

Translated from French



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2010/106

Judgment No. : UNDT/2011/127

Date : 13 July 2011
English

Original : French

Before: Judge Jean-François Cousin

Registry: Geneva

Registrar: Víctor Rodríguez

MASSABNI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Jay Wormus

Counsel for Respondent:
Bettina Gerber, UNOG

This translated version of the Judgment has been corrected in accordance with article 31 of the Rules of Procedure of the United Nations Dispute Tribunal.

Introduction

1. The Applicant contests the decision of 19 April 2010 whereby the Office of Human Resources Management, United Nations Secretariat, refused to classify at the P-4 level the post which she occupied at the P-3 level.
2. She requests that the Respondent should pay her the sum of USD 67,500 for the material and moral damage suffered.

Facts

3. The Applicant joined the United Nations Conference on Trade and Development (“UNCTAD”) in Geneva in 1980. After the restructuring of the Central Statistics and Information Retrieval Branch of UNCTAD, the Applicant, who then held a P-3 post, was appointed in May 2005 by lateral transfer within the Branch to the position of Chief of the Central Support and Reference Unit.
4. On 12 July 2006, the Applicant wrote to the Deputy Secretary-General of UNCTAD requesting that her post should be reclassified to the P-4 level and, if possible, to the P-5 level. In particular, she stated that her request was based on administrative instruction ST/AI/1998/9, which provides that requests for the classification or reclassification of a post shall be made when the duties and responsibilities of the post have changed substantially as a result of a restructuring within an office.
5. On 25 February 2009, the Applicant submitted to the Director of the Division on Globalization and Development Strategies, her second-level supervisor, a request for reclassification action form which she had signed and completed in her own name and that of her direct supervisor, the Chief of the Central Statistics and Information Retrieval Branch.
6. On 25 May 2009, the Applicant sought information from the Director of the Division on Globalization and Development Strategies regarding the outcome of her request of 12 July 2006. She recalled that she had reiterated her request verbally on several occasions in 2008 and 2009 and had submitted the request for

reclassification action form on 25 February 2009. She asked him to provide a written reply by 15 June 2009 at the latest.

7. On 15 June 2009, the Applicant's direct supervisor recommended that the Director of the Division on Globalization and Development Strategies should not reclassify the Applicant's post to P-4. On the same day, the Director informed the Applicant that he was not in a position to recommend the reclassification of her post.

8. On 26 June 2009, the Applicant wrote to the Chief of the Human Resources Management Service of the United Nations Office at Geneva ("UNOG") to request reclassification of her post. She referred explicitly to sections 1.1(b) and 1.3 of administrative instruction ST/AI/1998/9 and attached the request for reclassification action form she had sent to the Director of the Division on Globalization and Development Strategies on 25 February 2009.

9. By memorandum of 29 July 2009, the UNOG Human Resources Management Service, relying on section 1.3 of administrative instruction ST/AI/1998/9, informed the Applicant that her request of 26 June 2009 had been deemed receivable but that, after consideration of her functions and job description, the P-3 level had been maintained.

10. By memorandum of 23 September 2009 addressed to the Assistant-Secretary-General for Human Resources Management in New York, the Applicant appealed against the decision to classify her post at the P-3 level, referring to the provisions of ST/AI/1998/9, sections 5 and 6.

11. The Applicant retired on 1 December 2009.

12. By letter of 19 April 2010, the Office of Human Resources Management replied to the Applicant's memorandum of 23 September 2009, stating that the form submitted on 26 June 2009 to the UNOG Human Resources Management Service was not complete as it had not been signed by the supervisor or the second-level supervisor and did not include a post number or an organizational chart. In the absence of that information, her post could not be reclassified and, as

such, an appealable classification did not exist. The Office of Human Resources Management further asserted first that the Human Resources Management Service had erred when it considered by its memorandum of 29 July 2009 that the reclassification request was receivable, and, second that the memorandum did not constitute a classification decision, but rather mere “advice”.

13. On 10 June 2010, the Applicant submitted to the Secretary-General a request for management evaluation of the decision of 19 April 2010, which she interpreted as stating that her appeal was not receivable. In so doing, she also requested compensation for moral damages.

14. By letter of 26 July 2010, the Under-Secretary-General for Management informed the Applicant that her request for management evaluation had been rejected on the grounds that the Office of Human Resources Management had rightly deemed that the reclassification request was not receivable.

15. After seeking and obtaining an extension of time, the Applicant submitted an application to the Tribunal on 19 November 2010. The Respondent submitted a reply on 20 December 2010.

16. On 6 July 2011, a hearing was held in the presence of the Applicant, her Counsel and Counsel for the Respondent.

Parties’ contentions

17. The Applicant’s contentions are:

- a. The management evaluation contains errors of law and fact. It misinterpreted the Applicant as having requested review of the decision to declare her her reclassification request irreceivable. In fact, she sought review of the decision to declare irreceivable her appeal against the decision not to reclassify her post. The reply from the UNOG Human Resources Management Service of which she was officially notified was a classification decision that was subject to appeal;

b. In requesting that her post should be reclassified, the Applicant followed the procedure set forth in administrative instruction ST/AI/1998/9;

c. The decision of the Office of Human Resources Management dated 19 April 2010 was taken in violation of section 6 of the administrative instruction and deprived the Applicant of access to remedy before the Classification Appeals Committee;

d. In accordance with provisional staff rule 2.1(a), in force at the time of the events, staff members have a right to have their post properly classified;

e. It is the supervisor's responsibility to specify the tasks performed by the staff member and establish the corresponding job description;

f. She was not provided with a job description either before May 2005, or after taking up the post of Chief of the Central Support and Reference Unit. That post was never classified before the decision of the UNOG Human Resources Management Service, of which she was notified in July 2009;

g. Contrary to the statement made by the Office of Human Resources Management, the procedure provided for in section 2 of administrative instruction ST/AI/1998/9 does not apply to requests for review under section 1.3, which presupposes that the staff member and supervisor disagree on the job description.

18. The Respondent's contentions are:

a. The 19 April 2010 decision of the Office of Human Resources Management was taken in accordance with provisional staff rule 2.1 and administrative instruction ST/AI/1998/9. There is therefore no decision that could be reviewed by the Office or the Classification Appeals Committee;

- b. In order for a classification decision to be lawful, it should be taken by a human resources officer in accordance with sections 2.2 and 2.3 of the administrative instruction and on the basis of a complete and up-to-date job description set out on the pertinent form duly signed by the supervisor, and it should also include an updated organizational chart and a valid post number. Moreover, the staff member's supervisor must confirm that the duties included in the job description match the actual or future needs of the post. If the post remains at the same level or is downgraded, the staff member can submit an appeal for consideration by the Office of Human Resources Management. If the Office maintains the post at the same level, the appeal is referred to the Classification Appeals Committee;
- c. The Applicant submitted an incomplete request for reclassification action form; her supervisor had refused to sign the job description because it did not reflect her duties. Because the form was not complete, a reclassification decision could not be deemed to have been taken. The UNOG Human Resources Management Service was therefore justified in confirming that the Applicant's duties were those of a P-3 level post. The memorandum of 29 July 2009 did not constitute a classification decision;
- d. The Classification Appeals Committee is only a technical advisory body and its role is limited to giving opinions on the application of predetermined classification standards. It is not for the Committee to determine whether an alleged "decision" constitutes a "classification decision". It considers only the criteria explicitly enumerated under section 6.8 of administrative instruction ST/AI/1998/9;
- e. Contrary to the statement made by the Applicant, the fact that a specific case is not submitted to the Classification Appeals Committee does not mean that the staff member is denied any legal

protection. The decision of the Office of Human Resources Management that no classification decision was taken could be challenged through management evaluation and then before the Tribunal.

Judgment

19. The Applicant, a former staff member at the P-3 grade, contests the 19 April 2010 decision of the Office of Human Resources Management in New York, which she interprets as having deemed non-receivable her appeal against the decision to maintain her post at the P-3 grade. The Tribunal considers that the Applicant must be regarded as challenging the decision refusing to reclassify at the P-4 grade the post which she occupied at the P-3 grade.

20. The Tribunal must begin by considering whether, in requesting that her post should be reclassified, the Applicant followed the procedure set forth in administrative instruction ST/AI/1998/9 concerning the post classification system, and whether she received an answer to her request.

21. The administrative instruction provides as follows:

1.1 Requests for the classification or reclassification of a post shall be made by the Executive Officer, the head of administration at offices away from Headquarters, or other appropriate official in the following cases:

...

b) When the duties and responsibilities of the post have changed substantially as a result of restructuring within an office and/or a General Assembly resolution;

...

d) When required by a classification review or audit of a post or related posts, as determined by the classification or human resources officer concerned.

...

1.3 Incumbents who consider that the duties and responsibilities of their posts have been substantially affected by a restructuring within the office and/or a General Assembly resolution may request the Office of Human Resources Management or the local

human resources office to review the matter for appropriate action under section 1.1(d).

22. It transpires from the facts as set forth above that on 25 February 2009, the Applicant submitted a classification request to her second-level supervisor, the Director of the Division on Globalization and Development Strategies. She repeated her request on 25 May 2009. On 15 June 2009, the Applicant's direct supervisor recommended that the Director of the Division on Globalization and Development Strategies should not proceed with the Applicant's reclassification request. The Director followed that advice and so informed the Applicant on the same day.

23. The Applicant wrote to the Chief of the UNOG Human Resources management Service on 26 June 2009 requesting that her post should be reclassified. On 29 July 2009, a senior human resources officer decided that in accordance with section 1.3 of administrative instruction ST/AI/1998/9, the Applicant's reclassification request was receivable but that, after consideration of the job description which she had submitted, the P-3 level was maintained. It is clear from the wording of the decision that it was taken "[b]ased on the careful analysis of the functions described in the job description ... submitted [by the Applicant] and the application of the job classification standards".

24. The Respondent therefore cannot seriously maintain that the UNOG Human Resources Management Service did not take a decision to classify the contested post to the P-3 level, whether or not the decision was well founded.

25. Section 5 of administrative instruction ST/AI/1998/9, entitled "Appeal of classification decisions", provides as follows:

The decision on the classification level of a post may be appealed by the head of the organizational unit in which the post is located, and/or the incumbent of the post at the time of its classification, on the ground that the classification standards were incorrectly applied...

26. Section 6 of the administrative instruction, concerning the appeals procedure, provides as follows:

6.1 Appeals shall be submitted in writing to:

a) The Assistant Secretary-General for Human Resources Management, in the case of appeals regarding [p]osts in the Professional category...

...

6.3 Appeals must be submitted within 60 days from the date on which the classification decision is received.

6.4 The appeal shall be referred for review to:

a) In the case of appeals submitted to the Assistant Secretary-General for Human Resources Management, the responsible office in the Office of Human Resources Management, which will submit a report with its findings and recommendation for decision by, or on behalf of, the Assistant Secretary-General...

...

6.6 If it is decided to maintain the original classification or to classify the post at a lower level than that claimed by the appellant, the appeal, together with the report of the reviewing service or section, shall be referred to the appropriate Classification Appeals Committee established in accordance with the provisions of section 7 below.

27. On 23 September 2009, the Applicant submitted to the Assistant-Secretary-General for Human Resources Management, in accordance with section 6 of the administrative instruction, an appeal against the decision of 29 July 2009 not to reclassify her post to the P-4 level. The appeal concerns the substance of the rejection, contending that the classification standards were not correctly applied. It is therefore exactly the type of appeal provided for by section 5 of administrative instruction ST/AI/1998/9.

28. Thus, the Office of Human Resources Management, in its contested decision of 19 April 2010, was wrong to reject her appeal on the grounds that there had been no classification decision that could be appealed. The Tribunal must stress that mistakes made by persons in authority in addressing staff members' requests cannot, in any event, cause harm to the staff members and deprive them of access to remedies. Given that, rightly or wrongly, a substantive decision not to reclassify the post to the P-4 level had been taken, and given that the staff member had complied with the procedures and deadlines set forth in the provisions cited above, the Administration could not legally limit itself to

deeming non-receivable the Applicant's appeal against the decision not to reclassify her post to the P-4 level. It was therefore also in error that the case was not referred to the Classification Appeals Committee.

29. The Applicant requests the Tribunal to award her compensation for the damage resulting from the irregularities detailed above.

30. In that connection, it should be recalled that in order to grant compensation, the Tribunal must establish a connection between the irregularities committed by the Administration and the damage suffered by the Applicant.

31. In this case, the Applicant was deprived of access to remedy in that she could have brought her request for her post to be reclassified to the P-4 level before the Classification Appeals Committee. The Tribunal must therefore assess the likelihood that the Classification Appeals Committee would have recommended reclassification of her post to the P-4 level.

32. The Tribunal first notes that on 15 June 2009, the Applicant's direct supervisor recommended that her post should not be reclassified. He explained that no P-4 posts appeared to be available at UNCTAD and that it was highly unlikely that such a post would be allocated in the budget for 2010-2011, and that the duties of any potential P-4 level post would not correspond to the needs of the Central Statistics and Information Retrieval Branch. By memorandum of 29 July 2009, and acting on the basis of the job description which the Applicant had herself drafted, the senior human resources officer at UNOG determined that the P-3 level should be maintained, allocating it a score of 1595 on the points rating sheet. In her application, the Applicant did not challenge that score or attempt to demonstrate that her post should have been reclassified to the P-4 level.

33. In the absence of such demonstration, the Tribunal can only consider that it was very unlikely that the Classification Appeals Committee would have recommended that the post should be reclassified to the P-4 level and that such a decision would then have been taken.

34. At the hearing, Counsel for the Applicant explicitly ruled out the possibility that she could have been promoted to the litigious post before her retirement on 1 December 2009. However, he maintained that the reclassification of her post to the P-4 level, albeit belatedly, would have entitled her to a retroactive special post-allowance for a P-4 post.

35. But in the absence of “a valid and available post number confirming the existence of a post approved at the appropriate level in the budget”, reclassification of the Applicant’s post to the P-4 level would have required action on the part of the Office of Programme Planning, Budgets and Accounts and subsequent approval by the General Assembly (see, along the same lines, Judgment *Jaen* UNDT/2010/165). On the basis of the case file, there is no reason to believe that those bodies would have confirmed the reclassification. It is therefore highly unlikely that the Applicant would have been granted a special post allowance.

36. It follows from the foregoing that the unlawful action did not cause clear material damage to the Applicant.

37. As regards moral damage, the Applicant has maintained that it consisted in the bad faith shown to her by the Administration and the unjust and unfair treatment to which she was subjected. The only question before the Tribunal is that of the legality of the decision not to reclassify her post following a request submitted by the Applicant on 26 June 2009. The Tribunal cannot take into account moral damage suffered before that date. It nevertheless considers that the denial of a remedy enabling the Applicant to present her case and allowing her the opportunity to gain recognition of her responsibilities from her supervisors resulted in moral damage and that, on those grounds alone, she should be awarded the sum of USD 1,500.

Conclusion

38. In view of the foregoing, the Tribunal DECIDES:

- a. The Respondent is ordered to pay the Applicant USD 1,500 in moral damages;
- b. The abovementioned compensation shall bear interest at the United States prime rate with effect from the date this Judgment becomes executable until payment of the said compensation. An uplift of five per cent shall be applied to the United States prime rate 60 days from the date this Judgment becomes executable;
- c. All other claims are rejected.

(Signed)

Judge Jean-François Cousin

Dated this 13th day of July 2011

Entered in the Register on this 13th day of July 2011

(Signed)

Víctor Rodríguez, Registrar, Geneva