

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

*Registry's translation,  
the French text alone  
being authoritative.*

**K.**

**v.**

**UNESCO**

**134th Session**

**Judgment No. 4502**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms M. K. against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 18 December 2018 and corrected on 22 January 2019, UNESCO's reply of 6 May, the complainant's rejoinder of 26 July and UNESCO's surrejoinder of 4 November 2019;

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

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

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

The complainant challenges the decision not to reclassify her post.

The complainant joined UNESCO in 1995. In August 2000, after the new post classification standard came into force introducing a seven-grade scale, she was appointed "clerk" at grade G-3 in the Bureau of Public Information. Her job description was updated in 2002 to reflect amendments to the classification of General Service posts. The complainant and her supervisor signed the updated job description in November 2002.

In January 2003 UNESCO published "The revised classification standard for posts in the General Service category", the basic working tool of the Job Evaluation Committee which was responsible for determining

the grade of posts by evaluating the updated job descriptions of staff members in the category concerned before making a recommendation to the Director-General on how to classify each post. On 16 December 2003 the Director of Human Resources Management informed the complainant that the Job Evaluation Committee had submitted its recommendations to the Director-General, who had decided that her post would be reclassified at grade G-4 with effect from 1 January 2003. On 23 February 2004 the complainant challenged that decision before the Job Evaluation Recourse Committee, which was responsible for reviewing internal complaints filed against the reclassification decisions taken on the basis of the revised classification standard. The matter was reviewed, then on 3 November 2004 the complainant was informed of the Director-General's decision to reclassify her post from G-4 to G-5 with effect from 1 January 2003 as recommended by that committee.

On 2 December 2008 the complainant was transferred at the same grade within UNESCO's new Publications Unit. An updated job description was drawn up by her supervisors in June 2009 to take account of her new duties and responsibilities. On 21 September 2009 the Bureau of Human Resources Management's Classification Officer decided to classify the post at grade G-5 and to change the official title from "clerk" to "web editor/documentalist". On 4 August 2010, as part of a restructuring exercise, the Director-General decided to incorporate the Bureau of Public Information in the Sector for External Relations and Cooperation in order to create the Sector for External Relations and Public Information.

On 6 November 2012 the complainant – who considered that the 2009 job description did not take account of the resultant increase in her duties and responsibilities – submitted a request to the Director-General for her post to be reclassified pursuant to Staff Rule 102.2. She explained the delay by reference to structural and organisational changes in her section, the merger with the Sector for External Relations and Public Information and the worry caused by the serious situation in Syria, her home country. As she did not receive a reply, she resubmitted her request in December, then on 21 January 2013 she lodged a notice of appeal with the Appeals Board against the implicit rejection of her request. In

its opinion of 17 July 2015, the Appeals Board recommended that the Director-General arrange for an audit of the complainant's post to be conducted with a view to a possible reclassification, which she agreed to do in a decision of 27 August 2015.

An updated job description was signed and approved by the complainant's immediate supervisor in November 2015. The duties and responsibilities listed were the same as those identified in the 2009 post description. Shortly afterwards, an audit was carried out by an external expert, who met the staff members concerned and submitted an initial report on 21 December 2015. The complainant provided her comments and signed the report on 20 January 2016. The external expert finalised his report on 17 February concluding that the grade of G-5 should be maintained. On 14 March the Bureau of Human Resources Management's Classification Officer expressed her agreement with and approved the classification resulting from the desk audit. On 16 March the Director of Human Resources Management notified the complainant that her post had been correctly classified at grade G-5 in accordance with the master standards of job classification developed by the International Civil Service Commission.

In a letter of 7 April 2016, the complainant informed that director that she was formally challenging that decision and requested "a review of all documents [...] demonstrating [her] responsibility and dedication, comparing the duties and responsibilities identified in the 2002 [and] 2009 job descriptions". As she did not receive a reply from the Administration, on 18 May the complainant filed a notice of appeal with the Appeals Board against the implied rejection of her request for reclassification and at the same time requested an "endorsed copy" of her 2015 job description. On 30 May the Director of Human Resources Management replied that the external expert had classified her post appropriately.

On 26 July 2016 the complainant lodged her detailed appeal with the Appeals Board against the implied rejection of her letter of 7 April and the express rejection of her request for reclassification that she had received on 30 May. She sought the setting aside of the decisions maintaining her post at grade G-5, the conduct of a fresh audit on the

basis of the 2009 job description, the payment of salary arrears and other allowances that she would have received if her post had been reclassified at a higher grade, including pension contributions, and an award of moral and material damages. The complainant retired on 30 November 2017.

The Appeals Board sent its opinion to the complainant on 16 July 2018. It noted that the audit report had not provided an adequate response to all the questions that had led to the recommendation that it be drawn up. However, as the Appeals Board could not request a fresh audit of the post at issue with a view to its possible reclassification, and given that the complainant had retired, it recommended that the Director-General send the complainant a retrospective letter of appreciation and pay her three months' salary in recognition of the high standard of her performance. Two members of the Appeals Board expressed an alternative opinion and recommended paying five months' salary instead of three. In a dissenting opinion, the member of the Board who represented the Administration considered that there was no reason to award the complainant compensation. In a letter of 4 October 2018 the complainant was informed of the Director-General's decision to dismiss her appeal and endorse the dissenting opinion. That is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision and order the reclassification of her post at grade P-2 with retroactive effect from 2 December 2008. She also seeks payment of the additional salary and benefits accompanying the retroactive reclassification, including the actuarial equivalent of her loss of retirement pension entitlements, and redress for all the injury she claims to have suffered.

UNESCO asks the Tribunal to dismiss the complaint as unfounded.

#### CONSIDERATIONS

1. The complainant requests the Tribunal to declare unlawful, firstly, the impugned decision taken by UNESCO's Director-General on 4 October 2018, which maintains her post ERI-062 at grade G-5 and, secondly, the prior decision taken by the Director of Human Resources Management on 30 May 2016, confirmed by the impugned decision, on

the grounds that those decisions are tainted by serious factual and procedural errors, an error of judgement, a failure to provide reasons, incorrect conclusions, discriminatory treatment and bias. The complainant seeks the setting aside of the impugned decision in full and, accordingly, an order that the Director-General reclassify her post ERI-062 at grade P-2 with retroactive effect from 2 December 2008, payment of the additional salary and benefits accompanying the reclassification, including the actuarial equivalent of her loss of retirement pension rights, and redress for all the injury she submits she has suffered.

2. The complaint is based on Staff Rule 102.2, which provides:

“Any staff member who considers that the nature of the duties or the level of responsibilities required of him or her are not compatible with the classification standards or criteria applicable to the grade of his or her post may, at any time, submit to the Director-General a request for the reclassification of the post, provided that there has been a substantial modification in the structure and responsibilities of the unit to which the post belongs, and consequently in the responsibilities of the claimant.”

The procedure applicable within the Organization for classifying posts is set out in Item 3.1 of the Human Resources Manual, entitled “Post classification system”. In particular, paragraph 21 thereof provides:

“A desk audit is a technical review initiated by [the Bureau of Human Resources Management], in order to confirm the accuracy of an approved Job description, by clarifying the functions and verifying that they are properly described. A desk audit is conducted with the supervisor and with the incumbent of the post and other interlocutors, as required.”

3. The decision of 30 May 2016, confirmed by the impugned decision of 4 October 2018, sets out the circumstances leading to the complaint before the Tribunal. In this regard, the Tribunal notes, firstly, that the complainant submitted a request for the reclassification of her post to the Director-General on 6 November 2012. As she did not receive a reply, on 21 January 2013 she lodged her first notice of appeal against the implicit rejection of her request with the Appeals Board. In its first opinion dated 17 July 2015, the Appeals Board made the following recommendation to the Director-General:

“41. On comparing the two Job descriptions, that of 2002 and that of 2009, the Appeals Board is of the opinion that some details were probably overlooked. In addition to the inherited duties, the Board observes that there are certain substantial changes in the duties and responsibilities of the post. The [complainant] works independently and in an autonomous manner. The question is, was the evaluation under review, the period prior to or after 2009? As for the title, not only does the [complainant’s] title differ within the various official documents, it also seems to be incompatible with the duties and responsibilities attached to the grade [of] ‘Clerk’ (G-5) in the 2002 Job description, with duties nominally to ‘assist’, ‘participate’ and Web Editor/Documentalist (G-5) in that of 2009, with duties such as ‘assure’, ‘edit’, ‘manage’.

42. However, it is not for the Appeals Board to evaluate such changes. For that reason, it will be convenient to carry out a new and profound evaluation, in order to establish whether the nature of the duties or the level of responsibilities of the post have substantially changed from the last reclassification and if so, appropriately upgrade the [complainant’s] post.

43. For the above reasons, the Appeals Board invites the Director-General to request the relevant services to carry out an in-depth evaluation of the [complainant’s] post, with view to its possible retroactive reclassification, should higher duties and responsibilities be confirmed.”

On 27 August 2015 the Director-General accepted the Appeals Board’s recommendation. After quoting aforementioned paragraph 43 of the Appeals Board’s opinion, she informed the complainant of her decision as follows:

“In this context, a desk audit of post ERI-062 will be conducted. For this and as a first step, [the Bureau of Human Resources Management] has requested your supervisors to prepare and approve an updated job description reflecting your responsibilities.”

That decision, taken by the Director-General on 27 August 2015, has not been challenged by the complainant.

4. The Tribunal observes, secondly, that an audit was subsequently performed by an external expert, who on 21 December 2015 submitted a seemingly somewhat brief initial audit report. Once he had received the complainant’s comments on 20 January 2016, the external expert, in his capacity as human resources consultant, submitted to the Organization his final audit report dated 17 February 2016, consisting of his Post Rating Summary and Classification Review Report. In those documents, the

external expert recommended that the complainant's post be maintained at grade G-5. In particular, he stated as follows on pages 2 and 3 of his Classification Review Report:

“Evaluation

[...]

The key issue is the nature of the changes and their overall impact on the role of the position. In this case, and as confirmed by the supervisor, the essential role of the position has remained essentially unchanged since 2002, but over the years the incumbent has been trained to undertake her tasks using Internet based and desktop publishing applications, i.e. Dreamweaver as one example. Much of the work is still focused, however, on data entry and checking of information prior to publication on websites with many of these functions previously being undertaken manually. [...]

Conclusion

Separate and independent evaluations by [...] classifiers [in the Bureau of Human Resources Management] in 2009 and now in 2016 have concluded that this position is appropriately classified at the G-5 grade.

The Division of Public Information's [...] view is also that the position is appropriately classified at the G-5 level.

Recommendation

That the grade of the position be confirmed at the G-5 grade level.”

On 14 March 2016 the Bureau of Human Resources Management's Classification Officer expressed her agreement with that recommendation and endorsed the classification. On 16 March the complainant was informed of the Director-General's decision that her post must be deemed to have been appropriately classified at grade G-5 for the following reasons:

- “2. The desk audit was conducted by an external [...] expert based on the background documentation provided, the environment of the post and its level of complexity and responsibility.
3. According to the resulting evaluation, the duties and responsibilities attributed to post ERI 062 are appropriately classified at the G-5 level in conformity with the Global Job Evaluation Standard for posts in the General Service and related categories promulgated by the International Civil Service Commission.”

5. Lastly, the Tribunal notes that the complainant formally challenged that decision of 16 March 2016 in her letter of 7 April 2016, which led to the aforementioned decision of 30 May 2016, which the complainant submits is unlawful. In the explanations provided to the complainant on the Director-General's behalf on 30 May 2016, the Tribunal observes that the following is stated concerning the audit outcome:

“5. As a result of the desk audit evaluation, the classification expert concluded that the duties and responsibilities attributed to post ERI 062 were appropriately classified at the G5 level, in conformity with the Global Evaluation Standard for posts in the General Service category set by the International Civil Service Commission. [...]

6. As reflected above, the desk audit evaluation was based not only on the updated [job description] of post ERI 062, but also on the information, documentation and comments that you had provided during the desk audit and that you have reiterated in your memo of 7 April 2016. The desk audit did not compare the 2015 [job description] with the 2009 [job description]. In line with the [Human Resources] Manual provisions, the desk audit clarified the duties performed by you as incumbent of post ERI 062, and carried out an evaluation of the level of [...] this post, in accordance with the applicable classification standard for posts in the [General Service] category.”

The complainant's challenge to that decision led to the Appeals Board issuing its second opinion on 16 July 2018, of which she was thus notified after she had retired on 30 November 2017. In that second opinion, the Board referred to the audit conducted by the external expert without mentioning specifically his Post Rating Summary or Classification Review Report, both dated 17 February 2016. On the substance of the complainant's appeal, the Board pointed out that, in the decision of 27 August 2015, the Director-General had followed the recommendation it had previously made in its first opinion of 17 July 2015. On that point, the Tribunal observes that the Appeals Board stated as follows in paragraphs 48 and 49 of its second opinion:

“48. Thus, pursuant to the Director-General's decision adopting the Board's recommendations, the evaluator was tasked with reviewing and examining the [complainant's] functions before and after 2009 and comparing her job description during the two periods in order to determine whether they had changed. By contrast, the Board also notes that, in his audit report of



21 December 2015, the external classifier only included the discussions which he had respectively with the [complainant] [...] (on 26 November 2015) and her immediate supervisor [...], Chief of the Publications Unit, ERI/DPI (on 26 November 2015), as well as general observations (where relevant).

49. As a result, the audit report did not provide a response to all the questions that had led to the recommendation for it to be drawn up.”

While regretting the “ambiguity” of the audit findings, the Appeals Board considered that, given the complainant’s retirement, “it [could] not seek a new evaluation with a view to a possible reclassification, which is a technical exercise outside the scope of its competence”. It nevertheless found that the complainant, who had fully discharged with her duties to the Organization for more than 17 years, deserved recognition from the Administration. This explains the recommendations made by two members of the Appeals Board, that she should be sent a retrospective letter of appreciation and paid three months’ salary as a sign of recognition, and by two other members, that she should be awarded five months’ salary instead of three. The dissenting opinion delivered by the fifth member of the Board, which the impugned decision of 4 October 2018 endorsed, considered that there had not been any administrative failings in the procedure followed, that the Board was not competent to challenge an official evaluation and determine the classification of the post, and that there was no reason to award the complainant compensation. In the impugned decision, the Organization provided the following explanations to the complainant in justification for the Director-General’s decision to maintain her post at grade G-5:

“The Director-General [...] cannot accept the recommendations made by the Appeals Board in paragraphs 52[i] and 53[i] of its [opinion] [concerning the need to review the descriptions of duties relating to web management] because these are general recommendations that do not relate to the instant case.

Furthermore, the decision to maintain the post at grade G-5 after the post audit conducted by the external expert and endorsed by the [C]lassification [O]fficer [of the Bureau of Human Resources Management] complies with the Organization’s rules. The Appeals Board has not shown that there were any formal flaws in the procedure for auditing the post concerned. As regards the Appeals Board’s findings in respect of the methodology used by the external classifier, it must be borne in mind that the classification of a

post may only be evaluated by experts with the training and experience that enable them to evaluate and classify posts. Accordingly, the Director-General considers that the Appeals Board should not substitute its findings for those of an expert.

Similarly, the Director-General cannot accept the recommendations made by the Appeals Board in paragraphs 52[ii] and 53[ii] of its [opinion] [concerning a retrospective letter of appreciation and an award of three or five months' salary]. The merits of a staff member's performance are completely unrelated to the issue of the classification of the post that she or he holds. In the circumstances, it is unnecessary to send a letter of appreciation or award salary as a sign of recognition.

In the light of the foregoing, the Director-General has decided to accept the recommendation put [in the opinion dissenting from the Appeals Board's opinion].”

6. The Tribunal outlined the fundamental principles that apply in the context of post classification in Judgment 4221, consideration 11, which refers to Judgments 4000, considerations 7, 8 and 9, 3589, consideration 4, and 3764, consideration 6:

“It is well established that the grounds for reviewing the classification of a post are limited and ordinarily a classification decision would only be set aside if it was taken without authority, had been made in breach of the rules of form or procedure, was based on an error of fact or law, was made having overlooked an essential fact, was tainted with abuse of authority or if a truly mistaken conclusion had been drawn from the facts (see, for example, Judgments 1647, consideration 7, and 1067, consideration 2). This is because the classification of posts involves the exercise of value judgements as to the nature and extent of the duties and responsibilities of the posts and it is not the Tribunal's role to undertake this process of evaluation (see, for example, Judgment 3294, consideration 8). The grading of posts is a matter within the discretion of the executive head of the organisation (or the person acting on her or his behalf) (see, for example, Judgment 3082, consideration 20).

[...]

‘It is for the competent body and, ultimately, the Director-General to determine each staff member's grade. Several criteria are used in this exercise. Thus, when a staff member's duties attach to various grades, only the main ones are taken into account. Moreover, the classification body does not rely solely on the text of the Staff Regulations and Staff Rules and the job description but also considers the abilities and degree of responsibility required by each. In all cases grading a post requires detailed knowledge of the conditions in which the incumbent works.’

[...] The classification of a post involves an evaluation of the nature and extent of the duties and responsibilities of the post based upon the job description. It is not concerned with the merits of the performance of the incumbent (see, for example, Judgment 591, under 2).

[...]”

In aforementioned Judgment 4221, consideration 12, the Tribunal added the following in respect of the provisions of UNESCO Staff Rules 102.1 and 102.2, which are central to the present case:

“That the classification of a post is to be based essentially on the nature of the duties and the level of the responsibilities that attach thereto is emphasized, for example, in Staff Rules 102.1 and 102.2. The basic statements of principles in Item 3.1, entitled ‘Post classification system’, of the Human Resources Manual are also noteworthy. Paragraph 8 states as follows:

‘The basic principles governing post classification in UNESCO are the following:

- a) The principle of “equal pay for work of equal value” (or achieving fairness in the equitable remuneration of staff).
- b) UNESCO’s classification system is a rank-in-post system. Posts are classified on the basis of the requirements of the job and not on the basis of [f] the incumbent’s profile or performance.
- c) Posts are classified in accordance with the applicable classification standards established by the [International Civil Service Commission].”

7. In this case, an examination of the submissions and evidence filed by the parties shows that, contrary to what the complainant argues, it has not been established that the impugned decision and the prior decision of 30 May 2016 confirmed by the impugned decision are unlawful.

Firstly, the Tribunal finds that the Director-General’s classification decision is not affected by any formal or procedural flaws and is not based on a factual or legal error. The Organization followed the post classification procedure set out in the applicable provisions and implemented the recommendation made in the Appeals Board’s first opinion of 17 July 2015, as the Director-General agreed to do in her decision of 27 August 2015. The audit of the complainant’s post by an external expert was conducted as specified by the Appeals Board.

Secondly, the Tribunal cannot conclude, in the light of the submissions and evidence, that essential facts were not taken into account. On this point, the Tribunal finds that the evidence in the file does not support the statement contained in the Appeals Board's opinion of 14 June 2018, sent to the complainant on 16 July, that the audit report did not answer all the questions that had led to the recommendation that it be drawn up. As the Tribunal has already observed in consideration 4, above, the documents entitled "Post Rating Summary" and "Classification Review Report", submitted by the external expert on 17 February 2016, show that the converse is true. Moreover, while the Appeals Board's second opinion raises what it describes as "persistent doubts" as to the complainant's increased duties, without providing any further explanation in that regard, the impugned decision refers to the evaluation of the classification of the post carried out by the external expert and endorsed by the Bureau of Human Resources Management's Classification Officer, the content of which was shared with the complainant in a timely manner, in accordance with the requirements of the case law (see Judgment 4437, consideration 15).

Consequently, the Tribunal will not substitute its own evaluation of the complainant's post for the audit conducted by an expert who had the necessary training and experience to do so (see, for example, Judgments 929, consideration 5, and 2706, consideration 14). In her submissions, the complainant mainly repeats the arguments that she put forward at each step in the procedure regarding the increase and changes in the duties and responsibilities involved in her post and ultimately criticises the Organization for not accepting her version of the facts. However, the mistakes that she identifies, which tend to support the re-evaluation of the classification of her post, are insufficient to warrant a finding that the impugned decision was unlawful. As has already been stated in consideration 6, above, it is settled case law that the Tribunal's role is not to substitute its assessment for that of the Organization concerning the classification of a post.

The position would only be different if the file showed that the Organization had committed an obvious error of judgement when assessing the duties attached to the complainant's post, which, in view

of the content of the various reports on that question, cannot be considered to have been established. The position would likewise be different if the file showed that an essential fact was overlooked when the decision was taken. However, while the complainant submits that the Director-General failed to take into account the altered structure and responsibilities of the unit to which her post belonged, the file shows that this circumstance was in fact taken into consideration.

8. The complainant also contends that there was a breach of the principle of equal pay for equal work in that other staff members performing similar duties to hers held posts at higher grades. On that point, the Tribunal observes that it is not ordinarily its role to compare a post whose classification is contested to the classification of similar posts in the same organisation in order to ascertain whether the classification decision is lawful (see, for example, Judgments 4000, consideration 9, and aforementioned 4221, consideration 15). That is especially the case here since, on the basis of the Organization's submissions in its reply, it can reasonably be considered that the complainant has not established that the duties attached to her post were at the same level as those attached to the other posts that she cites as a comparison.

Accordingly, this plea is also unfounded.

9. The complainant further submits that the Organization failed in its duty to provide information and to state the reasons for the impugned decision. However, the numerous excerpts quoted above from the documents in the file, in particular the excerpts from the impugned decision, the previous decision that it confirmed, the two opinions of the Appeals Board and the audit report, establish that the complainant was informed of the reasons for the Organization's decision regarding her post classification.

10. Lastly, the complainant contends that the Organization was biased against her. However, under the Tribunal's settled case law, the burden of proving bias rests with the complainant (see Judgments 3380, consideration 9, and 3914, consideration 7). She has clearly not brought such proof in the present case.

11. It is apparent from the Tribunal's findings in considerations 7 to 10, above, that the post classification decision at issue is lawful.

12. Accordingly, the complainant's request that the reclassification of her post at grade P-2 "be ordered with retrospective effect from 2 December 2008" is unfounded. Furthermore, this request is irreceivable in any event, as it is not within the Tribunal's competence to make orders of this kind against organisations (see, for example, Judgment 3834, consideration 6).

13. As regards the recommendation made by four of the five members of the Appeals Board that the complainant should be awarded three or five months' salary in recognition for her commitment and dedication over the years, the Tribunal considers that this recommendation disregards the applicable case law in the area. As the excerpts from Judgment 4221, consideration 11, quoted above show, the classification of a post is not concerned with the merits of the performance of the incumbent (see also Judgment 4000, consideration 9). In UNESCO's classification system, posts are classified on the basis of the requirements of the job and not on the basis of the incumbent's profile or performance. In the context of a request for reclassification such as the one that formed the subject of the complainant's appeal, the recognition that she may deserve on account of her commitment and dedication, which the submissions and evidence do not call into question in this case, is irrelevant. In this regard, the impugned decision to abide by the Organization's previous decision to maintain the complainant's post at grade G-5 and to not accept the Appeals Board's recommendations in respect of sending her a retrospective letter of appreciation or paying her an award of salary as a sign of recognition is not tainted by an irregularity that could warrant intervention by the Tribunal.

14. Accordingly, since the impugned decision of 4 October 2018 and the decision of 30 May 2016 that it upheld are lawful, the complainant's claims for compensation must also be dismissed as unfounded.

15. It follows from the foregoing that the complaint must be dismissed in its entirety.

DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 29 April 2022, Mr Patrick Frydman, Vice-President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 6 July 2022 by video recording posted on the Tribunal's Internet page.

*(Signed)*

PATRICK FRYDMAN    JACQUES JAUMOTTE    CLÉMENT GASCON

DRAŽEN PETROVIĆ