
ADMINISTRATIVE TRIBUNAL

Judgement No. 699

Case No. 749: LAU-YU-KAN

Against: The Secretary-General
of the International
Maritime Organization

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,
Composed of Mr. Jerome Ackerman, President; Mr. Luis de Posadas
Montero, Vice-President; Mr. Mayer Gabay;

Whereas, at the request of Michael Lau-Yu-Kan, a staff member of
the International Maritime Organization, hereinafter referred to as IMO,
the President of the Tribunal, with the agreement of the Respondent,
extended the time-limit for the filing of an application to the Tribunal
to 31 August 1993;

Whereas, on 13 August 1993, the Applicant filed an application
containing the following pleas:

"II. PLEAS

The Tribunal is requested:

- (a) To rule that, in accordance with the procedures laid down in
staff rule 102.2, the Applicant's former post should have
been reclassified at grade G.5 on the basis of the evaluation
made by the Personnel Section some time between 22 November
1988, ... and 21 December 1989 ...
- (b) To order the Respondent to pay compensation to the Applicant
equal to what he would have received, if he had been promoted
to G.5 in his former post with effect from 1 January 1989,
...
- (c) To order the Respondent to pay substantial compensation to
the Applicant for the dilatory and inconsiderate manner in
which the Administration handled his case and for its failure
to apply the procedures set forth in staff rule 102.2."

Whereas the Respondent filed his answer on 31 August 1994;

Whereas the Applicant filed written observations on 23 November

1994;

Whereas, on 4 July 1995, the Tribunal put a question to the Respondent to which he provided an answer on 7 July 1995;

Whereas the facts in the case are as follows:

The Applicant entered the service of IMO on 16 April 1981, as a Messenger in the Documents Section of the Conference Division, at the G-2 level, pursuant to a fixed-term appointment through 31 July 1981. The Applicant was granted a probationary appointment, with effect from 1 August 1981. On 1 May 1982, the appointment was converted to permanent, and the Applicant was promoted to the post of Machine Operator, at the G-4 level, in the Printing Section of the Conference Division. With effect from 1 December 1992, the Applicant was promoted to the G-5 level.

On 21 November 1988, the Applicant submitted a job description questionnaire which he had completed as part of his application for reclassification of his post. On 22 November 1988, the Head of the Printing Section forwarded the job description questionnaire to the Head of the Personnel Section with a memorandum of support for the reclassification. In a reply dated 29 November 1988, the Head of the Personnel Section informed the Head of the Printing Section that "Personnel Section will evaluate the grading of the post and you will be informed of the outcome shortly."

In a memorandum dated 21 December 1989, the Head of the Personnel Section informed the Applicant that his post had been reviewed and the existing grade of G-4 had been confirmed. On 20 February 1990, in a memorandum to the Head of the Personnel Section, the Applicant appealed this decision. In a memorandum dated 22 February 1990, the Acting Head of the Personnel Section informed the Applicant that his appeal would be referred to the Review Committee on Job Classification (RCJC), to be convened "as soon as possible" after the Head of Personnel's return to Headquarters on 26 February 1990.

On 11 February 1991, the RCJC sent its report on a number of appeals, including the Applicant's, to the Secretary-General. The report on the Applicant's case stated that "it was found that the wrong number of points had been inadvertently quoted for Factor III and that the post, which had been confirmed at G.4, should in fact have been upgraded to G.5." The report also noted that "the Second Evaluator, whose values could not be made available to the RCJC, arrived at a total of 117, i.e.

well within the G.5 range." The report concluded that the post "should clearly have been graded G.5 when submitted for reclassification" and recommended that the Applicant "be compensated for the prejudice he has suffered."

In a memorandum to the Director of the Administrative Division, dated 21 March 1991, the Chairman of the RCJC expressed concern that no decision had yet been taken on the RCJC recommendations. She noted that the situation was "rather distressing for the staff members concerned" and urged the Director to "give this matter your most urgent attention". In a reply dated 27 March 1991, the Director of the Administrative Division assured the Chairman of the RCJC that "the cases in question are being given the attention necessary" and that the incumbents would be advised of the Secretary-General's decision "in due course".

In a memorandum dated 26 March 1991, the Applicant wrote to the Secretary-General stating that he had been informed by the RCJC Chairman "that an error had been made" in the calculation of the factors relating to classification of his post. He stated that he had "received no word of apology or any kind of communication from the Section involved". He added that "it has now been 2 years and 5 months since I applied for upgrading."

In a reply dated 17 April 1991, the Director of the Administrative Division informed the Applicant that the Secretary-General was "carefully considering the [RCJC] report" and that as soon as a decision was made he would be informed.

In a memorandum dated 12 July 1991, the Director of the Administrative Division informed the Chairman of the RCJC that the Secretary-General had been "unable to take any decisions" on the RCJC report and that he had "interviewed the staff members concerned and explained the position to them." He said the Secretary-General would "return to your recommendations as soon as the financial circumstances permit."

In a memorandum to the Director, Administrative Division, dated 15 August 1991, the RCJC acknowledged the financial difficulty "for the Secretary-General to approve the additional expenditure which the upgrading of posts would entail". It suggested, however, that there was no reason "a decision could not be taken in principle on the Committee's recommendations and the incumbents of the relevant posts informed of such decision."

On 14 October 1991, the Head of the Personnel Section informed the

Applicant that the RCJC "did not consider it necessary" to review the case, as "an arithmetical error was inadvertently committed by the scrutineers in the Personnel Section." Nevertheless, the Secretary-General had decided "to submit your application (along with other pending cases) for evaluation by an external consultant fully conversant with the common system job evaluation mechanics."

In a memorandum to the Head of the Personnel Section, dated 2 January 1992, the Applicant protested this decision, stating "I do not understand on what basis it is necessary to carry out another review, especially after 3 years have elapsed." He requested that the error be corrected and that he be promoted to the G-5 level, with effect from 28 November 1988.

In a memorandum dated 23 January 1992, to the Head of the Personnel Section, the Chairman of the RCJC also protested the decision to review the Applicant's reclassification request. She recalled that the RCJC report "clearly states that there was no need to review [the Applicant's] post as the factors awarded by both Personnel evaluators made the post a G.5." She noted that "had there not been an arithmetical error, the post would never have been submitted to the RCJC for review." She also noted that the RCJC recommendation to upgrade the post and compensate the Applicant had been made almost a year earlier and expressed concern over the manner in which the case was being handled.

In a reply dated 21 February 1992, the Head of the Personnel Section stated that "once a committee submits its report on a case, it has no further locus therein" and that as the report of the RCJC had been submitted "the responsibility for implementing whatever decision arises herefrom rests with the Administration."

In a memorandum dated 21 February 1992, the Head of the Personnel Section informed the Applicant that while it was true that an arithmetical error had been made in the initial assessment of the language factor (Factor B) for his post, "during the process of a further review of the case it has been discovered that Factor B as applied against 'Knowledge of Languages' was in itself inaccurate." As no knowledge of a second language was required for the post, "factor A should have been applied instead", which would bring the score for the post to a total "below the minimum range for a G.5 grade."

In a memorandum dated 5 March 1992, the Applicant advised the Head of the Personnel Section that he was "absolutely dissatisfied and

disillusioned" with the result. He noted that his Head of Section had checked and signed his application for reclassification, and he reviewed the history of its consideration by the RCJC and the Administration. He requested review of his case by the Joint Appeals Board (JAB). On 11 March 1992, the Applicant requested the Secretary-General to review the administrative decision taken by the Head of the Personnel Section, in accordance with staff rule 111.2(a). In a reply dated 18 March 1992, the Head of the Personnel Section informed him that his request was under consideration.

On 13 April 1992, having received no reply to his request, the Applicant lodged an appeal with the JAB.

The JAB adopted its report on 28 January 1993. Its recommendations read as follows:

"RECOMMENDATIONS

5.1 The JAB recommends that the post which is the object of the appeal be classified at grade G.5.

5.2 The JAB recommends that this upgrading be backdated to 1 January 1989, since that was the year in which the request made in 1988 was originally considered; the choice of such a date seems to be consistent with standard IMO practice.

5.3 The JAB recommends that a compensation be granted to the Appellant for the delays and lack of consideration that he suffered. Having heard from the Respondent that such compensation is usually awarded at the rate of one week's salary for each month of extra delay, the JAB recommends that such a payment be calculated from 21 December 1989, the date on which the request for an upgrading was first turned down."

On 27 April 1993, the Secretary-General transmitted to the Applicant a copy of the JAB report and informed him that he had decided "not to approve the recommendations contained therein."

On 13 August 1993, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. Although the original evaluation of the duties and responsibilities of the Applicant's post made by the Personnel Section, if correctly interpreted, should have resulted in the upgrading of his post, no action was taken to give effect to the upgrading.

2. The Administration failed to follow the procedures in the staff rules applicable to the Applicant and handled the Applicant's case

in a dilatory and inconsiderate manner.

Whereas the Respondent's principal contentions are:

1. The Respondent has complied with the procedural requirements of the staff rules and of due process. His exercise of discretion in regard to the classification of the Applicant's post was reasonable and lawful.

2. The Applicant suffered no damages in the proceedings, or from the allegedly protracted nature of the classification proceedings, and is entitled to no compensation.

The Tribunal, having deliberated from 3 to 27 July 1995, now pronounces the following judgement:

I. In November 1988, the Applicant requested the reclassification of his post to the G-5 level. His request was rejected. On 20 February 1990, the Applicant appealed to the Review Committee on Job Classification (RCJC). The RCJC convened a year later and submitted its report on 11 February 1991. Its chief conclusion reads as follows: "It was found that the wrong number of points had been inadvertently quoted for Factor III and that the post, which had been confirmed at G-4, should in fact have been upgraded to G-5 ... It was decided that there was no need for the Committee to review Post n° 238, since it should clearly have been graded G-5 when submitted for reclassification ...". The Administration took no action on the RCJC conclusions. The Respondent later admitted that this was due to financial reasons, but did not communicate this to the Applicant. The Applicant was simply informed, on 17 April 1991, that the Secretary-General was "carefully considering" the RCJC's report.

II. In the words of the JAB, the error detected by the RCJC originated as follows:

"4.1 ... The two evaluators consider seven factors to which they assign a letter rating according to their reading of the answers provided by the staff member on his job description questionnaire. Then they convert these letters into figures according to a set

mathematical formula, and finally compare the resulting total to the ranges of points required for each grade. A grade G.4 falls within the range 75-104 points and a grade G.5 in the range 105-134 points.

4.2 In the case of the Appellant's G.4 post, one evaluator who had given factor three (knowledge of languages) a B rating, came up with 103 points. The other evaluator came up with 117 points, but even though this total is known, its components are not since the actual grading sheet has been lost. Following this exercise, the Director, Administrative Division, recommended to the Secretary-General not to upgrade the post to G.5.

4.3 When the case was referred to the RCJC, that committee discovered that a mistake had been made in the surviving evaluation sheet: the rating B given for knowledge of languages should have been converted to a figure 10 (instead of the number 6 actually given), in which case the total of 103 would have been increased to 107. The RCJC then concluded that since both evaluators arrived in fact at a total above 105, the post should be a G.5, and that it should not have been sent to the RCJC in the first place."

III. In the Tribunal's view, the Administration should have reclassified the post as soon as it was informed of the existence of this mistake. The review procedure, as far as reclassification of posts is concerned, is set forth in staff rule 102.2. Paragraphs (i) and (j) of that rule stipulate that the RCJC will submit its recommendations to the Secretary-General and that the Secretary-General's decision shall be final. These provisions apply to the outcome of a review procedure. This procedure, however, was not followed since the RCJC stated in its report dated 11 February 1991 "that there was no need for the Committee to review ... the post ... since it should clearly have been graded G-5 when submitted for reclassification ..."

As a result, paragraph (j) of staff rule 102.2 was not applicable and the Secretary-General was not free to accept or refuse reclassification. Nevertheless, the Secretary-General decided to avail himself of the services of an outside consultant who was to examine the Applicant's case alongside with others. However, this did not materialize. Some time later, a new mistake was allegedly discovered in the rating of the post. On 21 February 1992, the Applicant was informed that "during the process of a further review of the case by the Personnel Evaluators it has been discovered that Factor B as applied against 'Knowledge of Languages' was in itself inaccurate. This discovery has arisen on considering that the performance of the duties attached to the

post under reference does not require the knowledge of a second IMO working language. This means that Factor A (5 points) should have been applied instead."

IV. As a consequence, the Applicant's post was again considered as not being at the G-5 level. The Applicant appealed this decision to the JAB.

The JAB found in favour of the Applicant and recommended the retroactive reclassification of his post to the G-5 level, as well as compensation. The Secretary-General decided not to accept the JAB's recommendation. He did not, however, specify the reasons for his refusal. The Applicant then appealed to the Tribunal.

V. With respect to the issue of the language requirement and the other issues before the JAB, the Tribunal fully concurs with the JAB's findings and shall base its judgement on them. The findings are set forth below.

"4.4 A year later, the Respondent explained that, in fact, the wrong letter rating had been used for factor three, as the knowledge of a second IMO language was not required for the post. Instead of a B = 10, the evaluator should have used A = 5, the total being thus 102, which was below the minimum range for a G.5. The other evaluator's score of 117 was not mentioned.

4.5 Without repeating the whole evaluation exercise, the JAB felt that it should scrutinize the figures because of the mistakes made. At the formal meeting of 14 December 1992, it asked the Respondent how two evaluators' totals were normally reconciled if they were very different. The JAB was told that, in such a case, the decision would tend to be positive if the figures leant towards the positive side and vice versa.

4.6 Applying this principle to the present case, the JAB considered that 117 points were certainly noticeably higher than the floor value for G.5 and that 103 or 102 were practically at the ceiling of the G.4 range, which should point towards a positive decision. Even if the mistake attached to the language factor was eliminated, and the 117 score was reduced by substituting an A = 5 rating for the B = 10 rating presumably given by the second evaluator to that factor, the result in a score of 112 would still pull the decision in the direction of an upgrade.

4.7 To illustrate these different alternatives, the JAB then proceeded to average the corresponding totals of the two evaluators. The JAB first averaged the undisputed score of 117 given by one scrutineer with the original wrong score of 103 given by the other (average = 110), then with the score of 107 as per the suggestion of the RCJC (average = 112), and then with the

score of 102 as corrected by the Respondent (average = 109.5). In those three cases, the average was well above the G.5 floor value.

4.8 Having reduced the 117 score of the second evaluator to 112 by applying the A = 5 rating instead of the B = 10 presumably used, the JAB then averaged that 112 score with the lowest score of the other scrutineer. That worst case scenario, which discounted the factor 'knowledge of languages', gave an average figure of 107, which is still within the G.5 range.

4.9 Again the JAB did not make these calculations in an attempt to evaluate the post itself but simply analysed the figures arrived at during the evaluation process as a necessary precaution since two errors had been made, the latter annulling the first one. The JAB could not understand why the higher score of 117 given by one evaluator had not been taken into account either in the initial assessment or in the further review made by the Personnel Section. That score which had been given by an experienced scrutineer could be expected to carry as much weight as the lower score. The JAB noted that the 117 score was not mentioned at all in the Respondent's memorandum of 17 December 1992 which described the second examination of February 1992 as a mere 'review' that did not require the conduct of two new evaluations. The JAB felt that, even if a mere review was justified, it should not have been confined to the checking of the score of only one evaluator, without taking the other score into account as if it had never been given. Even though the other evaluation sheet had been lost, an enquiry could have been made as to how the other evaluator's score had been arrived at.

4.10 At the formal meeting, the Respondent said that the evaluation process was not a purely arithmetical exercise and that the figures obtained were not meaningful by themselves since a number of considerations were taken into account, such as the principle of 'rationality'. This view was emphasized in the memorandum of 17 December 1992 which stated that there was no 'mechanical' relation between the numerical score of the evaluators and the grading of a post. This memorandum referred to a process called the 'coherence test' which also played a part in deciding whether a post should be upgraded or not, and which was said to be in keeping with the definition of the evaluation system given in staff rule 102.2(1).

4.11 With specific reference to staff rule 102.2(1), the JAB noted that no other considerations relevant to that rule had been invoked all along the grading process. Only the scoring figures were given prominence on the evaluation sheet (...) which stated:

'As 103 ranges between 75 and 104 and is equivalent to classification level III on the conversion table, the grade is confirmed at G.4.'

That was a mechanical and straightforward conclusion that excluded any other element.

...

4.13 It is significant that, as late as 21 February 1992, in the letter addressed to the Appellant by the Head, Personnel Section (...), there appears to be no doubt that the determining element that made the post a G.4, as opposed to a G.5, was the actual point count: 'In view of this development, the actual result of your scores is shown as 102, being 3 points below the minimum range for a G.5 grade.' No other reason was given for this grading.

4.14 In the whole correspondence the JAB was unable to find any reference to other considerations that might have been relevant once the letter ratings were given. Looking for the 'subsequent evidence, which constitutes a more in-depth review of the post classification' as mentioned in the Respondent's memorandum of 17 December 1992, the JAB could not find any hint of such considerations except in the statement made by the Respondent at the formal meeting and in that memorandum, i.e. some three years after the initial assessment. If such other considerations were indeed important, they could be expected to have been taken into account when the letter ratings were assigned; if overlooked at that stage, they then should have been mentioned soon after in the evaluation process. The question could be raised as to whether the 'coherence test' or the principle of 'rationality' were invoked as an afterthought, after the completion of the process, to justify the decision taken. At any rate, these concepts were not described or defined in the available submissions.

4.15 The JAB therefore found it difficult to take into account considerations that had apparently played no part in the grading process of the Appellant's post up to February 1992; that process had solely relied on figures, once the letter ratings had been assigned by the evaluators according to their judgement based on any number of criteria. Besides, no matter how the figures were calculated and whether minimizing or not the importance of the language requirement, it was clear, if one used the scores of the two evaluators, that the Appellant's post should have been upgraded in 1989 when his request was first considered."

In consequence of the JAB's findings and reasoning, the Applicant's post should have been classified at the G-5 level.

VI. In view of the foregoing, the Tribunal orders the Respondent to pay to the Applicant the difference between what the Applicant earned and what he would have earned had he been promoted to the G-5 level, with effect from 1 January 1989 as well as the amount of \$1,500 as compensation for delay and lack of consideration in the handling of his case.

(Signatures)

Jerome ACKERMAN

President

Luis de POSADAS MONTERO
Vice-President

Mayer GABAY
Member

Geneva, 27 July 1995

R. Maria VICIEN-MILBURN
Executive Secretary