

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

S.-V.
v.
UNESCO

132nd Session

Judgment No. 4437

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms S. S.-V. against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 13 December 2017 and corrected on 19 January 2018, UNESCO's reply of 7 May, the complainant's rejoinder of 1 October and UNESCO's surrejoinder of 21 December 2018;

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 of her post following her transfer.

By letter of 21 May 2014, the complainant, who at the material time held a grade P-4 post in the Office of the Director-General, was informed of the latter's decision to transfer her at equal grade with her post to the Secretariat of the Executive Board (GBS/SCX) as from 9 June 2014. The letter stated that a meeting would be arranged with the Administration to discuss her new assignment and the related duties and responsibilities, and that a new job description would be prepared to evaluate the post and verify its classification. At the same time, a staff member who had been working as Deputy Secretary of the Executive Board was transferred with her P-5 post to the Bureau of Human

Resources Management with effect from the same date as the complainant's transfer.

On 5 December 2014 a description of the complainant's new job was prepared by the Director of the Governing Bodies Secretariat (GBS). It was proposed that she be assigned grade P-5, and the complainant and her supervisor signed the description.

On 13 January 2015 the Director of the Bureau of Human Resources Management informed GBS that, in line with the applicable provisions on the classification of posts in Chapter 3.1 of the Human Resources Manual, a desk audit would be conducted in order to confirm and clarify the functions assigned to the complainant's post. An external consultant was then invited to conduct the audit. On 12 March the complainant and her supervisor were interviewed, and on 7 April the consultant submitted his first report. On 20 August the complainant submitted her comments, which the Director of GBS stated he endorsed, suggesting that her post be classified at grade P-5. The external consultant finalised his report on 1 October 2015 and concluded that the grade of P-4 should be maintained. On 23 October 2015 the Bureau of Human Resources Management's Classification Officer expressed her agreement with and approved the classification resulting from the desk audit.

By a letter of 13 November 2015, received by the complainant on 3 December, the Director of the Bureau of Human Resources Management notified her that her post was correctly classified at grade P-4 in conformity with the Master Standard for Job Evaluation promulgated by the International Civil Service Commission. On 23 December 2015 the complainant informed her that she formally contested the content of that letter and requested the details of her job evaluation. In a memorandum dated 2 February 2016, the Director explained the process that had been followed to reach the conclusion that her post was correctly classified. She pointed out that the results of the audit had been communicated to the complainant and that, throughout the reclassification process, sufficient attention had been paid to her comments and she had been provided with the necessary details.

In a letter of 1 March 2016 sent to the Director-General, the complainant stated that she was challenging "by an Appeal submitted to the Appeals Board" the result of the audit of her post which found that the P-4 grade should be maintained. She requested an additional two weeks to lodge her detailed appeal. On 1 April 2016 she lodged a

notice of appeal with the Appeals Board against the administrative decision not to reclassify her post at the next highest grade, and also stated that she had already submitted a “request” to the Director-General on 1 March. The Appeals Board acknowledged receipt of her notice on the same day and reminded her that she had to provide a detailed appeal within one month. Also that day, the Director of the Bureau of Human Resources Management informed the complainant that her letter of 1 March constituted a protest against the memorandum of 2 February 2016 but that, inasmuch as that memorandum confirmed the decision notified on 13 November 2015, she was time-barred from challenging the latter decision. On a subsidiary basis, the Director informed the complainant that her protest was unfounded.

The complainant lodged her detailed appeal with the Appeals Board on 5 April 2016, seeking, inter alia, cancellation of the decision to “downgrade” her post, reclassification of her post at grade P-5 as from the commencement of her assignment, compensation for moral and material injury and an award of costs. The Appeals Board acknowledged receipt of the detailed appeal on 8 April. On 16 April the complainant wrote to the Secretary of the Appeals Board to express her concern about the receivability of her appeal and asked her to confirm the accuracy of various facts, particularly dates. She was informed that the notice of appeal had been lodged on 1 April, not 1 March. The Administration submitted its reply to the detailed appeal on 10 February 2017, following requests for extensions of the time limits, opposed by the complainant but approved by the Chairperson of the Appeals Board.

The Appeals Board delivered its opinion on 5 July 2017 after hearing the parties. It found that, although the appeal could be considered inadmissible *ratione temporis* for the same reasons as those set out in the letter of the Director of the Bureau of Human Resources Management of 1 April 2016, it was admissible *ratione materiae*. It recommended that the Director-General assign to the complainant’s post the grade of P-5 from the commencement of her assignment and retroactively award her moral and material damages and costs. By letter of 6 October 2017, which constitutes the impugned decision, the complainant was informed that the Director-General had decided to dismiss her appeal as irreceivable *ratione temporis* and, subsidiarily, as unfounded.

The complainant asks the Tribunal to set aside the impugned decision, the “implied decision that may have arisen 60 days after the communication of the opinion of the Appeals Board to the Director-General” and the decisions initially taken, and to order UNESCO to award her the grade befitting her post as from her assignment, with all legal consequences, in particular in terms of pay and pension entitlements. Subsidiarily, she seeks payment of a special post allowance and a new job evaluation. She also claims full compensation for the moral and material injury she considers she has suffered and 5 per cent interest on any sums owed to her from each due date, as well as 10,000 euros in costs for the internal appeal proceedings and the proceedings before the Tribunal. She requests that an amount corresponding to the fees and taxes which she has undertaken to pay to her counsel be deducted from any monetary awards made to her and that such amount be paid to her counsel.

UNESCO asks the Tribunal to dismiss the complaint as irreceivable for failure to exhaust internal remedies and, subsidiarily, as unfounded.

CONSIDERATIONS

1. The complainant impugns the decision of 6 October 2017 by which the Director-General dismissed her appeal against the classification of her post following her transfer as irreceivable *ratione temporis*, and, subsidiarily, as unfounded, as well as the “implied decision that may have arisen 60 days after the communication of the opinion of the Appeals Board to the Director-General” and the decisions initially taken.

2. 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).

3. In support of her complaint, the complainant puts forward both procedural and substantive pleas against the decisions at issue.

4. In respect of procedural legality, she argues that the decision to review the classification of her post was taken in breach of the rules on competence, form and procedure.

5. With regard to the lack of competence, she explains that this decision was taken in breach of Chapter 3.1, paragraph 18, of the Human Resources Manual, as it does not appear that the classification of her post was decided by the proper authority, namely the Bureau of Human Resources Management's Classification Officer.

The Tribunal notes that, contrary to what the complainant alleges, although an external consultant was invited to conduct an audit in order to confirm and clarify the functions assigned to her post, it was the Classification Officer who, after conducting her own assessment on the basis of the final report of 1 October 2015, approved, on 23 October 2015, the classification of the complainant's post at grade P-4. It follows that the plea is unfounded.

6. With regard to formal and procedural defects, the complainant submits that the Organization breached Chapter 3.1, paragraphs 13, 14, 15, 16, 17, 19, 20, 21, 22 and 23, of the Human Resources Manual.

7. She argues that there was a breach of paragraph 13, according to which requests for the review of the classification of a post must be submitted by the Director of the Bureau concerned. She points out that there is no evidence of any request for a review of the classification of her post submitted by the Director of GBS. She contends that if such a request was made by that Director, he was, in fact, acting at the behest of the Director of the Bureau of Human Resources Management with a view to keeping her at grade P-4. She submits that the Organization also breached paragraph 14 by reviewing the classification of her post for a reason that is not envisaged by that provision. She also complains that

UNESCO violated paragraph 15 in that its request for reclassification was not accompanied by the requisite documents.

8. The evidence shows that on 5 December 2014, the Director of GBS drew up a job description for the post in question and suggested that it be reclassified at grade P-5. A request for a review of the post's classification – which was hence in no way intended to maintain it at grade P-4 – was therefore made by the Director concerned. Furthermore, the fact that UNESCO considered a review of the classification of the complainant's post necessary was consistent with paragraph 14(d), which provides that a request for the review of the classification of a post is to be made “[w]hen the duties and responsibilities of a post have changed substantially as a result of a restructuring or of a reorganisation”. The Organization had to ensure that the complainant's new duties and responsibilities following her transfer were commensurate with grade P-4. As for the allegedly missing documents relating to the reclassification request, it is clear from UNESCO's explanations and the external consultant's desk audit of 7 April 2015 that these were indeed taken into account in the classification process.

The Tribunal therefore considers that the procedure followed complied with Chapter 3.1, paragraphs 13, 14 and 15, of the Human Resources Manual. The plea therefore fails.

9. The complainant further contends that her post was reclassified in breach of the provisions of Chapter 3.1, paragraph 16, of the Human Resources Manual, which provides that requests for the review of the classification of a post must be approved by the Director-General. She argues that there was no such approval in this case.

10. However, as UNESCO rightly points out, the letter of 21 May 2014 notifying the complainant of her transfer made clear that, by decision of the Director-General, the complainant would be transferred with her post and that, as a result, a new job description would be drawn up in order to evaluate the classification of the post in question. In these circumstances, the Director-General should be considered to have indirectly approved the request for the review of the classification of this post. Accordingly, this plea must be dismissed.

11. The complainant also alleges that there was a breach of Chapter 3.1, paragraphs 17, 21 and 23, of the Human Resources Manual. She argues that the post classification system, based on a strict division of roles, was not complied with in this case. She explains that the external consultant evidently misunderstood the purpose of the audit of her post and confused the audit and classification procedures, thereby encroaching on the Classification Officer's authority.

12. However, the Tribunal fails to see how the external consultant, who worked under the Classification Officer's responsibility, breached the provisions in question. It follows that this plea must be dismissed.

13. The complainant further relies on a breach of Chapter 3.1, paragraph 19, of the Human Resources Manual which provides, *inter alia*, that the notification of the classification decision to the Director of Bureau concerned must indicate the level of the post and its official title, and must be accompanied by a copy of the job description. The Tribunal notes that the letter of 13 November 2015 indicated the number of the post that was the subject of the classification review and the designated classification of grade P-4. The fact that this letter did not mention the official title of the post in question is irrelevant since this title appeared in the job description of 5 December 2014. While it is admittedly not established that the job description was enclosed with the letter, this possible flaw cannot in any case significantly taint the procedure followed since the evidence clearly shows that the Director of GBS was aware of this job description, which he himself signed. The plea must therefore be rejected.

14. The complainant submits that there was a breach of Chapter 3.1, paragraphs 20 and 22, of the Human Resources Manual, which respectively provide that the incumbent of a post must receive the job description for that post from her or his supervisor and must sign the audit report. She submits that her supervisor did not provide her with the job description, and adds that she neither signed nor even received the audit report.

15. It is true that the evidence does not establish that, at this stage of the procedure, the complainant received another copy of her job description, but, since she was aware of this document, which she had

herself signed on 5 December 2014, this possible flaw cannot in any event be significant. With regard to the desk audit, the Tribunal notes that the complainant did receive the audit report, in its version of 7 April 2015, on which, moreover, she commented. While it is regrettable that the complainant was not sent the final version of that report, drawn up after consideration of her comments, that defect was remedied in this case by the disclosure to the complainant of that document, which was produced by UNESCO as an annex to its reply in the course of the proceedings before the Tribunal (see, for example, Judgment 3117, consideration 11, and the case law cited therein). The plea will therefore be dismissed.

16. The complainant submits that there was a breach of due process and complains of a failure to disclose relevant documents. She states that she was heard only during the audit and maintains, in particular, that she did not receive the audit report or the job evaluation which formed the basis for the decisions at issue.

17. However, the evidence shows that, as stated above, the complainant was in fact invited to submit her comments on the external consultant's initial desk audit. As regards the failure to provide particular documents, this objection must be dismissed for the same reasons as those set out above.

18. The complainant also contends that insufficient reasons were given for the decision notified on 13 November 2015. She explains that the Organization did not sufficiently justify the decision to "downgrade" the post of Deputy Secretary of the Executive Board in that it did not state the factual reasons why the post had been downgraded. In her view, the statement of reasons in the aforementioned letter of 13 November 2015 is devoid of explanatory value. She further notes that the final decision of 6 October 2017 should have set out in its statement of reasons why that decision departed from the opinion of the Appeals Board.

19. Precedent has it that any administrative decision, even when the authority exercises discretionary power, must be based on valid grounds (see, for example, Judgment 4108, consideration 3). Furthermore, under settled case law, the executive head of an international organisation, when taking a decision on an internal appeal that departs from the

recommendations made by the appeals body, to the detriment of the employee concerned, must adequately state the reasons for not following those recommendations (see, for example, Judgments 2339, consideration 5, 2699, consideration 24, 3208, consideration 11, 3695, consideration 9, 3830, considerations 6 and 8, or 4062, consideration 3).

In this case, the Tribunal finds that the statement of reasons in the letter of 13 November 2015, though brief, was sufficient to enable the complainant to know the reasons for that decision and to determine what action she might wish to take in response. The mere reference to the results of the external consultant's audit suffices as a statement of reasons in this case (see, for example, Judgment 1817, consideration 6). As for the impugned decision, which was in fact taken in the light of the opinion of the Appeals Board even though it departed from the Board's recommendations, the Tribunal considers that the explanation given to the complainant to justify the dismissal of her appeal, which referred in particular to the results of the audit and the job classification, satisfies the necessary conditions in this case. It follows that the plea is unfounded.

20. As regards the substantive legality of the decisions at issue, the complainant alleges a breach of Chapter 3.1, paragraph 7, of the Human Resources Manual, according to which a downgrading of a post can only result from a substantial decrease in the complexity of duties and responsibilities assigned. She explains that UNESCO has never alleged any decrease in the duties and responsibilities of the Deputy Secretary to the Executive Board as justification for its decision and that the Director of GBS stated that the level of responsibility was similar to that of the previous incumbent, who held a post at grade P-5. However, that argument is unfounded since, contrary to what the complainant argues, UNESCO does justify the classification of the new post at grade P-4 on the basis of a decrease in responsibilities in relation to the post previously occupied by another staff member, and the evidence in fact shows that the managerial responsibilities associated with the new post were reduced.

The complainant additionally relies on a breach of Article 2.1 of the Staff Regulations, as well as of Chapter 3.1, paragraph 8, of the aforementioned Manual, and abuse of authority, since, in her view, there was no objective reason to review the classification of her post. She submits that the Organization reviewed the classification of this post to justify the decision to transfer her at equal grade. She contends

that the decision of 21 May 2014 breached the principle of good faith since it did not specify the content of her new duties and responsibilities.

21. The Tribunal notes that the complainant never challenged the decision of 21 May 2014 by which she was transferred at equal grade with her post to GBS/SCX with effect from 9 June 2014, whereas, contrary to what she maintains, the scope of that decision was defined in a sufficiently precise manner to enable her to do so in good time. She is hence time-barred from objecting to that decision at this stage, and any challenge in its respect is irreceivable.

22. As recalled in consideration 2 above, in view of the technical nature of post classification decisions, the Tribunal will only interfere with such a decision on limited grounds. In this case, the complainant's submissions do not allow the Tribunal to conclude that the post classification decision involved an error of fact, disregard for essential facts or an obvious error of judgement. These submissions will therefore be dismissed.

23. Lastly, the complainant submits that the impugned decision is tainted with abuse of authority by UNESCO. The Tribunal recalls that there is abuse of authority when an administration acts for reasons that are extraneous to the organisation's best interests and seeks some objective other than those which the authority vested in it is intended to serve (see Judgments 1129, consideration 8, 2885, consideration 12, and 3902, consideration 9).

In this case, there is no evidence to suggest that the post classification decision at issue was taken for reasons extraneous to the requirement that the post be classified at the appropriate grade. This plea will therefore be dismissed.

24. It follows from the foregoing that all the complainant's pleas are unfounded. The complaint must therefore be dismissed in its entirety, without there being any need to rule on UNESCO's objections to receivability.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 28 June 2021, Mr Patrick Frydman, President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Ms Fatoumata Diakité, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 7 July 2021 by video recording posted on the Tribunal's Internet page.

(Signed)

PATRICK FRYDMAN GIUSEPPE BARBAGALLO FATOUMATA DIAKITÉ

DRAŽEN PETROVIĆ