

ADMINISTRATIVE TRIBUNAL

Judgement No. 409

Case No. 433: TRENNER

Against: The Secretary-General of
the International Civil
Aviation Organization

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,
Composed of Mr. Arnold Kean, Vice-President, presiding;
Mr. Jerome Ackerman; Mr. Francisco A. Forteza;

Whereas at the request of Simone Trenner, a staff member of the International Civil Aviation Organization, hereinafter referred to as ICAO, the President of the Tribunal, with the agreement of the Respondent, extended the time-limit in which to file an application until 29 May 1987;

Whereas, on 29 May 1987, the Applicant filed an application in which she requested the Tribunal to:

- "(a) Consider that a decision by the Administration should allow for due process, i.e. that it should be made, and be appealable, in accordance with established rules and applicable standards;
- (b) Consider that it is sound administrative practice that a staff member's grade should correspond to his/her actual duties and level of responsibility as a matter of principle and quite apart from any consideration of remuneration;
- (c) Consider that the Administration, in failing to follow proper procedures, did not observe due process in this case, neither in the review of classification of the Applicant's post, nor in allowing her to appeal from its first decision;
- (d) Consider that the Secretary-General's first decision on classification (in May 1986) (...) was based on faulty procedure and relied on an evaluation which did not take essential facts into account and which drew mistaken conclusions from whatever information was available;

- (e) Consider that the remedy contemplated by the Secretary-General (...) is inadequate in equity because of the delays involved in the circumstances;
- (f) Consider that this is a matter of principle and that no compensatory damages are involved nor could they indeed be quantified;
- (g) Recommend therefore as a remedy:
 - That the Applicant be granted the grade corresponding to her duties, to which she is entitled as a matter of law and equity, i.e. P-4;
 - That the step in that grade be set in accordance with staff rule 103.17;
- (h) Recommend also, as nominal compensation for moral damages:
 - That the decision be retroactive to 26 August 1985, the date on which the Applicant took up her appointment;
 - That the Applicant's costs be paid by ICAO;
 - Any additional compensation that the Tribunal may deem appropriate."

Whereas the Respondent filed his answer on 14 September 1987;
Whereas the Applicant filed written observations on
18 November 1987;

Whereas, on 18 March 1988, the Applicant submitted additional documents and on 24 March 1988, the Respondent commented thereon;

Whereas, on 11 April 1988, the Applicant requested the Tribunal, pursuant to article 10, paragraph 2 of the Rules of the Tribunal, to ask the Respondent to produce any and all documents concerning her case;

Whereas, on 11 April 1988, the Respondent commented on the Applicant's request;

Whereas, on 21 April 1988, the Respondent submitted an additional document concerning the classification of the Applicant's post by two independent classification experts from the International Civil Service Commission (ICSC) and on 28 April 1988,

the Applicant commented thereon;

Whereas the facts in the case are as follows:

Simone Trenner was initially recruited by ICAO in August 1962 as a Language Officer at the P-2, step I level. She was employed by ICAO until 24 March 1969, on which date she resigned from the Organization. At the time of her separation from the service of ICAO, the Applicant held an appointment at the P-3, step V level. From 1969 to 1985, the Applicant worked as a free lance interpreter and translator.

On 17 February 1984, ICAO issued a vacancy notice for a post of Language Officer at the P-3 level at the ICAO Regional Office in Paris. The Applicant successfully applied for the job. In a cable dated 28 January 1985, the Secretary-General offered the Applicant a three-year fixed-term appointment at the P-3, step V level. The Applicant did not accept the offer at that level. Upon further consideration, bearing in mind the Applicant's experience, the Secretary-General amended the initial offer in a further cable dated 27 February 1985, changing the entry level from P-3, step V to P-3, step X. The Applicant accepted the second offer on 12 March 1985, and re-entered the service of ICAO on 26 August 1985.

In December 1985, the P-3 post encumbered by a Russian Language Officer who worked in the European Regional Office, with responsibilities similar to the Applicant's, as self revising translator/reviser, was upgraded to the P-4 level. On 18 December 1985, the Language Officer I, (LAN/I, Paris) recommended to the ICAO Representative that the Applicant be promoted to the P-4 level. She attached to the recommendation a post description which reflected the nature of both the Applicant's "ability" and of her "actual activity in the Office". In addition, on 24 January 1986, the Language Officer submitted to the ICAO Representative a request for reclassification of the Applicant's post to the P-4 level, which was transmitted on the same date to the Director, Bureau of Administration and Services (ADB) at Headquarters.

On 28 February 1986, the ICAO Representative wrote to the Director/ADB at Headquarters setting forth his comments on the request. He noted that "should a personal upgrading of Ms. Trenner be considered, [he] was pleased to confirm that she [had] fulfilled all expectations and that her performance was fully satisfactory". On 7 March 1986, the Applicant herself wrote to the Director/ADB to expand on the contents of the memorandum by the ICAO Representative, concerning the request for review of the classification of her post.

In a reply dated 14 March 1986, the Director/ADB informed the Applicant that the classification of the post would be reviewed as soon as the newly appointed Establishment Officer took up his duties.

On 28 April 1986, the Establishment Officer submitted to the Secretary-General his report and his recommendations concerning the requests for reclassification of posts at the Paris European Regional Office. As regards the Applicant's post, he confirmed that her position had been graded correctly at the P-3 level in accordance with the standards set forth by the ICSC for the common system.

On 13 May 1986, the ICAO Representative informed the Applicant verbally that the request for reclassification of her post had been rejected. The Applicant did not receive notice in writing of the Secretary-General's decision.

On 12 June 1986, the Applicant wrote to the Director/ADB to request a personal upgrading to the P-4 level. In a reply dated 19 June 1986, the Director/ADB informed her that after an evaluation of all pertinent aspects of the case, it had "not [been] possible to accommodate [her] request for a personal upgrading at this time". In addition, he noted that her prior request for the reclassification of her post had been "reviewed against the ICSC grading standards for translators and revisers."

On 11 July 1986, the Applicant requested the Secretary-General to review the administrative decision not to grant her request for a personal upgrading of her post. On 25 July 1986, the

Secretary-General informed the Applicant that he had decided to maintain the contested decision. On 8 August 1986, the Applicant lodged an appeal with the Advisory Joint Appeals Board (AJAB). The Board adopted its report on 31 October 1986. Its conclusions and recommendations read as follows:

"CONCLUSIONS AND RECOMMENDATIONS

40. The Board concludes that the Secretary-General's decision not to grant the Appellant a personal upgrading was a proper exercise of his discretionary power, and that the Appellant has failed to produce evidence to the contrary. Therefore, the Board unanimously recommends that the Appeal be rejected as unfounded in facts and in law.
41. On the other hand, the Board recognizes that the Appellant's request for a personal upgrading stemmed from her frustration over the apparent incompleteness of the reclassification procedure. In this respect, the Board finds that the documentation presented to it was incomplete and not readily available with respect to the evaluation of Post No. 2920.10 (LAN/II) as carried out by the establishment officer in April 1986. The Board therefore further recommends that the Secretary-General consider repeating this evaluation exercise once the new establishment officer has been appointed, without prejudice to the outcome."

On 18 November 1986, the Secretary-General accepted the conclusions of the Board's report. On 19 November 1986, the Secretary of the AJAB transmitted the report to the Applicant and notified her of the Secretary-General's decision.

On 29 May 1987, the Applicant filed with the Tribunal the application referred to above.

Whereas the Applicant's principal contentions are:

1. The Respondent did not inform the Applicant in writing of the decision not to reclassify her post to the P-4 level. The lack of proper notice denied the Applicant due process.

2. The common intent of the Applicant and the Respondent was clear from the conversation held between the Secretary-General and the Applicant in which the Secretary-General implied that if the

reclassification of the post was justified, it would be favourably considered.

3. The Respondent failed in his obligation to give due consideration to a properly submitted application for reclassification and to accord due process to the Applicant.

4. The Respondent should respect the principle of equal pay for equal work.

Whereas the Respondent's principal contentions are:

1. The review of the classification of the Applicant's post was conducted in keeping with ICAO practice regarding post classification by an Establishment Officer who overlooked no essential fact and drew no mistaken conclusions.

2. The Secretary-General has complete discretion to grant or to deny personal upgradings. The Tribunal cannot review the Secretary-General's decision unless it was taken without authority or unless essential facts were overlooked.

3. The original cause of action was the refusal by the Secretary-General to grant the Applicant a personal upgrading. The Tribunal cannot entertain the Applicant's pleas concerning the alleged errors in the original post classification exercise.

The Tribunal, having deliberated from 26 April 1988 to 11 May 1988, now pronounces the following judgement:

I. The Applicant requests the production of certain documents. The Respondent has stated that all documents concerning her case are now in the Applicant's possession. However, in view of the Tribunal's decision as set forth below, there is no need for the Tribunal to examine such further documents as may exist relating to the post classification exercise and therefore the Applicant's request is rejected.

II. The Applicant first submitted to ICAO Headquarters, through

her supervisor and through the ICAO Representative in Paris, an application for the reclassification of her post from the P-3 to the P-4 level.

III. Upon the rejection of her application for reclassification of her post, in her own words as they appear in her Explanatory Statement:

"The Applicant felt that the best course of action in the circumstances lay in seeking a personal regrading, a possibility which had in fact earlier been put forward by the Administration itself. Led to believe that this was a practicable avenue, the Applicant requested a personal upgrading on 12 June 1986."

The Applicant's appeal to AJAB on 8 August 1986 stated:

"Although technically the appeal has to be from the decision on personal upgrading, it is really from the whole procedure leading up to that decision."

IV. The AJAB, correctly in the Tribunal's opinion, regarded the appeal as being solely against the refusal of personal upgrading.

V. The personal upgrading is a matter falling wholly within the discretion of the Secretary-General, the exercise of which cannot be interfered with by the Tribunal in the absence of mistake of law or fact on his part, omission to consider essential facts, or consideration of extraneous matters.

VI. The Applicant has attempted to link her present claim with alleged faults in the procedure leading to the decision not to reclassify the post she occupied. Any such faults would not be relevant to the Secretary-General's decision to refuse personal upgrading, and therefore could not be taken into consideration by the Tribunal.

VII. Even if this appeal had been against refusal to reclassify

the Applicant's post (which it was not), the Tribunal holds that "it is not the function of the Tribunal to substitute its judgement for that of the Secretary-General in job classification matters. This would be so even if the Tribunal had the required expertise in this area - which it does not. For the most part, the arguments advanced [by] the Applicant seek to have the Tribunal determine independently how it would classify the post in question, but this is not the role of the Tribunal. It is instead the function of the Tribunal to determine whether under all the circumstances, the Respondent has acted within his reasonable discretion." Judgement No. 396, Waldegrave, paragraph XV, (1987).

VIII. The Tribunal notes that, since accepting the report of the AJAB, the Secretary-General has had the Applicant's post re-evaluated by two independent experts from the ICSC, who confirm that its present grading at the P-3 level is correct. The Applicant has therefore suffered no damage. In her observations regarding the reclassification study, the Applicant asks the Tribunal to consider its accuracy. As noted above, this is not the Tribunal's function.

Presumably, the Applicant will bring her concerns to the attention of the appropriate review body.

IX. For the foregoing reasons, all pleas of the Applicant are rejected.

(Signatures)

Arnold KEAN
Vice-President, presiding

Jerome ACKERMAN
Member

Francisco A. FORTEZA

Member

Geneva, 11 May 1988

R. Maria VICIEN-MILBURN
Executive Secretary