

ADMINISTRATIVE TRIBUNAL

Judgement No. 396

Case No. 407: WALDEGRAVE

Against: The Secretary-General
of the International
Maritime Organization

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Arnold Kean, First Vice-President, presiding;
Mr. Luis de Posadas Montero, Second Vice-President; Mr. Jerome
Ackerman;

Whereas at the request of Joyce Evelyn Waldegrave, a staff
member of the International Maritime Organization, hereinafter
referred to as IMO, the President of the Tribunal, with the
agreement of the Respondent, successively extended the time-limit in
which to file an application until 15 July 1986 and 30 October 1986;

Whereas on 30 October 1986, the Applicant filed an
application the pleas of which read as follows:

"II. PLEAS

The Applicant requests that the Tribunal:

- (a) As a preliminary measure:
 - (i) Order the International Maritime Organization (IMO) to produce the official status file of the Applicant, as well as the report of the 1978 Grading Committee for the General Service staff;
 - (ii) Invite Mr. George L. Sherry, ex tempore Chairman of the Special Study Group on Job Classification and Career Development of Language Staff (established by the Secretary-General of the United Nations in May 1980), as an expert witness on the proper categorization of [Applicant's] post as it was described in 1978 and as it existed in 1981;

- (iii) Provide data on the occupational code, the number and percentage of General Service posts on which the Secretary-General of the IMO decided not to apply the recommendations of the 1978 Grading Panel, and identify the gender of the 1978 incumbents of these posts;
- (b) Order the IMO to rescind the following decisions, under article 9, paragraph 1 of the Tribunal's Statute:
- (i) The decisions by the Secretary-General to set aside the recommendation made by the Grading Committee in 1978 with regard to [Applicant's] post that 'special consideration be given as early as possible to the possibility of bringing these posts into the professional category'; or, if this request is not accepted by the Tribunal,
 - (ii) The decision taken in 1981 by the Secretary-General of IMO not to apply the ICSC [International Civil Service Commission] methodology for distinguishing between Professional and General Service staff ... as a first step to the application of the Master Standard; or, if this cannot be granted by the Tribunal,
 - (iii) The decision taken by the Secretary-General of IMO in 1985 not to accept the recommendation contained in para. 9.1 of the Joint Appeals Board's report;
- and [Applicant] further requests that the Tribunal:
- (c) Determine that [Applicant's] duties and responsibilities, as they were described and carried out in 1978, were of a professional nature;
 - (d) Request the Secretary-General to upgrade [Applicant's] post to the Professional category with retroactive effect to 1978, in accordance with the Grading Committee's recommendation, or, if the request is considered ill founded, with retroactive effect to 1 January 1981, when the application of the ICSC Master Standard and its methodology for distinguishing between Professional and General Service level had become mandatory;
 - (e) Find that the Secretary-General of the IMO has not observed his obligations with regard to [Applicant], and has caused considerable damage to her career through this non-observance;
 - (f) Conclude that the Secretary-General of the IMO has discriminated against [Applicant] by withholding from her the

application of standards applied to other common system staff in her field of work;

(g) The obligations which the Applicant is invoking are the following:

(i) Article 8 of the Charter of the United Nations, which excludes any restrictions 'on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs';

(ii) General Assembly resolutions:

35/214, Part A, Section II, para. 3, in which the General Assembly 'invites the Commission, the Secretary-General and the heads of the organizations which have accepted the Commission's statute to co-operate fully in the implementation of the common standards of job classification established by the Commission, ensuring appropriate consideration of the individual situation and requirements of each organization and the most economical use of resources';

35/225, in which the General Assembly approved proposals for the classification of language staff, and noted the objective 'that the translators, interpreters, verbatim reporters, editors, copy-preparers and proofreaders benefit from the reclassification measures';

36/233, Section I, para. 1, in which the General Assembly 'urges all organizations concerned to implement the decisions of the International Civil Service Commission and to act positively on the recommendations of the Commission in accordance with its statute';

37/126, Section IV, para. 3, in which the Assembly recommends 'that the three-tiered job classification system developed by the Commission, based on a Master Standard of common system job classification standards, be applied to ensure optimal equality in remuneration as well as a sound basis for human resources planning and career development, and that personnel policies of organizations of the common system be harmonized with the job classification system promulgated by the Commission';

(iii) Article 9 of the statute of the ICSC;

(iv) Decisions of the International Civil Service Commission under article 13 of its statute, set out in its Sixth

Annual Report to the General Assembly and to the governing organs of the other organizations participating in the work of the Commission (30 September 1980), to promulgate a Master Standard for the classification of professional posts, for implementation by the Organizations of the common system as of 1 February 1981, and to establish a methodology to distinguish between Professional level and General Service level work (A/35/30, paras. 234 through 262).

- (h) The amount of compensation claimed by the Applicant in the event that the Secretary-General decides, in the interest of the IMO, to pay compensation for the injury sustained, in accordance with article 9, paragraph 1, of the statute:
- (i) For damages to career caused by discrimination and non-observance of the Charter \$ (United States dollars) 50,000;
 - (ii) For damages to career caused by non-observance of General Assembly resolutions and ICSC decisions \$50,000;
 - (iii) Unless Applicant's reclassification to the Professional category is implemented retroactively, full compensation for the past and future loss of income suffered since 1 April 1978, the effective date for the implementation of the Grading Committee's recommendations, or, if the Tribunal considers this date inappropriate, since 1 January 1981, the effective date for the implementation of the ICSC Master Standard. Such compensation should amount to the difference between the salary and allowances received by Applicant and the earnings she would have received if placed in the Professional category."

Whereas the Respondent filed his answer on 30 April 1987;

Whereas on 30 September 1987, the President of the Tribunal, pursuant to article 10 of the Rules of the Tribunal, put questions to the Applicant and to the Respondent, to which they both replied on 9 October 1987;

Whereas the Tribunal heard the parties and the witnesses, Mr. Marc Bourgeois and Mr. George Sherry at a public hearing held on 21 October 1987;

Whereas on 22 October 1987, at the request of the Tribunal Mr. Marc Bourgeois submitted additional information, and on

27 October 1987 the Applicant commented thereon;

Whereas the facts in the case are as follows:

Joyce Evelyn Waldegrave entered the service of the IMO on 1 January 1967. She was initially offered a four-month fixed-term appointment at the G-4, step I level and was assigned to the English Pool. On 1 May 1967 she was offered a probationary appointment and on 1 January 1968 a permanent appointment. Effective 1 February 1969, she was transferred to the Ship Construction Section. On 1 October 1971, she was appointed to the post of English Editor in the Publications Unit, Division of Languages, Documents and Conference Services. In accordance with staff rule 103.5 in force at the time she was promoted to the grade G-6, step I level.

In a memorandum dated 17 March 1975, the Applicant asked the Director, Conference Division, to submit to the IMO Council an application for the upgrading of her post to the Professional category. She asserted that her job, which was very skilled and required a "high degree of technical knowledge and practical ability", was graded at a lower level than other positions within the IMO, like Senior Secretary or Pool Supervisor. In addition, "in other UN agencies, an editor, or proofreader [was] graded as P-2". There are no documents in the Applicant's official status file showing whether or not the Respondent considered the Applicant's request.

On 9 March 1978, the Secretary-General informed the staff in circular PER/G/78/559 that he would conduct a review of the IMO General Service grading structure, including job descriptions and job classifications of all General Service posts. A classification survey was required at the time to provide basic information for IMO's discussions with ICSC, on job descriptions and matching points for a forthcoming salary survey of General Service salaries to be conducted in London. It was also desirable to develop classification policies and procedures, to set up and operate in the future a classification plan and a grading structure within IMO. In

addition, "an equally important reason" was the establishment of a classification plan "consistent with recommendations by the UN General Assembly, the Advisory Committee on Administrative and Budgetary Questions and the Joint Inspection Unit, as well as with the mandate given to the ICSC in its statute". The Secretary-General also announced that the IMO would be assisted and advised by a Grading Expert, Mr. Marc L. Bourgeois, Head of the Grading and Salary Section, Personnel Policy Branch, of the ILO.

On 13 July 1978, in circular PER/G/78/1552, the Secretary-General described the procedures that would be followed for the classification of General Service posts in IMO. The Grading Expert, assisted by a Classifier, would review preliminary evaluations of the duties and responsibilities of posts; elaborate proposals concerning the overall grading structure and then recommend grades for individual posts. These proposals would subsequently be reviewed by a Grading Committee. The records of the Grading Committee would be confidential, available only to its members, to the Secretary-General, and to the Director, Administrative Division. The proposals by the Grading Expert, as reviewed by the Grading Committee, would form the basis of the recommendations concerning post classification. They would be submitted in a confidential report to the Secretary-General, through the Director, Administrative Division, for his consideration and decision. A Grading Appeals Committee was established to consider requests for reconsideration of the Secretary-General's decisions.

In July 1978, the Grading Expert finalized his "Report on a Classification Survey of Posts in the General Service Category of the International Maritime [Consultative] Organization, London Headquarters 1978." The report contains a section on "Exceptional Cases Requiring Special Considerations". The Expert noted in this section that, in conducting classification surveys, it is normal to encounter "anomalies and/or double functions" in certain posts. He stated in this regard:

"In the IMO survey the number of such anomalies was small and

the cases meriting special consideration did fall into the following categories:

- (a) G.S. [General Service] posts with significant Professional content;
- (b) Posts for which insufficient data [was] available at present."

The classification team had identified four cases under (a) above, three in Editing work and one in Personnel. The Expert stated in this connection:

"Without prejudging a decision whether to recategorise these posts or not, I can nevertheless say that if they were in the ILO or another organization in Geneva they would be considered as belonging to the Professional category.

Two of the Editing posts are Nos. 161 and 162 ... where, ... there are editing duties considered to be Professional.

...

Special consideration of all of the foregoing cases is recommended."

According to an extract of the Grading Committee's confidential report:

"The Committee approved the Report's proposal that Posts Nos. 161 and 162 be upgraded to G.8. It also noted that in other UN organizations these posts would be considered as belonging to the Professional category, and recommended that special consideration be given as early as possible to the possibility of bringing these posts into the Professional category."*

The Applicant encumbered post No. 161. However, since the reports of the Grading Expert and the Grading Committee were of a confidential nature, she was unaware of these recommendations.

In a memorandum dated 26 September 1978, the Head, Personnel Section, informed the Applicant that:

* Counsel for the Respondent, in his pleadings, certified that this extract was a "true copy of the original."

"As announced in the Secretary-General's circular memorandum PER/G/78/2066 of 25 September 1978, ... the grade of your post (No. 161) has been changed from G-7 to G-8."

The Applicant was subsequently promoted to the G-8 level.

On 2 October 1981, the Applicant and a colleague, Mrs. R. Lawrence, who encumbered post No. 162 and who performed similar functions, requested the Director, Conference Division, for his support in order to reclassify their posts to the Professional level. Their request was founded on UN General Assembly resolution 35/225 of 17 December 1980 on Job Classification and Career Development of Language Staff, in which the Assembly approved proposals from the UN Secretary-General, aimed at reclassifying language posts to higher levels of professional grades. In addition, they felt that "the responsible and professional role of Editors/Proofreaders, ... should be recognized at IM[C]O as it [was] in other duty stations."

This request was transmitted on 20 October 1981 to the Head, Personnel Section, by the Director, Conference Division. In the memorandum of transmission he noted that it would not be possible to review the classification of those posts through the continuing "Machinery for Classification" established for General Service posts. He suggested that reclassification be examined "in the context of the common standards developed in the UN System" and asked the Head, Personnel Section "if [he] could take the necessary action in this respect". Not having received a reply from the Administration, on 22 February 1982, the Applicant and her colleague wrote to the Director, Conference Division, to express their concern at the lack of any communication concerning their request for the reclassification of their posts. On 25 February 1982, the Director, Conference Division, transmitted this latest memorandum to the Head,

Personnel Section, and asked him to give the matter "the necessary attention" and to inform the Applicant and her colleague of the steps being taken in that regard.

Not having received a reply, on 7 February 1983, the Applicant and her colleague wrote again to the Director, Administrative Division, to request, for a third time, that their jobs be reclassified to the Professional category. Their request was supported by the Head, Publications Section, who, on 8 February 1983 wrote to the Director, Administrative Division, emphasizing that the Applicant's work was "undoubtedly of a professional nature".

In a memorandum dated 18 April 1983, the Head, Personnel Section, informed the Head, Publications Section, that the matter of the reclassification of the posts of English and French Editor/Proofreader had been "given the most careful consideration".

However, it had "not proved possible for any reclassification to be implemented and the posts [would] therefore remain in the General Service category". He asked the Head, Personnel Section, to advise the Applicant and her colleague Mrs. Lawrence, of this fact.

On 4 February 1985, the Applicant wrote to the Head, Personnel Section, requesting reclassification of her post to the Professional category. She informed him that she had recently discovered the Report on the Classification Survey of Posts in the General Service category of IMO submitted in 1978 and the recommendation of the IMO Grading Committee that "special consideration be given as early as possible to the transfer of these posts to the Professional category". She therefore sought "redress for the material injury sustained" and claimed compensation which [she] consider[ed] ... dates back to 1975".

Not having received a reply, on 8 March 1985, the Applicant requested the Secretary-General, under staff rule 111.2(a), to review the decision not to reclassify her post. On 7 May 1985, the Applicant lodged an appeal with the Joint Appeals Board. The Board adopted its report on 17 January 1986. Its conclusions and

recommendations read as follows:

"8. Conclusions

- 8.1 The Board concludes that, because of competence limitations, it could not reach a categoric and undisputed conclusion on whether the Appellant's post should be reclassified from her present General Service grade of G.8 to the Professional category. Therefore, the Board did not address the second, third and fourth requests submitted in the appeal namely to state that her duties as editor were of a professional nature, to recommend the upgrading of the Appellant's post and to backdate the upgrading to 1975.

The Board considered the first request of the Appellant regarding the implementation of the Master Standard.

It examined whether a decision on the reclassification of the Appellant's post had been made, and established that there was a lack of decision on this subject. While the Board recognized its inability to carry out the technical assessment of the duties of the post, it considered recommending the method that, in its view, would be the most desirable framework for undertaking an objective and impartial review of the classification of this post, which is long overdue.

- 8.2 The Board notes that the Administration, the Respondent in this case, has failed, over a long period of time, to make a prompt and substantiated response to several requests made by the Appellant. The only time her requests received in-depth consideration was in the context of these proceedings, after they had developed into an appeal and the Respondent was required to prepare a reply. Prompt acknowledgment of requests, followed by a substantiated reply and, where appropriate, a well founded decision, are essential to ensure job satisfaction and avoid possible detriment and moral frustration. The Board is conscious of, and sympathetic with, the adverse effect such failure in communication has had on the Appellant.

The Board also notes that the Administration, in contrast with the grading exercise, does not appear to have given adequate care to promulgating information about the implementation of the Master Standard system and to advising staff members whose career development could be affected by its introduction.

- 8.3 The Administration does not appear to have given special consideration to the classification of the post as recommended in the 1978 grading reports. Furthermore, no assessment of the post was made as required when the Master

Standard was introduced. An impartial technical assessment of the post, as described prior to the reorganization of the Publications Section, is required as soon as possible. The Board is anxious that the preliminary conclusions reached by the Administration in the context of the preparation of its reply within the proceedings of this Board should not influence the impartiality of the technical assessment of the post, and considers that, to ensure fairness and objectivity, this technical assessment should preferably be carried out, in this case, with participation of staff representation.

8.4 The Board notes that a Standing Committee on Job Classification has been established on General Service posts and is functioning as a permanent organ in the Organization. This standing committee includes representation of staff and is responsible for advising on the implementation of the personnel policies of the Organization, including the common standard established for the United Nations system. It would appear to be a possible forum for the consideration of borderline cases, when required, to confirm if the duties and the functions of such posts are within the highest General Service grade, or to state that they exceed the General Service category.

8.5 The Respondent denied the Board the opportunity to be provided with a document relevant to the case. Furthermore, the Respondent attached a condition to an offer to verify an extract from the same document. In accordance with staff rule 111.1(k), the Board concludes that it was clearly entitled to access to the above document. On the other hand, the Board notes that the Rule does not distinguish between confidential and non-confidential documents and therefore identifies a need for clear guidelines to be elaborated on this matter. Concerning the document in question, the indications are that the extract of the Grading Committee's report, submitted by the Appellant, is a true reflection of what has been stated concerning this post in the 1978 Grading Committee's report.

9. Recommendations

9.1 The Board recommends that the Administration shall arrange, as soon as possible, for a technical assessment of the Appellant's post to be carried out. The post to be assessed shall be the post described prior to the reorganization of the Publications Section. The assessment shall be made on the basis of the Master Standard and the guidelines issued by the ICSC and shall preferably be undertaken with participation of staff representation. The Board further recommends that the Appellant be notified of the method by which the technical assessment will be processed and of the

outcome of the assessment.

- 9.2 The Board recommends that guidelines be elaborated and established to regulate communication between the Administration and the staff members on matters concerning career development. These guidelines should cover time-limits for acknowledging the receipt of requests, for giving a substantiated reply, for disseminating and promulgating information on the implementation of the amendments to existing systems and the establishment of new ones.
- 9.3 Invoking staff rule 111.1(d), the Board recommends that guidelines be issued to clarify the meaning of staff rule 111.1(k) in order to guarantee unrestricted access by Joint Appeals Boards to confidential documents relevant to their proceedings."

On 19 February 1986, the Director, Administrative Division, informed the Applicant that:

"...

The Secretary-General has decided, in the light of the JAB's report, to appoint a classification expert from within the UN system, but from outside IMO, to undertake a technical assessment of the classification of your post as presently described and, if possible, also before the reorganization of the Publications Section. The expert would in particular be requested to advise on whether the IMO GS classification system or the Master Standard system is or was applicable. The expert would be requested to make recommendations to the Secretary-General.

..."

On 14 August 1986, Mr. Bourgeois, who had initially conducted the grading survey, submitted a report on the Applicant's post that reads in part as follows:

"At the request of Mr. Aitken, Director of the Administrative Division, the ILO agreed that I should undertake an analysis of the position occupied by Mrs. Waldegrave, IMO official, in order to determine whether the position of Editor-Proofreader which she occupies in the Conference Services was of Professional level or whether this position should still belong in the GS category.

...

Background information

During my discussions with Mr. White [Chairman of the Staff Committee] and Mr. Grell [Chief of the Publications Section], it was confirmed that a first audit and analysis had been done in 1978 At that time, two positions were identical: one occupied by Mrs. Waldegrave and one occupied by Mrs. Lawrence. As a result of this first evaluation, these two positions were upgraded from L.7 to L.8 of the London GS scale. In spite of the existence of an Appeals Committee, neither Mrs. Waldegrave nor Mrs. Lawrence appealed against this grading proposal.

In the report on the classification survey of 1978, attention had been drawn to the fact that some parts of the job (i.e., the editing-proofreading) might - and in fact did - belong to the Professional category in some organizations. This statement has been confirmed in the Grading Committee.

If these two declarations (both in the classification report and in the Grading Committee) are not absolutely categorical, it is due to the fact that such positions had been analysed by the International Civil Service Commission and evaluated as belonging to the GS category, despite the fact that they were, for historical reasons, still included in the P [Professional] category.

Audit of Mrs. Waldegrave's position

At the beginning of the audit, Mrs. Waldegrave confirmed what Mr. White and Mr. Grell had already told me, i.e., that there has been no change in her duties since the first classification exercise in 1978. Consequently, I used mainly the Job Description questionnaire which had been established at that time. In reality, the shorter Job Descriptions established later, either by Mrs. Waldegrave or by Mr. Grell, are very similar to the 1978 Job Description.

What came out of the discussion and audit is that the duties performed by Mrs. Waldegrave have still not changed.

During the audit, Mrs. Waldegrave gave samples of her work and explained her participation in the final product of much more complicated work, such as proofreading the International Code, and what is involved in the editing part of her work on 'standard' IMO publications.

The great majority of IMO publications are reports and regulations which do not require difficult lay-out, or decisions on typesetting. The editing performed by

Mrs. Waldegrave must be considered as light editing; substantial changes cannot be made without the author's agreement and/or the agreement of the services concerned because the substance is too technical.

It is obvious that Mrs. Waldegrave recognises and finds errors in manuscripts and/or in proofs, and that it is her duty to report on such findings but she reports and/or draws attention to such mistakes without taking the responsibility of changing the text and/or the drawings or maps.

In view of the above, and by applying the correct meaning to some ambiguous words, such as 'alterations to text..., research, etc.' in the Job Description, it can be seen that the duties performed by Mrs. Waldegrave do not correspond to P level work and that they are much closer to the definition of editing/proofreading work, as given in the CCOG under 2.02, than to editing work, as given under 1.0.2.

...

Conclusions on the evaluation

The first evaluation done in 1978 is, from my point of view, still valid. The tasks and responsibilities correspond to work of a top-level GS.

General Comment

...

If one looks at other organisations, it is still possible to find a number of positions of proofreaders at the P level. The UN system is such that it takes a good number of years to correct over-grading. This does not mean that the situation should not be corrected. In the ILO, most of what was considered as proofreading duties and light editing are now performed by G.6 and G.7 level officials.

More difficult lay-out and decisions concerning editing of publications that include graphs, different colours, complicated and diverse typesetting are being discharged by P level officials. This corresponds to the distribution presently in force in IMO.

To conclude, I recommend that the present duties and responsibilities of Mrs. Waldegrave's position be confirmed at the top GS level."

On 18 August 1986, the Director, Administrative Division,

transmitted the report to the Applicant.

On 30 October 1986, the Applicant filed with the Tribunal the application referred to above.

Whereas the Applicant's principal contentions are:

1. The Secretary-General arbitrarily discarded the views of a grading expert whom he characterized as "reputed to be among the most experienced in the common system" and of a Grading Committee, although both pointed out that the Applicant's post should be reclassified to the Professional category.

2. The Secretary-General cannot exercise his authority to classify posts without taking into account Article 8 of the Charter and the principle that staff performing equal or comparable duties should receive equal pay.

3. Since the IMO joined the common system in 1959, and accepted the ICSC Statute in 1975, the Secretary-General of the IMO is bound by the provisions of article 9 of its Statute. He is therefore bound to abide by classification standards commonly accepted by other organizations of the common system.

4. The Secretary-General deprived the Applicant of the possibility of appealing by not releasing the report of the Grading Expert and the Grading Committee.

5. The UN General Assembly in its resolution 35/225 recognized that the career of staff in all language occupational groups at the UN represents a functional continuum within which the range of grade levels should reflect the increasingly complex and specialized nature of the assignments performed by language groups and approved the Secretary-General's proposals. Editors were placed as professional posts.

Whereas the Respondent's principal contentions are:

1. The application is time-barred. The Applicant should have appealed the decision to classify her post in the General Service category in 1978 and in 1983.

2. The decisions of the Secretary-General on the recommendations of the Grading Committee were based entirely on the merits of each individual case and, moreover, staff had a further opportunity to request a review of the decisions through the Grading Appeals Committee.

3. The decision to upgrade the Applicant's post to the G-8 level was taken by the Secretary-General upon the recommendation of the Grading Committee, and was entirely within his discretion.

4. The Secretary-General determined that the Applicant's duties were not of a professional nature on the basis of the advice of the technical assessment of the IMO Administration. Subsequent expert advice has shown that other agencies which previously regarded these duties as professional had now followed the ICSC guidelines and the Common Classification of Occupational Groups (CCOG) in placing them in the General Service category.

The Tribunal, having deliberated from 21 October 1987 to 5 November 1987, now pronounces the following judgement:

I. With respect to the preliminary measures requested by the Applicant, the IMO has produced the Applicant's official status file and has confirmed that the relevant portion of the 1978 Grading Committee report is as the Applicant has quoted it with regard to her position. In the Tribunal's view, that is sufficient disclosure in terms of the Applicant's interests at this time. At the Applicant's request Mr. Sherry has been invited to and has appeared before the Tribunal as an expert witness. But the Tribunal has not seen fit to require the IMO to prepare the gender-based data requested by the Applicant under the circumstances of this case, since (a) nothing more than mere suspicion on the part of the Applicant has been advanced as a reason for so doing, (b) the record reveals evidence of fair treatment of female employees, including the Applicant, and (c) as will be seen below, the Tribunal finds that, on the merits of the central issue in this case, the

Secretary-General has acted properly with respect to the classification of the Applicant's position in the General Service category rather than the Professional category.

II. Although the Respondent has advanced a not insubstantial contention that some or all of the Applicant's claims are time barred, the JAB declined to accept that contention and the Tribunal will not reverse the JAB's decision because of (1) the confidential treatment accorded to the 1978 Grading Committee report, which resulted in the Applicant being unaware for a lengthy period of its

recommendation potentially affecting her, and (2) the wholly unwarranted delay of over two years on the part of the Administration in responding to the Applicant's 1981 request for reclassification and the improperly cryptic nature of the response for which there now appears to be no underlying explanatory documentation whatever.

III. The Applicant has put forward arguments concerning Article 8 of the Charter of the United Nations regarding equal treatment of men and women. The Tribunal finds no evidence in this case of any violation of any principle of equal treatment.

IV. The Applicant has also put forward arguments concerning the alleged cumulative mandatory binding effect on the IMO of certain UN General Assembly resolutions, article 9 of the Statute of the ICSC and certain decisions of the ICSC under article 13 of its Statute to promulgate a Master Standard for the classification of professional posts and to establish a methodology for distinguishing between Professional level and General Service work. The Tribunal need not address the extent, if any, to which the foregoing were mandatorily binding upon the IMO, for the Tribunal finds that the IMO voluntarily adopted the ICSC recommendations. Thus, the question in this case is whether the IMO adhered to the recommended principles and procedures or whether (a) some improper procedure was followed, or (b) discretionary authority was unreasonably or abusively exercised in this case.

V. During the oral hearings, the Applicant's counsel cited the Tribunal Judgement No. 388 (Moser) in support of the application. But, unlike in Moser, where the evidence showed that the Administration, itself, had recognized that the job description which covered the work assignment of the Applicant in that case described Professional category work, here the IMO has on the basis of impartial outside expert advice, consistently maintained that the

Applicant's job falls within the General Service category. Moreover, in Moser a principal argument of the Respondent was that the Applicant there, though assigned to a post within the Professional category, was not able to perform the work satisfactorily. That contention was rejected in Moser and the issue is not present in this case.

VI. The CCOG description of the "Editor's" post in the Professional category is:

"1.0.2 Editors

Review and evaluate written material provided by contributors and make recommendations regarding acceptability for publication in one or more languages; commission or solicit material for publication; examine material for conformity with organization's established policy and practices and revise it as necessary; spot manifest or possible errors in original text; propose re-arrangements, reduction or revision of texts where necessary; negotiate changes with author and suggest different forms of presenting material; rewrite and shorten texts for greater consistency, clarity and adherence to space limitations; edit material to ensure that phraseology, terminology, style and syntax are correct; edit copy for spelling, punctuation, grammar and continuity and verify facts, dates and statistics of texts using standard reference sources; verify accuracy of quotations and citations, collate copy and proofs for conformity with other language editions, advising other editors of changes needed in other versions; verify that copyright rules are observed and obtain necessary rights and permissions; obtain, select and use illustrations; write headlines and instruct printer concerning kinds of type of[sic] be used; control relevance and accuracy of Proofreaders' and Authors' corrections on proofs. May recommend conditions of publications contract; may write articles or other texts, including abstracts and publicity material for sales promotion purposes; may prepare indexes."

and the CCOG descriptions of the post and the proofreader post in the General Service category are:

"1.0.8 (Editorial Clerks)

Perform specialized tasks contributory to the work of

writers, translators, interpreters and related workers: review and correct text in order that spelling, punctuation and syntax conform to authorized style of organization; verify references and quotations; collect, assemble and lay-out material for tables and indices of content; verify accuracy and adequacy of layout and captions of graphic material in text; caption graphic material; verify equivalency of text and graphic material in different language versions; provide instructions to reproduction services; record and draft parts of text prepared by or with others; type and lay-out texts; maintain records relating to reproduction.

1.0.9 (Proofreaders)

Compare proofs of texts and related material composed for reproduction with original material and mark errors for correction according to established system."

VII. The difference between the Professional category positions in the Editor/Proofreader job and those in the General Service category is not easily or instantly determinable in all cases. As set forth in the ICSC guidelines,

"259. The Commission recalled that it had recognized at its ninth session, held in February and March 1979, the importance of developing a methodology for distinguishing between Professional level and General Service level work, since some organizations place certain jobs in the Professional category whilst other organizations (sometimes within the same duty station) place the same jobs within the General Service category. At its twelfth session, the Commission considered proposals submitted by CCAQ [Consultative Committee on Administrative Questions] for such a methodology.

260. The representative of CCAQ explained that the proposed methodology involved the use of two steps, each step being applied to a particular post until a conclusion was reached as to the appropriate category for that post. The first step consisted in comparing the occupational group of the post to the Common Classification of Occupational Group (CCOG) approved by the Commission and which categorizes occupational groups as either Professional level or General Service level. The post under review, therefore, would be categorized in accordance with the occupational group to which it belonged.

261. If this were not sufficient to make a determination, the second step would be used. It consisted of analyzing the post under review in accordance with a narrative description

of Professional level work, and thereby establishing the appropriate category. This narrative description was 24¹ as follows:

'Professional work is analytical, evaluative, conceptual, interpretive and/or creative and thus requires the application of the basic principles of an organized body of theoretical knowledge, such as a field of science, learning or specialized discipline. It is intricate and involves a level of difficulty and complexity requiring the identification and consideration not only of the interrelationships between its constituent elements, which are of a varied and diverse nature, but also the broader context and perspective within which it is performed, including its impact on, and interrelationship with, the larger objectives and programmes of the Organization. It requires judgement in analyzing and evaluating problems and in decision-making involving discretionary choices between alternative courses of action.

Professional work required the understanding of an organized body of theoretical knowledge which is of a level equivalent to that represented by a university degree. While this knowledge is customarily and characteristically acquired through formal education, it may, in some field of learning or specialized disciplines, be acquired through other training, self-study, or practical experience'." (A/35/30)

VIII. Although the Applicant argues to the contrary, the Tribunal finds that, except with regard to delay and the cryptic explanation provided to the Applicant in 1983, in denying her 1981 request for reclassification, throughout the entire period in question from 1978, the Secretary-General acted reasonably in exercising his

¹ "24* The definition does not (and cannot) describe all aspects of all Professional work. Parts of this definition may also apply to some work within the General Service category. In applying the definition for the purpose of distinguishing between Professional and General Service work it is recognized that judgement must be applied in assessing whether or not the work involved in a given job conforms to the over-all definition rather than to one selective aspect of it (emphasis added). It should always be borne in mind that it is not the level of education or training possessed by the incumbent that is relevant, but rather the level of theoretical knowledge required to carry out the work.'

judgement regarding the proper category of the Applicant's post. In 1978, the Secretary-General, following the Grading Committee report, upgraded the post one level. He also reviewed the question whether the post should be placed in the Professional category and decided against doing so based on the recommendation of the individual who had most closely investigated in an audit the details of the job, and the concurrence in that conclusion by Mr. Bourgeois, the ILO expert who assisted in various aspects of the IMO classification analysis.

IX. It was noted in Mr. Bourgeois' report that some aspects of the editing-proofreading job in some organizations of the UN Common System belonged to the Professional category. This was the reason for the report recommending that special consideration be given to whether the post should be reclassified. There was no definitive recommendation on the basis of the audit that it should be reclassified. This was confirmed by the testimony of Mr. Bourgeois, who appeared at the oral hearing at the invitation of the Tribunal.

Though Mr. Bourgeois did not do a desk audit of the post in question at that time, he explained that his views in 1978 about the classification practice regarding editor-proofreaders of other organizations at other locations relating to the Applicant's post, were not based on actual knowledge of the nature of the Applicant's job. He pointed out that some of the words used in the job description, depending on an understanding of the work actually performed, might signify either the Professional or the General Service category.

X. To be sure, the Administration was, in the Tribunal's opinion, remiss in not explaining clearly and within a reasonable time after the Applicant's 1981 request for reconsideration, why it declined to reclassify her post. Yet, the fact remains that the post was then properly classified in the expert opinion of Mr. Bourgeois.

XI. Indeed, in response to, and the Tribunal finds, in compliance with the recommendation of the JAB in para. 9.1 of its report, the Administration again reviewed the Applicant's position, and for this purpose obtained the services of Mr. Bourgeois once again. He ascertained from the Applicant that her job was the same in 1986 as in 1978 and he conducted a detailed review of its duties and responsibilities. His expert conclusion was that it had been classified properly in the General Service category and that it did not belong in the Professional category.

XII. Mr. Sherry, who testified on behalf of the Applicant, did so not on the basis of any investigation of the details of the duties and responsibilities of her job. His testimony was directed rather to the general inclination on the part of those making recommendations regarding the classification of editor-proofreaders to conclude that they should be placed in the Professional category. But this testimony is not necessarily at odds with Mr. Bourgeois' views. For Mr. Sherry simply had no knowledge regarding the details of the Applicant's post and therefore he could have no basis for an opinion on whether other classification experts might have shared Mr. Bourgeois' conclusions, had they conducted an audit of the job as he did in 1986.

XIII. The Applicant submitted for the consideration of the Tribunal a number of editor-proofreader "job descriptions", most of which were contained in vacancy announcements by various organizations. These indicated that the posts were in the Professional category. Mr. Bourgeois reviewed them and pointed out that without more than merely a review of the words used in these announcements, it was not possible with certainty to compare the posts with the post encumbered by the Applicant. The Tribunal finds this to be quite understandable. In the case of two of the descriptions, Mr. Bourgeois indicated that they sounded comparable to the

Applicant's post but in those cases, he had reason to be skeptical about actual comparability of important elements going to the question whether her post was Professional or whether the post with which hers was being compared was Professional.

XIV. The essence of Mr. Bourgeois' expert conclusion, which the Tribunal finds was reasonably supported by his audit, is that the level of the work involved in the Applicant's post was simply below the level of the work involved in those editor-proofreader posts classified in the Professional category. This conclusion was, moreover, mirrored in the statement of counsel for the Respondent at the oral hearing that, with the exception of the Head of the English Translation Section in the IMO office, no staff member performs or is considered capable of performing editor-proofreader work at a Professional level. When such work at that level is required, the IMO has uniformly utilized the temporary services of outside professional editors.

XV. 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 on behalf of 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 and the Tribunal finds that in relying on obviously well-qualified impartial experts, such as Mr. Bourgeois, he did not exceed his discretionary authority in declining to classify the Applicant's post in the Professional category.

XVI. The Applicant has asserted that, among other things, the Administration failed to adhere to the Master Standard

classification procedure established by the ICSC. There is no merit in this contention. The Administration chose to follow an option provided by the ICSC which permitted reclassification review to be deferred until a change of duties in the post occurred. Here there was no change in the duties of the post as between 1978 and 1986, and there was, in fact, a reclassification review in 1986 by Mr. Bourgeois as a result of the JAB recommendation.

XVII. Although the Tribunal rejects, for the foregoing reasons, all of the Applicant's pleas, it nevertheless finds that because of the Administration's unjustified delay for over two years in responding to what appeared to the Applicant (and to the Tribunal on the basis of the 1978 report) an entirely reasonable request, the Applicant's rights were infringed. And this was compounded by the cryptic nature of the response when it finally came in 1983. A staff member is entitled to a reasonably adequate explanation under such circumstances of why action is or is not being taken in response to such a request. The response given fell far short of what is required. Accordingly, the Tribunal orders the Respondent to pay to the Applicant \$US 1,000 for the injury caused.

(Signatures)

Arnold KEAN
First Vice-President, presiding

Luis de POSADAS MONTERO
Second Vice-President

Jerome ACKERMAN
Member

New York, 5 November 1987

R. Maria VICIEN-MILBURN
Executive Secretary