ADMINISTRATIVE TRIBUNAL

Judgement No. 880

Case No. 986: MACMILLAN-NIHLÉN

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Ms. Deborah Taylor Ashford, Vice-President, presiding; Mr. Chittharanjan Felix Amerasinghe; Mr. Kevin Haugh;

Whereas, at the request of Maryrose MacMillan-Nihlén, a former staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, successively extended to 31 August and 30 November 1996, 28 February, 31 May, and 31 August 1997, the time-limit for the filing of an application with the Tribunal;

Whereas, on 29 August 1997, the Applicant filed an application requesting the Tribunal, inter alia, as follows:

> "...
>
> 2. ... to order the Respondent to compensate her ... by payment of the sum of US$20,000 based on the difference in salary and benefits that would have been payable had her post been reclassified at [the] G-7 level with effect from 1 December 1991; and by payment of the additional sum of US$5,000 for the material loss she suffered ..."

Whereas the Respondent filed his answer on 13 February 1998;

Whereas the Applicant filed written observations on 29 April 1998;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations Office in Geneva in February 1961, as an Administrative Clerk. On 1 October 1962, she transferred to UN Headquarters in New York, where she was granted a short-term appointment as Clerk-Typist, at the GS-2A level, for the duration of the General Assembly.

On 3 October 1972, the Applicant re-entered the service of the UN on a short-term contract for one month, as Clerk-Typist Stenographer, at the GS-3 level. That appointment was extended and converted to a fixed-term appointment on 3 December 1972. She received a permanent appointment on 1 December 1974, and was promoted to Secretary, at the GS-4 level, on 1 April 1975. She was assigned to two peacekeeping missions from 1 January 1977 to 15 February 1979 and 13 May 1979 to 21 July 1983, respectively. Thereafter, the Applicant was placed in a series of temporary posts. The Applicant's post was converted to the GS-5 level, based on new classification standards, with effect from 1 January 1985. On 4 April 1988, the Applicant was appointed as Administrative Assistant, with the Department for Special Political Questions, Regional Co-operation, Decolonization and Trusteeship. The Applicant was promoted to the GS-6 level on 1 October 1988. She separated from service upon retirement, on 31 December 1995.

On 25 September 1991, the job description for the post encumbered by the Applicant at the GS-6 level, was submitted for classification review pursuant to ST/AI/358 dated 31 July 1989. On 30 December 1991, the Applicant was informed that the Compensation and Classification Service (CCS) had confirmed the classification of her post at the GS-6 level. On 10 March 1992, the Applicant appealed this classification decision. On 5 July 1994, the CCS submitted its report, in which it found the classification of the Applicant's post at the GS-6 level to be appropriate, to the New York General Service Classification Appeals and Review Committee (NYGSCARC).

NYGSCARC adopted its report on 3 April 1995. Its findings and recommendation

read, in part, as follows:

"**Findings:**

...

16. ... While noting that the assignments of the post encompassed general administrative as well as personnel functions, the Committee observed that 75% of the work was related to personnel administration. In the Committee's view, the general administrative responsibilities of the post as described in Section 2(e) of the job description did not warrant a higher grade.

17. In examining the personnel-related responsibilities of the post, the Committee felt that the duties as described in the job description were comparable to those depicted in the GS-6 Personnel Benchmark. The Committee observed, however, that some of the samples of work submitted by the appellant were indicative of a higher level. ... In the Committee's view, these examples did not conform to the definition of General Service work approved by the International Civil Service Commission. In this regard, the Committee observed that the appellant appeared to have been called upon, in certain instances, to perform higher level functions owing to her personal capabilities and exigencies of the office ... While the Committee was appreciative of the quality of the appellant's contribution to the work of the Executive Office, it concluded that its review was necessarily limited to the specific duties and responsibilities of the post described in Job Description Number NO4997. These, the Committee judged, were compatible with the grade and factor definitions of the Classification Standard at the GS-6 level.

Recommendation:

19. Accordingly, the Committee recommends that the post be maintained at the GS-6 level in the Administration related occupation (2.A.12)."

On 3 January 1996, the Assistant Secretary-General, OHRM, transmitted a copy of NYGSCARC's report and informed the Applicant as follows:

"1. As set out in administrative instruction ST/AI/358 of 31 July 1989, after reviewing the materials submitted in conjunction with your appeal, the New York General Service Classification Appeals and Review Committee (NYGSCARC) has

submitted its findings and recommendation to me.

2. Based on its review of the job information, the information provided in your memorandum of appeal, and subsequent memoranda dated 22 May 1992, 31 August 1992, 9 August 1994, the analysis provided by the Common System and Compensation Service, and your comments on the CSCS report, the Appeals Committee concluded that the functions of your post were compatible with the grade and factor definitions of the Classification Standard at the GS-6 level. Accordingly, the Committee has recommended to me that the post be maintained at the GS-6 level in the Administration related occupation.

3. I have approved this recommendation, as indicated on the attached classification notice. ..."

On 29 August 1997, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. NYGSCARC erred by limiting its review of the classification of the Applicant's post to the specific duties and responsibilities of her post as set forth in the relevant job description and by failing to consider the actual functions she was performing following her office's restructuring and the high level at which she was performing them.

2. The processing of the Applicant's case by the Administration was unreasonably delayed, denying her the opportunity to pursue alternative means of career development during that time.

Whereas the Respondent's principal contentions are:

1. The Respondent's discretionary decision with regard to the classification level of the Applicant's post was properly taken following an independent review by a specialized appeals body.

2. Delay in the finalization of the Applicant's classification appeal caused no loss to the Applicant and thus the decision not to reclassify her post did not violate her rights.

The Tribunal, having deliberated from 6 to 31 July 1998, now pronounces the following judgement:

I. The Applicant complains first that there were errors in the classification of her post by the review body after she appealed to the Assistant Secretary-General, Office of Human Resources Management (OHRM), and second, that there was unreasonable delay in the hearing of her appeal as a result of which she suffered material loss.

II. There are two principal issues raised in the case:

(i) Was there a failure on the part of the review body, the New York General Service Classification Appeals and Review Committee (NYGSCARC), to conduct a proper review of the Applicant's post, with the result that her post remained classified at the G-6 level?

(ii) Was there undue delay by the Respondent in communicating his decision on the appeal to the Applicant?

III. It has been clearly established in the jurisprudence of the Tribunal that classification is a discretionary power of the Respondent. (Cf. Judgement No. 541, Ibarria (1991), para. II) Consequently, the Tribunal will not substitute its judgement for that of the Administration. However, the decision to classify a post is subject to review by the Tribunal if such decision constitutes an abuse of discretion. A discretionary decision will be reviewed if there has been a substantive irregularity, such as an error of fact or of law; a procedural irregularity, such as undue delay; or prejudice, discrimination or other extraneous factors.

IV. The Tribunal will deal first with the issue whether the review by the appeals body

resulted in an abuse of discretion. The Applicant contends that, although she provided evidence that she was doing work at a higher level than that of G-6, NYGSCARC classified her post at the G-6 level. The Administration stated, in the report that it prepared for NYGSCARC, pursuant to NYGSCARC's request, that the Administration had taken into account this evidence but nevertheless had maintained the classification. NYGSCARC, in its report dated 3 April 1995, stated that while it "was appreciative of the quality of the appellant's contribution to the work of the Executive Office, it concluded that its review was necessarily limited to the specific duties and responsibilities of the post described in Job Description Number N04997." NYGSCARC thus was fully aware of the additional evidence submitted by her but decided not to include it in its assessment of the classification of her post. In the view of the Tribunal, NYGSCARC acted properly. The Tribunal notes that ST/AI/358 clearly envisages that classification of a post should be based on an established job description. Thus, a review of classification by the appeals body should also be based on the job description established for the position in question. NYGSCARC did not abuse its discretion by determining that the evidence submitted, other than the established job description, was irrelevant to the classification of the post. If the Applicant wanted the additional evidence to be considered as part of her job description, she should have requested that a new job description be prepared for her post, that would have included what she alleged were the additional duties and responsibilities of the job. The establishment of a new job description to include any alleged and additional duties is the responsibility of both the Applicant and the Administration. The Applicant cannot obtain reclassification based on evidence that, on occasion, she was performing higher-level duties than those listed in her job description. The Tribunal concludes that there was no abuse of discretion in this regard by NYGSCARC.

V. As regards the issue of undue delay, the Tribunal notes that there was a lapse of over four years between the initial confirmation on 30 December 1991 to the Applicant of classification and the receipt by the Applicant on 26 January 1996 of the decision by the

Assistant Secretary-General, OHRM, rejecting the Applicant's appeal. The Respondent claims that the delay was caused by the Applicant but has presented no evidence that this was the case. The Applicant submitted her appeal on 10 March 1992. The addendum that she submitted, dated 22 May 1992, was sent before action was taken on her appeal. Her response of 31 August 1992 was in reply to a communication by the Compensation and Classification Service. It took about two years, until 20 July 1994, before the Applicant was requested to give her comments on the findings on her appeal, which comments she submitted within less than three weeks. The report of NYGSCARC was issued about eight months later, on 3 April 1995. The Applicant was not informed of the Respondent's decision on her appeal until 26 January 1996, more than nine months later. Any delay, therefore, was almost entirely on the part of the Administration.

VI. The Applicant does not have to show any specific damage resulting from the undue delay. As the Tribunal has held, an inordinate delay "not only adversely affects the administration of justice but on occasions can inflict unnecessary anxiety and suffering to an applicant." (Cf. Judgements No. 353, El Bolkany (1985) and No. 414, Apete (1988)). The delay in this case entitles the Applicant to compensation, which the Tribunal assesses at $3,000.

VII. For the above reasons, the Tribunal:

1. Orders the Respondent to pay to the Applicant compensation in the amount of $3,000.

2. Rejects all other pleas.

(Signatures)

Deborah Taylor ASHFORD
Vice-President, presiding

Chittharanjan Felix AMERASINGHE
Member

Kevin HAUGH
Member

Geneva, 31 July 1998

R. Maria VICIEN MILBURN
Executive Secretary