 9 November 2011 conveyed a clear and definite administrative decision, namely, that her post graded at the G-5 level was consistent with the duties and responsibilities she was carrying out. This decision produced direct legal consequences for Ms. Gorelova. Therefore, the time limit to contest the decision within the timeline established by the Staff Rules began as of the date of receipt of this letter.

45. Furthermore, we note that Ms. Gorelova's job description was not affected by the restructuring exercise that was carried out at the time of the decision taken on 9 November 2011. As emphasised, Ms. Gorelova should have requested a timely review of the contested decision, since there was no guarantee that her job description would be modified in order to grant her claim.

⁵ As mentioned, there was nothing new in her subsequent requests and the factual basis is the same.

⁶ Impugned AJAB opinion, paragraph 2.4. In this respect, the introductory statement of her letter dated 9 May 2012 confirms that conclusion: "I wish to draw your attention to major discrepancies between the functions I fulfil in my job, my job description, and my remuneration". Also, the statement mentioned in the IOM dated 14 June 2012, in which Ms. Gorelova declared that she did not agree with the assessment of her request for correction of grade, since she was allegedly performing functions beyond the secretarial stage and thus incorrectly classified at the G-5 level. She further declared in the same document that she had been performing duties at a higher level, compatible with the duties carried out by the supervisor, at the G-7 level.

⁷ *Kazazi v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-557, para. 31 (internal citation omitted).

46. Even assuming, *arguendo*, that the original administrative decision was taken on 16 May 2012, as Ms. Gorelova contends, the filing of an appeal before the AJAB on 18 July 2012 would also be time-barred, as set forth in ICAO Staff Rule 111.1(6) transcribed above, and also, in light of ICAO Staff Rule 111.1(5), not receivable *ratione materiae*.⁸

47. The appeal rests upon misguided grounds and Ms. Gorelova failed to demonstrate that the AJAB committed an error of law when it considered that her appeal was not receivable.

Request for referral for accountability

48. Lastly, Ms. Gorelova requests that, in accordance with Article 9(5) of the Statute read in conjunction with Article 2(8) of the United Nations-ICAO Agreement, the case be referred to the ICAO Secretary General for accountability and for appropriate action to audit the internal appeal function of ICAO. She points to the “egregious delay in the internal appeal process”, as her appeal to the AJAB was filed on 18 July 2012 and the ICAO Secretary General’s final decision was only notified to her on 4 April 2017, more than four years later.

49. The ICAO Secretary General submits, however, that ICAO Staff Rule 111.1(3) requires the AJAB to give urgent treatment and priority to appeals related to summary dismissal, termination, suspension without pay, or transfer without staff member consent and other priority cases.⁹

⁸ Although there is no evidence of the date of receipt of that answer, Mrs. Gorelova submitted a new “[c]laim for monetary compensation for 17 years of extra work over and above [her] official job description” on 14 June 2012, in which she acknowledged “[h]aving received a negative response” to her previous request. If we consider that she had received the answer on 14 June 2012, she should have submitted her request for review within the next 30 calendar days. She only did that on 18 July 2012, and thus after the deadline.

⁹ ICAO Staff Rule 111.1(3) provides, in relevant parts, as follows: “Notwithstanding the provisions of Regulation 11.4, when a decision to impose summary dismissal, termination, suspension without pay, or transfer without the consent of the staff member is confirmed, the staff member may request the Secretary General to suspend implementation of the decision pending the hearing by the Board of an appeal against that decision. Irrespective of whether or not implementation has been suspended, the Board shall give urgent treatment and priority to an appeal against any decision referred to in this paragraph. The Board, at its sole discretion, may also give urgent treatment and priority to an appeal against any administrative decision which, due to its nature and characteristics, is deemed to be of gravity equivalent to decisions referred to above. If implementation has been suspended for a fixed period, every effort must be made by all parties to have the appeal procedure completed before that period has expired.”

50. In *Cohen*, we stated:¹⁰

... The exercise of the power of referral for accountability in terms of Article 9(5) of the Statute must be exercised sparingly and only where the breach or conduct in question exhibits serious flaws. (...) There is accordingly no justifiable basis to refer for accountability.

51. In light of the strict application of this provision and the ICAO Secretary General's reasonable submissions, we reject the demand for referral for accountability in this case. However, we strongly recommend that complaints be dealt with in due course.

52. In view of the foregoing, the appeal fails and there is no need to address the merits of the case.

¹⁰ *Cohen v. Registrar of the International Court of Justice*, Judgment No. 2017-UNAT-716, para. 46 (internal citations omitted).

Judgment

53. The appeal is dismissed and the decision of the ICAO Secretary General is affirmed.

Original and Authoritative Version: English

Dated this 27th day of October 2017 in New York, United States.

(Signed)

Judge Halfeld, Presiding

(Signed)

Judge Thomas-Felix

(Signed)

Judge Knierim

Entered in the Register on this 8^h day of December 2017 in New York, United States.

(Signed)

Weicheng Lin, Registrar