



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2010/011/
UNAT/1596
Judgment No.: UNDT/2010/141
Date: 4 August 2010
Original: English

Before: Judge Meeran
Registry: New York
Registrar: Hafida Lahiouel

MEESUKUL

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for applicant:

Bernard Adams, OSLA

Counsel for respondent:

David Browne, ALS-OHRM, UN Secretariat

Introduction

1. On 15 May 2008, the applicant lodged an appeal with the United Nations Administrative Tribunal against an administrative decision that was communicated to her on 1 February 2007 by the then Assistant Secretary-General for Human Resources Management, informing the applicant that her appeal in relation to the reclassification of her post had been unsuccessful following consideration of the report and recommendation by the New York General Service Classification Appeals and Review Committee (the Committee). This matter was transferred to the Dispute Tribunal for adjudication as of 1 January 2010.

Background

2. On 31 July 2003, the applicant retired from service with the Economic and Social Commission for Asia and the Pacific (ESCAP) at the G-5 level. She had been working as a Professional Assistant in the Agriculture and Rural Development Division of ESCAP from 1 August 1990. It should be noted that in the course of her employment she worked in two different posts and given the change in functions and the fact that her actual duties had not been properly reflected in her job description, her applications for reclassification were successful on two previous occasions, initially from the G-3 level to the G-4 and subsequently to the G-5 level.

3. By joint submission of 18 May 2010, the parties agreed that an oral hearing was not necessary.

Applicant's case

4. It is the applicant's considered view that the G-5 level was still inappropriate. She complained that no change had been made to the job description that was used to classify her post. One of the principal issues of complaint was that she had set up the Computerised Documentation Service/Integrated Set of Information Systems CDS/ISIS (a computerised records system) in 1998 and it was her view that this fact

was not mentioned in her job description. She argues that if this important aspect of her work was properly reflected in her job description in a timely manner she would have been classified at a higher grade with attendant benefits, including an entitlement to promotion opportunities above the grade she had at the time. Accordingly, the remedy she is seeking is that she be retroactively reclassified to a higher level and be paid the difference in salary from the date upon which the reclassification which should have taken place. She also requests six months' base salary for denial of due process and unfair treatment. The basis upon which she claims entitlements to a finding and appropriate remedy is her contention that over a long period of time she was denied due process and treated unfairly.

5. In Annex 3 to her appeal, the applicant provides a detailed letter dated 26 April 2004 in support of her reclassification request. The penultimate paragraph of that letter asks for there to be no further procedural delays in handling the reclassification request.

The respondent's case

6. It is the respondent's case that the decision made under the delegated authority of the Secretary-General was properly made on the facts and based on the report and recommendations of an expert committee and that the applicant was accorded due process and treated fairly at all material times.

The relevant legal principles

7. The Administrative instruction on the 'System for the classification of posts' (ST/AI/1998/9), as applicable at the time, sets out the policies and procedures for the maintenance of the post-classification system and, in so far as they are relevant to this case, are set out below.

8. Section 2 deals with the procedure for classification or reclassification. Paragraph 2.3 states that

the classification analysis shall be conducted independently by two classification or human resources officers on the basis of the classification standards set in section 3 below...

9. Section 3, which deals with classification standards, provides as follows:

Posts shall be classified:

a) In accordance with the applicable classification standards established by the International Civil Service Commission . . . for posts in the General Service and related categories at the duty station concerned,

...

10. Section 5 provides for an appeal either by the head of the organisational unit or the incumbent of the post.

11. Section 6 describes the appeal procedure. Appeals are dealt with by the Classification Appeals Committees, including the New York General Service Classification Appeals and Review Committee (the Committee), as established in accordance with section 7 which describes its purpose, “to examine classification appeals and advise the Assistant Secretary-General for Human Resources Management thereon or the respective head of office, as appropriate”. There is further provision regarding the membership of the Committee indicating, in particular, its representative nature and the rules of procedure to be followed.

Considerations

12. It is clear from the foregoing description of the procedures for considering applications for reclassification of posts that there is a carefully formulated and structured process. Decisions on reclassification are made by an independent panel after considering submissions and representations from both the management representatives, as well as the staff member. The question for decision in this case is what is the proper function of the Dispute Tribunal when presented with an appeal against a decision not to reclassify a post? In what circumstances would it be proper and appropriate for a Tribunal to find that the Committee had behaved unfairly in the manner in which it discharged its functions and came to a conclusion which is

irrational in the sense of not being supported by the evidence before it? It is not appropriate for the Tribunal to substitute its judgment for that of a properly constituted Committee that addressed itself correctly in terms of the principles and the evidence applicable to reclassification decisions. In considering such complaints, the Tribunal does not sit as an expert review body on classification of posts. However, the Tribunal does have power and, indeed, a duty to consider whether the Committee acted unfairly or in any way improperly. Furthermore, the Tribunal has the power and duty to examine whether there was a failure or omission or deliberate refusal on the part of the Assistant Secretary-General, acting under the delegated authority of the Secretary-General, to give effect to the substance of the report and recommendations of the Committee.

13. The applicant's complaint is that the outcome was generally unfair and arrived at as a result of a denial of due process. This being the principal attack on the decision not to grant her a reclassification request, it is incumbent upon the applicant to provide sufficient detail of what she alleges constituted the denial of due process.

14. It is clear from the report of the Committee that it had all the necessary documentation provided by the applicant as well as by the managers concerned. Additionally, it is clear that they gave full consideration to the material before them.

15. One of the arguments advanced by the applicant is that her job description did not mention the fact that she had responsibility for the CDS/ISIS computer system. It is clear from the documentation before the Committee, particularly the applicant's e-PAS report for 2002-2003, that the applicant was expected, under the section entitled "Goals/Performance Expectations to, *inter alia*, "develop and administer Computerized Documentation System/Integrated Set of Information System (CDS/ISIS) databases and information retrieval systems, including technical innovation (e.g. CDS/ISIS databases through Internet)..."

16. Whilst it is correct that the applicant's job description at the time did not make such specific reference to her responsibility relating to the CDS/ISIS databases, the applicant is incorrect in advancing the argument that the Committee did not have before it evidence that her work involved the use of such a computerised system. The Committee was therefore aware of this aspect of the applicant's duties when they made their final report and recommendation.

17. The Committee submitted its report dated 1 February 2007 to the Assistant Secretary-General for Human Resources Management. After reviewing the factual background the report concluded as follows:

The Committee deemed from the evidence presented that there is no significant information to conclude that a restructuring has substantially affected the duties and responsibilities of the post.

The conclusions and recommendations of the Committee are expressed at paragraph 7 in the following terms:

Accordingly, having reviewed the available documentation including the staff member's work plan for the 2002-2003 cycle, the Committee did not find a significant justification to support this appeal. The Committee therefore recommends no further action on this case.

18. The Assistant Secretary-General wrote to the applicant on 1 February 2007, stating that the Committee's recommendation was accepted.

Conclusion

19. The documentary evidence before the Tribunal indicates that the Committee gave full consideration to the evidence and had followed the prescribed procedures. There is no evidence that the Committee failed to take into account any matter of substance that it ought to have taken into account. Furthermore there is no evidence that the Committee took into account any improper or impermissible considerations. Their report and recommendation does not support any argument of irrationality either in the procedures adopted or the conclusions reached. There is no cogent

evidence in support of the applicant's contention that she was denied due process and treated unfairly. In the circumstances, this application fails and is dismissed.

(Signed)

Judge Meeran

Dated this 4th day of August 2010

Entered in the Register on this 4th day of August 2010

(Signed)

Hafida Lahiouel, Registrar, New York