

S. (No. 13)

v.

IAEA

(Application for interpretation and execution)

124th Session

Judgment No. 3820

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for interpretation and execution of Judgment 3490 filed by Ms H. S. on 18 December 2015 and corrected on 1 March 2016, the reply of the International Atomic Energy Agency (IAEA) of 22 June, the complainant's rejoinder of 10 October 2016 and the IAEA's surrejoinder of 16 January 2017;

Considering Article II, paragraph 5, of the Statute of the Tribunal;
Having examined the written submissions;

CONSIDERATIONS

1. On 30 June 2015 the Tribunal delivered in public Judgment 3490 ordering in point 2 of its decision that "[t]he IAEA shall, within three months of the delivery of this judgment, have the job classification of the complainant's former post reviewed by an independent classifier based on the 2 December 2008 job description".

2. On 18 December 2015 the complainant filed the present application for interpretation and execution, in which she asks the Tribunal to find that the IAEA has not executed Judgment 3490, given that: (i) it did not apply solely the International Civil Service Commission (ICSC) classification standards in force in December 2008; (ii) it did

not engage independent experts to conduct the review of the classification; and (iii) its classifiers conducted a flawed review, as they did not, among other things, perform a desk audit or interview the complainant. She also asks the Tribunal to accept the classification conducted by the independent expert whom she engaged, according to which the job description of her former post is at the G-6 level, and to order that she be paid the salary differential between a G-5 and G-6 grade, taking into account step increases, effective from March 2003, together with interest at 5 per cent per annum, as per Judgment 3490. She claims moral damages and costs.

3. At the outset, a consideration of the IAEA's receivability argument is necessary. The IAEA submits that as Judgment 3490 has been fully executed and the present application exceeds the scope of an application for interpretation and execution, it is irreceivable. This argument is rejected. As the Tribunal observed in Judgment 3723, under 2, "[a]n application for execution of a judgment is, by definition, premised on the contention that the judgment in question has not been properly executed. Determining whether or not that contention is correct plainly involves an examination of the merits of the application. Hence the receivability of an application for execution cannot be challenged by the defendant organisation on that basis."

4. Although in her complaint the complainant did not identify any ambiguity in the order, in the rejoinder it is submitted that the significant ambiguity in point 2 of the decision justifies the application for interpretation. The alleged ambiguities are whether:

- (a) the review is to be conducted by reference to the ICSC standards in effect in 2008 or those adopted in 2010;
- (b) the review is to be conducted by one classifier;
- (c) the review is to be conducted under the IAEA's regulations and rules or those of the United Nations Industrial Development Organization (UNIDO), or another organisation;
- (d) the independent classifier is obliged to interview the complainant and/or her supervisor; and

- (e) the independent classifier is to review only the job description or there are other documents which are relevant, for example, the Tribunal's judgment and other documents.

The application for interpretation is rejected. As the IAEA submits, the alleged ambiguities are not in truth ambiguities and thus do not raise questions of interpretation. Rather, they are directed at the execution of the judgment.

5. The complainant submits that the request to UNIDO to have its classification specialist conduct the review of the classification of the complainant's former post compromised the independence of the review. The complainant's reference to the IAEA's request to UNIDO as "calling upon its sister [Human Resources] unit in Vienna to conduct the review" appears to be a veiled allegation of some form of connection between the organisations and/or their respective human resources departments that is devoid of merit. The complainant has not submitted any evidence to displace the IAEA's statement that there was no contractual or financial relationship between the classifiers and the IAEA. Further, the IAEA did not provide any instruction or guidance to the classifiers. The complainant's assertion that the IAEA violated her due process rights and its duty to act in good faith by failing to give her an opportunity to object to the selection of the classifiers and to reach a mutual agreement on an expert is equally without merit. The order did not require the IAEA to consult with the complainant in the selection of an independent classifier. The complainant also maintains that the individuals who were selected to conduct the classification review did not have the requisite experience, training or qualification. However, as the complainant has not identified what aspects of the classifiers' experience, training or qualification are deficient, the submission requires no further consideration.

6. The complainant submits that as the Tribunal ordered that the review be conducted by one independent classifier, it is not clear why the IAEA appointed two individuals to act as classifiers. This argument is misconceived. In its 11 August 2015 letter to UNIDO, the IAEA requested "the services of a UNIDO classification specialist". There is no direct

information indicating how this came about other than the IAEA's statement that the use of two classifiers is consistent with best practices in relation to a classification review. This is not a situation where two classifiers prepared two separate reports. The two classifiers co-authored the single classification report. Further, as the complainant has not alleged any adverse consequences flowing from the co-authoring of the single report, it cannot be taken as a failure to execute the judgment as ordered.

7. The complainant claims that the independent classifiers applied the wrong ICSC standards in their review. That is, they applied the new Global Job Evaluation Standard for General Service and related staff categories promulgated by the ICSC in March 2010 and implemented by UNIDO in January 2011. The complainant adds that, although unstated, it is implicit in the Tribunal's order that the 2008 job classification standards should have been applied. According to the classification report, the classifiers used two standards: the ICSC Classification Standards for the General Service Category in Vienna, as approved by the ICSC in July 1986, and the new Global Job Evaluation Standard for General Service and related staff categories described above. The report also states that the "observations and factors taken into consideration while using the old classification standard have been included in the point rating sheet". Thus, it is clear that the classifiers used the standard applicable in 2008. The fact that they also used the new Global Job Evaluation Standard is of no moment. In relation to this latter standard, the report notes that the ICSC had undertaken a process of classifying job descriptions in the United Nations agencies using both the old and new methodologies and ascertained that they produced the same results.

8. Lastly, the complainant maintains that the execution of the order was seriously flawed because the classifiers did not interview her, as required by the ICSC standards. In support of this position she relies on a report prepared by the expert she retained to review the report of the UNIDO classifiers and to provide her own opinion regarding the classification of her former post. In the complaint, the complainant states that her "expert noted that the ICSC standards require an interview with [her], 'whereby the classifier actually sits with the incumbent of the

post, verifies his or her work products and responsibilities and follows up with a discussion with the supervisor to confirm his or her statement”. The complainant’s recital of the statement made in her expert’s report is not accurate. The complainant only quoted the last portion of the sentence in the report. The quoted sentence in the report reads: “[i]n my opinion, and according to ICSC standards, there should have been a proper desk audit conducted by the IAEA, whereby the classifier [...]” The remaining part of the sentence reads as set out above. In addition to the mischaracterizing of the statement in the report, the complainant’s contention that the ICSC standards required that the classifiers conduct an interview with her conflates two distinct and separate processes, the desk audit and the classification review. Although an interview with the incumbent of a post is required in a desk audit, it is not a requirement of a classification review.

9. As the application for interpretation and execution is without merit, it will be dismissed. No costs will be awarded.

DECISION

For the above reasons,
The application is dismissed.

In witness of this judgment, adopted on 9 May 2017, Mr Giuseppe Barbagallo, Vice-President of the Tribunal, Ms Dolores M. Hansen, Judge, and Mr Michael F. Moore, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 28 June 2017.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

MICHAEL F. MOORE

DRAŽEN PETROVIĆ