

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

B.
v.
UNESCO

136th Session

Judgment No. 4684

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms E. B. against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 2 November 2019 and corrected on 24 December, UNESCO's reply of 21 April 2020, the complainant's rejoinder of 9 June 2020, UNESCO's surrejoinder of 14 September 2020, the complainant's additional submissions of 18 December 2020 and UNESCO's final comments thereon of 22 March 2021;

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 classification exercise for her post and seeks compensation in this regard.

On 1 September 2008, the complainant joined UNESCO under a fixed-term contract at grade P-4. In 2012, following the departure of her grade P-5 supervisor, she took over the latter's responsibilities. On 2 August 2016, following an internal appeals procedure initiated by the complainant in 2013, in which she requested an updated job description and a special post allowance, the Director-General decided to award her that allowance and to have a desk audit carried out. The desk audit report

evaluating the complainant's post for the purposes of classification was signed by the specialist on 12 December 2016 and then sent to the complainant. On 4 January 2017, she added her comments and then signed the audit. By letter of 2 February 2017, she was informed that the evaluation had concluded that her post was appropriately classified at grade P-4.

On 28 February 2017, the complainant lodged a protest challenging the decision not to reclassify her post. Her protest was rejected on 19 April 2017, following which she lodged an appeal with the Appeals Board on 30 October 2017.

By letter of 14 May 2019 the Appeals Board sent the complainant the report dated 9 May 2019 it had submitted to the Director-General, which contained an "alternative opinion" also dated 9 May. On 24 May, the Appeals Board again forwarded its report, in which the alternative opinion, this time dated 22 May 2019, differed from the previous version dated 9 May. In that report, the Board recommended that the complainant's situation should be reviewed, taking due account of the level of responsibilities she undertook, in an effort to preserve good working relations.

By letter of 7 August 2019, the complainant was informed that the Director-General, while satisfied that the procedure followed by the Administration complied fully with the desk audit provisions of the Human Resources Manual, had nevertheless decided, on an exceptional basis, that the complainant's job description would be updated to take account of the duties she carried out. The Director-General recognised that using the complainant's job description from 2013 when carrying out the disputed post classification could have caused confusion. A new job description was therefore to be drawn up by the complainant's supervisors. That is the impugned decision.

The complainant asks the Tribunal to award her compensation of 5,000 euros for moral injury as a result of the procedural flaws which, she alleges, tainted the procedure for classifying her post. She also seeks moral damages in the amount of 10,000 euros for the Organization's failure to fulfil its duty of care and diligence in handling her requests for her job description to be updated and her post to be classified. In her

rejoinder, she denounces the excessive slowness of the internal appeals procedure, and in her additional submissions she specifies that the 10,000 euros in moral damages referred to above is intended to cover the injury which she alleges she suffered as a result of the excessive slowness of the various appeals procedures. She seeks 9,000 euros in costs.

UNESCO asks the Tribunal to dismiss the complaint in its entirety. In its surrejoinder, the Organization requests that the complainant's claim for compensation for the excessive slowness of the internal appeals procedure be declared irreceivable since it did not appear in the initial complaint.

CONSIDERATIONS

1. The complainant impugns the decision of 7 August 2019 of the Director-General of UNESCO which, in the light of the recommendations made by the Appeals Board, stated that there had been no irregularity in the Director-General's previous decision of 19 April 2017. By that decision of 19 April 2017, the Director-General had dismissed the complainant's protest of 28 February 2017 and confirmed the Organization's decision of 2 February 2017 to classify her post at grade P-4 after a desk audit had been duly carried out.

By the impugned decision, the complainant was informed that "[t]he procedure followed by the Administration complie[d] fully with the desk audit provisions of the Human Resources Manual" and that her "job description from 2013 [had] been updated, that is, confirmed by the HRM* classification officer who [had] signed that job description on 2 February 2017". Nevertheless, in that decision of 7 August 2019, the complainant was informed that the Director-General had decided, on an exceptional basis and in the interests of transparency, to ask for her job description to be updated to take account of the duties she carried out and, as a consequence, to ask for a new job description to be drawn up, which was finally done on 2 June 2020.

* Bureau of Human Resources Management.

The Tribunal notes that the decision of 2 February 2017, which gave rise to the complainant's protest, which in turn was the subject of the Appeals Board's report and the impugned decision, followed an earlier report by the Appeals Board of 11 May 2016. As a result of that earlier report, and in particular of the recommendation contained therein that a job description be drawn up correctly reflecting the duties and responsibilities of the complainant's post, the Director-General had decided to have a desk audit of the post in question carried out to have "[her] responsibilities correctly and objectively [set out] by an external classification specialist".

2. In her complaint, the complainant states that she is impugning the decision of 7 August 2019, but does not ask for it to be set aside. She seeks, first, disclosure of the full desk audit report and all of the documents which served as the basis for the decision how to classify her post and, secondly, payment of moral damages in the amount of 5,000 euros "for procedural flaws" and 10,000 euros "for moral injury for breach of the duty of care and diligence in relation to the request to have the job description updated and the post reclassified".

The procedural flaws alleged by the complainant relate to certain documents not being supplied and the classification exercise not being carried out by an external classification specialist, while the claims for damages contained in her complaint relate not only to these procedural flaws but also to the excessive delay in updating her job description.

In her rejoinder, the complainant raises the existence of another defect, this time in connection with the procedure before the Appeals Board. She states that the Board delivered an invalid report given that, in this case, there is one report from the Board dated 9 May 2019 and a second dated 22 May 2019 and that paragraph 47 thereof, which contains the alternative opinion expressed by three of the five members, differs between the two versions. In her rejoinder, in order to further justify her damages claim for 10,000 euros, the complainant also criticises the Organization for the excessive slowness of the internal appeals procedure which meant that it took UNESCO 22 months to deliver the impugned decision of 7 August 2019 in connection with her

appeal which was duly lodged when she filed the detailed appeal on 30 October 2017.

3. With regard to the complainant's request for disclosure of the full desk audit report for her post, she herself acknowledges in her submissions that the Organization has now acceded to her requests in this respect. Therefore, since the alleged flaw has been remedied through the provision of the relevant documents to the complainant in the proceedings before the Tribunal, the complaint has become moot on this point.

4. As for the procedural flaw which the complainant alleges on the part of UNESCO as a result of the classification exercise not being carried out by an external classification specialist, the Tribunal notes, as did the Appeals Board in its report, that the procedure followed for the desk audit of the complainant's post to which the Director-General had agreed was carried out in compliance with the procedure set out in the Organization's Human Resources Manual. As UNESCO explains in its submissions, in a desk audit, the classification exercise is a two-stage process: first, the audit is carried out, and then the job evaluation. That is apparent from reading the post classification procedure applicable at the material time, governed as it then was by paragraph 5 of point 3.1 of the Manual, the job evaluation procedure described in paragraphs 17 and 18 of the same point 3.1 and the definition of the desk audit in paragraphs 21 to 23 of that same point. These provisions were, at that time, worded as follows:

"C. Definitions

5. **Post Classification** is the action of determining the grade of a post based on the complexity of duties and responsibilities assigned to the post by the responsible manager. The process consists in analyzing the elements of a job, including its placement in the organizational structure, and measuring these elements against the applicable classification standards promulgated by the ICSC.

[...]

Authority to Classify posts

17. The Classification Officer in HRM undertakes the classification analysis and the evaluation of the job description on the basis of the applicable classification standards established by the International

Civil Service Commission (see Appendixes 3a and 3b of the Human Resource Manual).

18. The Classification Officer approves the classification of P/NO/G posts, except for the classification level of posts at P-5/NOE level and above which is approved by Director HRM, based on the evaluation of the job description by the Classification Officer.

[...]

Desk Audits: Definition

21. A desk audit is a technical review initiated by HRM, 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.
22. When the desk audit is completed, a desk audit report containing clarifications of the duties performed is signed by the incumbent of the post and the supervisor(s), confirming that the functions are adequately described. A copy of the full report is provided to the incumbent and the supervisor(s).
23. Upon completion of the desk audit, a job evaluation is conducted, as per Paragraph 17 above, the classification level is established and the post classified accordingly.”

According to settled case law, the grounds on which the Tribunal will intervene in a decision concerning the classification of a post are limited. In Judgment 4437, consideration 2, the Tribunal stated the following with regard to its limited power of review in this area:

“The Tribunal recalls that the evaluation and classification of a post is based on technical data. Thus, under its case law, the grounds on which the classification of a post may be reviewed are limited and ordinarily a classification decision would only be set aside if it was taken without authority, was made in breach of the rules of form or procedure, was based on an error of fact or law, overlooked an essential fact, was tainted with abuse of authority or if a truly mistaken conclusion was drawn from the facts. 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. 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 4221, consideration 11, and the case law cited therein).” (See also Judgment 4502, consideration 6.)

In the present case, the desk audit was thus entrusted to the external classification specialist, while the job evaluation was carried out by the HRM classification officer. The complainant cannot, therefore, successfully invoke an irregularity on the ground alleged.

This plea is unfounded and must be dismissed.

5. Turning to the irregularity on which the complainant relies in relation to the proceedings before the Appeals Board, on the ground that there were two successive versions of the alternative opinion that appeared in the Board's report, the Tribunal is astonished to note that, aside from the fact that the "alternative" opinion was in fact that of the majority of the Board, there were indeed two versions signed on different dates, being 9 May and 22 May 2019 respectively, by the three members of the Board who subscribed to it.

Other than mentioning that the Secretary of the Appeals Board forwarded the second report with "corr." added to the reference, the Organization has provided no explanation for this, asserting only that the second version was merely intended to correct the first. However, the Tribunal notes that the correction was far from trivial. In paragraph 47 of the version of the alternative opinion of 9 May 2019, three members of the Board wrote the following:

"In the light of the foregoing, the Appeals Board finds few irregularities to taint the Director-General's decision, but notes that the complainant's job description was amended by the Administration in February 2019, namely in the light of the grievances raised by the claimant in her second appeal, and that for more than five years she assumed, in good faith, the additional tasks entrusted to her which did not fall within her initial job description. [...]"

In the second version of paragraph 47 of the alternative opinion, this time dated 22 May 2019, this wording had been changed to read as follows:

"In the light of the foregoing, the Appeals Board notes that for more than five years the complainant assumed, in good faith, the additional tasks entrusted to her which did not fall within her initial job description on which the desk audit was based. [...]"

In both versions, paragraph 46, under which the signature of the other two members of the Board and the date 9 May 2019 appeared in both cases, stated the following:

“In the light of the foregoing, the Appeals Board finds no irregularity to taint the Director-General’s decision and also notes that for more than five years the complainant assumed, in good faith, the additional tasks entrusted to her. [...]”

6. In the absence of any explanation in the file concerning these different versions which dealt with the very question of the irregularities which allegedly tainted the Director-General’s decision, it is easy to understand the complainant’s confusion. What is more, in the impugned decision, the Board’s report to which the Director-General referred is the one which included the second version of the alternative opinion. That version merely attempts to explain why the procedure followed was correct, without commenting on the previous statement of three members of the Board that they “[found] few irregularities to taint the Director-General’s decision”, which implied that there were some.

7. Even if the second version of the alternative opinion of the Appeals Board of 22 May 2019 is valid because it was duly signed by the three Board members who subscribed to it and by the Secretary who forwarded it with the reference “corr.”, the Tribunal nonetheless agrees, in view of the unusual circumstances revealed by the evidence, that the complainant suffered moral injury as a result of the confusion caused by the anomalies described above, which will be fairly redressed by awarding her compensation in the amount of 3,000 euros.

8. As regards the claim for 10,000 euros in moral damages for the Organization’s failure to fulfil its duty of care and duty of diligence in dealing with her requests for her job description to be updated and her post to be classified, the Tribunal considers in the first place that this claim is unfounded in relation to the complainant’s reclassification since she has not established any irregularity in this regard. Furthermore, according to the submissions, the complainant’s classification remained at level P-4 from 2013 and has not changed since. In addition, as noted

by the Appeals Board in its report, the complainant has not adduced evidence of any injury suffered under this head.

9. On the other hand, in relation to the complainant's request for her job description to be updated, the Tribunal notes in the second place that although, following the impugned decision of 7 August 2019, the Organization did finally update the job description, as it had undertaken in that decision to do, this did not occur until 2 June 2020, whereas the original request for an updated job description had been submitted in 2013. Admittedly, as the Organization points out, during that period a desk audit of the complainant's post took place, in 2016, at its behest and following an earlier report by the Appeals Board, and the job description was revised on 2 February 2017, but the fact remains that it took almost a year – that is, until 2 June 2020 – for the actual updating to be completed.

Furthermore, notwithstanding the fact that the Organization maintains that the job description as revised on 2 February 2017 was sent to the complainant through the official channels, the complainant contends that she never received it at the time, despite her requests. There is no evidence on the file to establish that it was sent to her and the Tribunal notes that the space provided on the prescribed form for the complainant's signature has been left blank, as was also the case with the earlier job description from 2013. In addition, the parties' submissions before the Appeals Board show that, in her appeal of 30 October 2017, the complainant had stated that she was not sent a new job description following the audit carried out prior to February 2017 whereas the Administration's reply of 27 February 2019 to that internal appeal referred, in Annex 6, to that job description of 2 February 2017. In her submissions before the Tribunal, the complainant states that it was only at the time of that reply that the job description was finally supplied to her.

10. The Tribunal considers that these successive delays in updating the complainant's job description are indeed unreasonable and that the Organization thereby breached its duty of care and its duty to exercise diligence with regard to these other failings. The effect was to unduly prolong the updating exercise over a period of almost eight years and

inevitably caused the complainant moral injury, which may be fairly redressed by awarding her compensation in the amount of 3,000 euros.

11. As for the excessive length of the internal appeals procedure, on which the complainant focuses in her rejoinder and her additional submissions, the Tribunal considers it appropriate, first of all, to dismiss the Organization's argument that this claim is irreceivable as it was only made in the context of the rejoinder. The Tribunal notes that, in her complaint, the complainant criticised the overall period of seven years that elapsed between her initial request for an updated job description and the final decision of the Director-General of 7 August 2019 following the Appeals Board's report. As the period referred to includes the duration of the internal appeals procedure, it can be assumed that the complainant, in so doing, intended to challenge that duration as part of her damages claim for moral injury sustained as a result of the unreasonable time taken to reach a decision on her request.

12. It bears recalling that international civil servants are entitled to expect their cases to be examined by the internal appeals bodies within a reasonable time and failure to deal with them expeditiously constitutes a fault for which the organisation concerned will be held accountable (see, for example, Judgment 3510, consideration 24, or Judgment 2116, consideration 11). Under the Tribunal's case law, the amount of compensation liable to be granted under this head ordinarily depends on two essential considerations, namely the length of the delay and the effect of the delay on the employee concerned (see, for example, Judgments 4635, consideration 8, 4178, consideration 15, 4100, consideration 7, or 3160, consideration 17).

In the present case, a period of 22 months elapsed between the complainant filing her detailed appeal before the Appeals Board on 30 October 2017 and the Director-General delivering her final decision on 7 August 2019. That length of time is excessive having regard to the nature and the circumstances of the case in hand. As a result, the complainant has suffered moral injury, which will be fairly redressed by awarding her compensation of 2,000 euros under this head.

13. As she succeeds for the most part, the complainant is entitled to costs, the amount of which will be set at 1,000 euros.

DECISION

For the above reasons,

1. UNESCO shall pay the complainant moral damages of 8,000 euros for injury under all heads.
2. It shall also pay her 1,000 euros in costs.
3. All other claims are dismissed.

In witness of this judgment, adopted on 5 May 2023, 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 7 July 2023 by video recording posted on the Tribunal's Internet page.

(Signed)

PATRICK FRYDMAN JACQUES JAUMOTTE CLÉMENT GASCON

DRAŽEN PETROVIĆ