

108th Session

Judgment No. 2904

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr L. J. C. against the Food and Agriculture Organization of the United Nations (FAO) on 27 June 2008 and corrected on 30 June, the FAO's reply of 6 November, the complainant's rejoinder of 15 December 2008 and the Organization's surrejoinder of 20 March 2009;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. Facts relevant to this case are set out in Judgment 2530, delivered on 12 July 2006, concerning the complainant's first complaint. Suffice it to recall that in August 2003 the complainant, who has now retired, had filed an appeal in which he contended that, for almost two years, the Organization had failed to take any action on his request for the upgrading of his post from P-5 to D-1, and that the substantial reduction in the level of his duties and responsibilities amounted to a demotion. By letter of 22 December 2004 he was informed that the Director-General had decided to dismiss his appeal in view of

the Appeals Committee's finding that it was time-barred. The complainant challenged that decision before the Tribunal, which found in Judgment 2530 that he "was challenging an implied decision to reduce the level of his duties and responsibilities in the restructured [Agricultural Support Systems] Division". It further found that that issue had not been examined by the Appeals Committee, nor had the Committee decided whether his claim in that regard was receivable, and its failure to do so constituted an error of law. The Director-General's decision being based on the Committee's recommendation, it involved the same error of law. For that reason, the Tribunal decided to set aside the impugned decision of 22 December 2004 and decided that the case should be remitted to the Director-General for review.

In response to Judgment 2530, the FAO commissioned a human resources specialist from the International Atomic Energy Agency to perform a desk audit of the complainant's duties and responsibilities at the material time. The terms of reference for the desk audit stipulated that it was to be conducted pursuant to the procedures set out in Section 280 of FAO's Administrative Manual, which deals with the establishment and classification of posts. In his report dated 20 February 2007 the specialist recommended against upgrading the complainant's post. The latter separated from service on 28 February 2007, having reached the mandatory retirement age.

By a letter dated 23 March 2007 the ad interim Assistant Director-General in charge of Human, Financial and Physical Resources informed the complainant of the outcome of the classification review process and provided him with a copy of the specialist's desk audit report. He pointed out that the report was based on a review of the complainant's duties as Chief of the Agricultural Engineering Service (AGSE) in September 2001 and, following the restructuring of the Agricultural Support Systems Division (AGS) in August 2002, as Senior Officer of the Agricultural and Food Engineering Technologies Service (AGST). Both the 2001 and the 2004 post classification standards had been used, and his duties had also been compared with other job descriptions in the Division and in other parts of the Organization. He also pointed out that it was found

that there were no significant differences between the positions the complainant held as Chief of AGSE in 2001 and as Senior Officer of AGST in 2002 and that his claim regarding his “demotion” was not valid. Based on the report, the Assistant Director-General considered that the complainant’s claims were unfounded and that he had therefore suffered no injury entitling him to relief. He stated that the issues raised in the complainant’s first complaint had thus been addressed, as directed by the Tribunal in Judgment 2530.

On 30 April 2007 the complainant filed an appeal with the Appeals Committee, challenging the conclusions of the specialist’s report and objecting to the delays incurred in dealing with his case. In its report of 5 December 2007 the Committee recommended that the appeal be rejected as unfounded. By a letter of 28 March 2008 the complainant was informed that the Director-General had decided to accept the Committee’s recommendation. That is the impugned decision.

B. The complainant submits that in this case neither the Appeals Committee nor the Director-General made findings regarding the receivability of the complaint that led to Judgment 2530. He therefore asks the Tribunal to make its own finding that the claim regarding his “demotion” is receivable. He contends that his claims relating to the FAO’s failure to act on his request for a reclassification of his post are also receivable for the reasons he had set out in his first complaint.

Although he acknowledges that decisions regarding the classification of posts are subject to limited review by the Tribunal, the complainant argues that the Director-General’s review, based on the faulty report from the human resources specialist, has not fulfilled the Tribunal’s order in Judgment 2530. He asserts that, as a basis for his evaluation, the specialist considered the post description that he has been challenging since 2001 instead of a revised post description that had been submitted to the Human Resources Management Division in 2002. He argues in this respect that in a previous judgment the Tribunal considered a proposed post description as evidence of the duties carried out by a complainant, even if it carried no legal weight. Furthermore, the specialist failed to consider essential facts concerning

his duties in 2001, including the size of the budget that he was managing and the statements of three individuals who were AGS Service Chiefs in 2001. The specialist also did not consider the reduction of his work responsibilities that occurred after the change in his title.

In addition, the complainant submits that the Organization caused undue delay in its treatment of his case. He points out in particular that it took the FAO nine months to carry out the review in response to Judgment 2530; this, in his view, is mostly due to dilatoriness.

The complainant seeks the quashing of the impugned decision. He asks the Tribunal to find the claims of his first complaint receivable and to order the Organization to pay him a sum equivalent to the difference between the salary and allowances received at grade P-5 and the amounts he would have received at D-1 in respect of the period from 1 September 2001 to 28 February 2007, the date on which he reached the mandatory retirement age. He also seeks payment of the actuarial equivalent of the difference between the pension benefit that he is receiving on the basis of grade P-5 and that which he would have received at D-1. He claims 100,000 United States dollars as compensation for the damage to his reputation and standing, “including loss of income opportunities on retirement due to damage to [his] CV” and 25,000 dollars for the delays he suffered in the present proceedings and in those relating to his first complaint. He also claims costs.

C. In its reply the FAO contends that the complainant’s first complaint is time-barred and that it shows no cause of action because it did not take a challengeable decision, as it has already submitted in its previous pleadings.

Referring to the case law, it argues that its decision regarding the classification of his post is subject to only limited review by the Tribunal and that it was taken in accordance with the applicable rules and classification standards. It emphasises that the human resources specialist had the expertise to assess the complainant’s actual duties and responsibilities against the relevant post classification standards. It

points out that the complainant relies on a revised post description which he authored himself and which was never accepted by the FAO as an accurate reflection of his duties, as required by Manual paragraph 280.333. Therefore, the revised post description was not relevant to the classification review. The Organization further submits that the statements of the three AGS Service Chiefs do not support the complainant's claims, and that the size of the budget managed by the complainant in one biennium is irrelevant.

Lastly, it contends that the complainant himself contributed to the delays in this matter since he did not duly submit a request for reclassification of his post in September 2001; rather, he requested an upgrading of his post. It adds that this initial request for an upgrading of his post took place during an ongoing restructuring exercise, and he ought to have known that it was virtually impossible for the Organization to accommodate his request pending the outcome of that exercise. As for the delays in the appeal proceedings, they resulted from the expiration of the mandate of the Appeals Committee and the need to arrange for elections of new members.

D. In his rejoinder the complainant presses his pleas and quantifies his claim regarding his legal fees.

E. In its surrejoinder the FAO maintains its position in full.

CONSIDERATIONS

1. The complainant joined the FAO in July 1993, as Senior Officer, at grade P-5, in the AGSE. His job title changed to Chief of AGSE in September 1996 and then to Senior Officer following the creation of the AGST in August 2002. The complainant remained in that position until he retired in February 2007. In September 2001 the complainant requested an upgrade of his post from P-5 to D-1. In August 2003 he filed an appeal with the Appeals Committee which recommended in its report of 27 July 2004 that it be rejected as time-barred. The Director-General endorsed that recommendation on 22 December 2004. The complainant subsequently filed a complaint

before the Tribunal, contesting the Organization's "lack of action" following his request for a review of his post, as well as his "demotion" since his status had been downgraded from "Chief" to "Senior Officer".

2. In Judgment 2530 the Tribunal stated:

"9. It is well settled that an individual administrative decision that has been notified to a staff member can only be challenged within the time set by the relevant staff rules (see Judgments 1132 and 1393). If the decision has not been challenged within the time allowed, no subsequent complaint may be received by this Tribunal (see Judgment 955). Had the complainant been challenging the individual decision to change the designation of his post, his appeal would have been irreceivable as time-barred. However, as he made clear in his appeal to the Appeals Committee, he was not challenging an individual decision which had been notified to him but a course of conduct involving both 'lack of action' on his request to have his post regraded and a reduction in the level of his duties and responsibilities following the redesignation of his post.

10. By his appeal to the Director-General and subsequent appeal to the Appeals Committee the complainant was challenging an implied decision to reduce the level of his duties and responsibilities in the restructured AGS Division. He relied on the failure to act upon his request for regrading of his post and the actual decision to redesignate his post as evidence of that implied decision. Moreover, he was contending that that decision was notified to him only when he became aware of the extent of its consequences. That issue was never examined by the Appeals Committee. Its failure so to do constituted an error of law. And because the Director-General's decision was based on the Committee's recommendation, it involved the same error of law.

11. It follows that the Director-General's decision of 22 December 2004 must be set aside. However, it does not follow that the complainant is entitled to substantive relief as claimed by him. The Appeals Committee has neither considered whether he has, in fact, suffered a reduction in the level of his duties and responsibilities nor whether his claim in that regard is receivable. Those issues must be decided before any determination can be made as to whether the complainant has suffered any injury entitling him to relief by way of damages. Accordingly, the appropriate course is to remit his case to the Director-General for further consideration. The complainant should have his costs of the proceedings in this Tribunal."

3. Following Judgment 2530, the Organization commissioned an external human resources specialist to perform a desk audit. In the desk audit report, dated 20 February 2007, it was stated that, after a review and analysis of the complainant's duties and responsibilities as Chief of AGSE in 2001, then as Senior Officer of AGST from 2002 onwards, "an upgrade of the post to the D-1 level [was] not recommended". Not only did the specialist establish that no significant difference between the positions (before and after the August 2002 restructuring) had been found, but also that the complainant's claim that he had suffered a "*de facto* demotion" as a result of the additional layer of supervision introduced with the appointment of the new Chief of AGST in April 2003 was not valid.

4. By a letter dated 23 March 2007 the Organization informed the complainant of the outcome of the classification review process and of the subsequent decision to consider "[t]he issues raised in his first complaint to the Tribunal and which the Tribunal remitted to the Director-General for review [...] as having been addressed". The complainant filed an appeal with the Appeals Committee on 30 April 2007. In its report of 5 December 2007 the Committee found that "the desk audit served as an adequate basis for the Organization's review of the case and [...] that the [specialist] conducted the desk audit in a proper manner". Therefore, it considered that the appeal was unfounded and recommended that it be rejected together with the claims for redress sought by the complainant. By a letter dated 28 March 2008 the Director-General notified the complainant of his decision to accept the Committee's recommendation.

5. The complainant now impugns the decision of 28 March 2008. His claims are set out under B, above. In essence, he submits that the human resources specialist failed to consider the proper post description and essential facts concerning his duties in 2001 and that "[t]he Organization has been guilty of undue delay in dealing with [his] request for reclassification" and therefore "[t]he Director-General's review does not fulfil the order of the Tribunal in Judgment 2530".

6. The FAO objects to the receivability of the complaint and rejects the complainant's claims as unfounded. It submits in that latter respect that the complainant's post was correctly graded. It also argues that he contributed to the delays in this matter since he did not request a reclassification of his post in accordance with the applicable procedures, but rather a direct upgrading of his post in the context of a restructuring exercise of AGS at that time. Once he made a request to reclassify his post, he then withdrew that request and proceeded to file an appeal.

7. The Tribunal is of the opinion that the complaint is receivable. The Organization did not remit the case to the Appeals Committee for further consideration after the Director-General's review. Instead, it chose to implement a new review process resulting in a new decision (which is impugned in this second complaint). It did not just confirm a previous decision. As such, all deadlines stemming from the new decision have been respected and therefore there can be no question of receivability.

8. Turning to the merits, the firm case law has it that decisions regarding post classification lie "within the discretion of the organisation and may be set aside only on limited grounds. Such is the case, for example, if the competent bodies breached procedural rules, or if they acted on some wrong principle, overlooked some material fact or reached a clearly wrong conclusion [...]. In the absence of such grounds, the Tribunal will not remit the case to the organisation, nor will it substitute its own post evaluation for that of the competent bodies [...]" (see Judgment 2807, under 5).

9. The first substantive argument raised by the complainant regards the failure by the human resources specialist to consider the revised post description that was submitted to the Human Resources Management Division in 2002. In the Tribunal's view, as the revised post description had not been properly reviewed and accepted by the relevant division in accordance with the applicable rules (specifically Manual paragraph 280.333), the specialist was correct to disregard it

while conducting the desk audit, referring instead to the post description on file. Moreover, the Tribunal notes that the case cited by the complainant which states that the post description proposed by the complainant's supervisor "included more complicated tasks than those required of a secretary at grade G.5, and it was natural that the complainant referred to this description, even if it carried no legal weight" (see Judgment 1874, under 8) cannot be applied to the present case as the situations are different. It is clear in the audit report that the focus of the audit "was to establish whether or not there were any changes to the post that had not been adequately communicated to or recorded by [the Human Resources Management Division]" and that "the core issue [was] the difference in the duties and responsibilities expected of the post before and after the [...] restructuring of AGS".

10. The complainant asserts that the size of the budget which he was managing was an important element of his position which was not included in the post description that he has been challenging since 2001. However, the Tribunal finds that the specialist did take the budget into consideration but reasonably concluded that its increase for the year 2001 was not indicative of a change in the complainant's duties and responsibilities which would warrant a change in post classification as, inter alia, it was linked to a specific programme, temporary in nature, and for which the complainant was assigned an assistant to handle the additional budgetary requirements.

11. With regard to the human resources specialist's failure to consider the statements of the three AGS Service Chiefs, this contention is likewise unfounded. It was reasonable for the specialist to interview and rely on the statements of the then Service Chief of AGST and Director of AGS, considering that relevant facts regarding the duties, responsibilities and activities of staff members of international organisations are kept on file and therefore accessible to Office heads regardless of when they began working in the organisation. Moreover, while two of the three statements expressed praise for the complainant's capacities, they do not contain elements which support the complainant's claim for the reclassification of his

post. The third statement, dated 13 September 2003, concluded by saying that “the upgrading of [the complainant] to D-1 would not be fair or equitable when considered in relation to the current D-1’s or AGS senior officers”. At the complainant’s request, the same author further clarified his original statement in a memorandum dated 31 August 2005, saying inter alia that he confirmed that the complainant’s “duties prior to restructuring [in 2002] were comparable to those of the service chiefs and were greater than those of the AGS senior officers” but also stating that he found no substantive errors in his memorandum of 13 September 2003.

12. The claim against the demotion is also unfounded. The human resources specialist examined this issue and concluded that the complainant had not been demoted as a result of an additional layer of supervision. The Tribunal agrees that the specialist’s opinion was reasonably reached. A change in reporting line does not in itself result in any kind of demotion as shown by the complainant’s previous change in post from Senior Officer to Chief of AGSE in 1996 when the post title and reporting line changed but the post classification remained the same. Moreover, the Service Chief of AGST and the Director of AGS confirmed that the restructuring had no impact on the complainant’s duties.

13. The human resources specialist’s opinion, as detailed in the desk audit report, is reasonable and not vitiated by any procedural defects, factual mistakes, inconsistencies, failure to have regard to material facts or any other fatal flaw. Therefore, the Tribunal will not annul his assessment nor will it substitute its own assessment for that of the specialist.

14. The complainant claims compensation for the overall delay involved in this matter. There was no delay in the classification review process as it was not properly initiated in September 2001. The complainant’s initial request was not presented in accordance with Manual paragraph 280.333. It was only with his memorandum of 28 August 2002 that the proper proceedings for reclassification of his post started in accordance with that paragraph. On 28 July 2003,

after several meetings and discussions with the complainant, the Organization stated that a desk audit would be carried out. As noted above, the complainant filed an appeal with the Appeals Committee in August 2003. The time that lapsed between the filing of the first complaint with the Tribunal on 26 March 2005 and the delivery of Judgment 2530 on 12 July 2006 cannot be considered as an unreasonable delay on the part of the Organization.

15. As for the internal appeal process, the Tribunal recalls that the Organization has a duty to maintain a fully functional internal appeals body. Thus, the Committee's statement that "the alleged delays could not be ascribed to it as they were due to the need for arranging election of new members to the Appeals Committee and the time requirements for this" does not relieve the Organization from responsibility for the delay in the process. According to well-established case law, "[s]ince compliance with internal appeals procedures is a condition precedent to access to the Tribunal, an organisation has a positive obligation to see to it that such procedures move forward with reasonable speed" (see Judgment 2197, under 33). The first appeal lasted for approximately 16 months, even though it hinged on the simple question of receivability. The entire process to date has stretched over eight years. In the circumstances, the complainant is entitled to be compensated in the amount of 4,000 euros for this delay.

16. As the complainant succeeds in part, he is entitled to costs, set at 750 euros.

DECISION

For the above reasons,

1. The FAO shall pay the complainant 4,000 euros in damages for the delay in the internal appeal process.
2. It shall also pay him 750 euros in costs.
3. The complaint is otherwise dismissed.

In witness of this judgment, adopted on 30 October 2009, Ms Mary G. Gaudron, President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Ms Dolores M. Hansen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 3 February 2010.

Mary G. Gaudron
Giuseppe Barbagallo
Dolores M. Hansen
Catherine Comtet