



Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1325

Case No. 1400

Against: The Secretary-General  
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,  
Composed of Ms. Jacqueline R. Scott, First Vice-President, presiding; Mr. Dayendra Sena Wijewardane,  
Second Vice-President; Mr. Julio Barboza;

Whereas at the request of a former staff member of the United Nations Development Programme (hereinafter referred to as UNDP), the President of the Tribunal granted an extension of the time limit for filing an application with the Tribunal until 31 December 2004 and twice thereafter until 28 February 2005;

Whereas, on 28 February 2005, the Applicant filed an Application requesting the Tribunal

“... to find

- a. that the Ad Hoc panel convened by UNDP to consider her appeal against the reclassification of her post failed to properly examine said reclassification, particularly in light of clear discrepancies between the information provided about the post by the Applicant and by her supervisor;
- b. that the process concerning the reclassification of the post she encumbered lacked openness and transparency;
- c. that in not taking timely action to have the post reclassified in the light of an increase in the Applicant's responsibilities and her proven good performance, UNDP failed to appropriately recognize and reward the Applicant's efforts.

... [and] to order

- a. that the Respondent amends the pertinent provisions of [the] UNDP Personnel Manual to bring them in line with the provisions of ST/AI/1998/9 [of 8 October 1998, entitled ‘System for the Classification of Posts’,] to clearly set out that the final decision of a Recourse Panel concerning classification/reclassification of a post should be brought before the [Administrative Tribunal];

- b. that the Applicant be given a copy of [the comments submitted by her supervisor] and of the full record of the Ad Hoc panel's review of her appeal against the reclassification of her post;
- c. financial compensation for earnings lost due to incorrect grading of post; and,
- d. financial compensation for moral injury in respect of being made to appear untruthful."

Whereas at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent's answer until 23 August 2005 and twice thereafter until 21 October;

Whereas the Respondent filed his Answer on 20 October 2005;

Whereas the Applicant filed Written Observations on 14 February 2006, amending her pleas to request "the Tribunal to order the Respondent to compensate her for the violation of her due process rights in the context of the reclassification review process".

Whereas, on 21 November 2006, the Tribunal decided to postpone consideration of this case until its next session;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNDP on 22 March 1999, on a three-month, fixed-term appointment at the GS-5 level as an Assistant to the Resources Group, United Nations Volunteers programme (UNV). Her fixed-term appointment was subsequently extended. At the time of the events which gave rise to her Application, the Applicant held the GS-5 level position of Financial Resources Mobilization Assistant, Financial Resources Mobilization Unit, External Relations Group, UNV.

According to the Applicant, following discussions she had had with her supervisor regarding the classification of her post, in April 2003 an external classification expert preliminarily reviewed her job description and concluded that the post should be classified at ICS-6, the equivalent of the GS-6 level. She states that, in view of her expressed concerns that the external consultant's evaluation might prejudice a classification review of her post, UNV agreed that his assessment would not be provided to UNDP when the relevant material was submitted for the official classification review.

On 7 August 2003, the Applicant's supervisor signed a UNDP General Service Job Description Questionnaire for the position of Financial Resources Mobilization Assistant; on 11 August, the Applicant signed the questionnaire. By signature thereof, she acknowledged that she had seen her job description and "been informed about the duties and responsibilities attached to the position". On 12 August, the description was submitted to the Office of Human Resources, UNDP, (OHR) for review and classification. The Applicant claims that the assessment of the external classification expert was also submitted, contrary to the agreement she had reached with UNV. On 6 November, UNDP informed UNV that the Applicant's post had been reclassified to ICS-6, effective 1 September 2003, and the title upgraded to Financial Resources Mobilization Associate.

On 2 January 2004, the Applicant wrote to the Secretary-General requesting administrative review of the decision to reclassify her post at ICS-6, which she considered "still not appropriate to the duties" she performed, and of the "administrative processes that ... led to this decision". On 15 January, she notified UNDP that she was

appealing the decision to reclassify her post. On 3 March, UNDP advised the Applicant that as, pursuant to her 15 January request, a panel would be convened to review the classification decision, her request for administrative review would be “temporarily suspended” pending the outcome of the panel’s review. On 8 March, the Deputy Director, OHR, responded to the Applicant’s letter of 15 January, providing the “rationale for [the] grading decision” which indicated that her post was a “very strong ICS-6”, “seen overall to be one of specialized support, as well as non-supervisory and with significant supervisory controls” but that “the depth and variety of the specialized work was not complex enough to meet the G[S]-7 criteria”.

On 26 March 2004, the UNDP Ad Hoc Classification Recourse Panel met to consider the Applicant’s appeal. On 19 April, she was advised that the Recourse Panel requested clarification from her and her supervisor on certain elements of her job description, in order to “proceed with [its] review”. The Applicant and her supervisor submitted their responses on 10 and 7 May, respectively. The Recourse Panel reconvened on 11 June and, on 12 July, the Deputy Director, OHR, wrote to the Applicant, informing her that the Recourse Panel had considered the information provided by her and her supervisor but had concluded that “there was insufficient reason to raise the points rating assigned to the present classification of the subject post or to raise any other elements to a higher level than previously assigned” and had recommended, therefore, that “the classified level, ICS-6, be maintained”.

On 10 August 2004, the Applicant wrote to the Deputy Director, OHR, inquiring as to whether his letter of 12 July constituted the final decision in her appeal. The following day, she was advised that, as her request for administrative review had been suspended pending the review by the Recourse Panel, she should “re-submit [a] request for administrative review, reflecting the decision of the Recourse Panel, to the [UNDP] Administrator in accordance with staff rule 111.2 (a)”; thereafter, her case would have to proceed through the Joint Appeals Board (JAB). On 12 August, the Applicant informed UNDP and the United Nations that she considered that the letter of the Deputy Director, OHR, of 12 July constituted UNDP’s final decision on her appeal and that “any further recourse she [would] pursue [would] be submitted to the United Nations Administrative Tribunal”. On 26 August, she was informed that, in contrast to the position at the United Nations (as contained in ST/AI/1998/9), the UNDP procedures concerning the review of classification decisions, as set out in Chapter V of the UNDP Personnel Manual, were “silent on the question of whether the decision of the Recourse Panel is the final decision appealable to the Tribunal [and thus] the appropriate process for recourse ... [was] the appeal process as outlined in [staff rule 111.2]”. UNDP indicated, however, that if a statement of agreed facts could be prepared, it would consent to the matter being submitted directly to the Tribunal. Despite the documented efforts of both parties, no such statement was agreed upon.

On 7 February 2005, the Applicant resigned from service.

On 28 February 2005, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant’s principal contentions are:

1. The Application is receivable. The Recourse Panel is a joint review body and UNDP’s decision of 12 July 2004 was the “final decision” on her appeal.

2. The Applicant's rights of due process were violated by the failure of the Respondent to take timely action with respect to the reclassification of her post, and the failure of her supervisor to discharge her supervisory obligations.

3. The Recourse Panel based its decision on incorrect factual information provided by the Applicant's supervisor. The failure of the Administration to provide this information to the Applicant for her comments was a further violation of her rights of due process.

Whereas the Respondent's principal contentions are:

1. The Respondent now concedes that the Application is receivable because it constitutes an appeal from a final administrative decision, regarding which the administrative review process has been completed as required under the Staff Regulations and Rules.

2. The decision concerning the reclassification of the Applicant's post was a proper exercise of the Respondent's discretion, and was based on proper procedures that fully accorded the Applicant due process.

The Tribunal, having deliberated from 8 to 21 November 2006, in New York, and from 28 June to 27 July 2007, in Geneva, now pronounces the following Judgement:

I. The Applicant was employed by UNDP on 22 March 1999, initially on a three-month, fixed-term contract as an Assistant to the Resources Group for UNV in Bonn as a General Service employee at the GS-5 level. Her services were later extended until 30 June 2005 through a series of fixed-term contracts but she resigned from her post effective 7 February.

II. The case revolves around the efforts, over a period of time between 2001 and 2004, to determine the correct level of the Applicant's post. As early as 2001, her supervisor apparently suggested that she update her job description to reflect her duties and responsibilities, with a view to eliciting a reclassification of the post. In March 2003, the Applicant provided an updated version of her job description which was then put through a relatively informal – and, to a large extent, internal – process, albeit with the help of an outside consultant. By the end of April, however, this effort had not, to the disappointment of the Applicant, yielded any proposed rating higher than ICS-6. There ensued further exchanges of views and, in July, the Applicant indicated she would formally request reclassification of her post. This initiative resulted in a job description agreed to and signed by both the Applicant and her supervisor which, together with additional relevant material, was submitted on 12 August to UNDP for review and classification.

On 6 November 2003, the Officer-in-Charge, OHR, UNDP, informed the Manager, HR, UNV, that the post level had been confirmed at ICS-6 as previously determined. The communication was copied to the Applicant, although not received by her until 9 December. The Applicant did not agree with the classification and, on 2 January 2004, asked the Respondent for administrative review of this decision as it was still in her view “not appropriate to the duties [she was] being asked to perform”. At the same time, she also indicated her wish to appeal against the decision. As a result, the Applicant's request for administrative review was “temporarily suspended” and

steps were taken to have her classification appeal submitted to a “panel of review”, which is described in the record as the Ad Hoc Classification Recourse Panel, a joint staff-management review panel set up within UNDP to hear appeals from classification decisions.

The Recourse Panel examined her case and concluded that the Applicant’s post had been correctly classified at the ICS-6 level. The Recourse Panel’s findings were conveyed to the Applicant on 13 July 2004 by transmission of a letter dated 12 July from the Deputy Director, OHR, UNDP, together with a document which seemingly records the minutes of a meeting dated 11 June reflecting the conclusion of the Recourse Panel. The latter document was signed by the Chairperson and Secretary of the Recourse Panel and copied to the other members of the Recourse Panel. In relevant part, it reads as follows:

“the Panel has determined that there was insufficient reason to raise the points rating assigned to the present classification of the subject post or to raise any other of the elements to a higher level, than previously assigned. They agreed that sufficient credit had already been awarded as appropriate and therefore recommended that the classification level ICS-6 be maintained.”

It ended with the statement, “[p]lease see attached, a record of our review”. It is this decision of the Deputy Director that the Applicant now brings before the Tribunal, by way of an appeal raising issues both of procedure and of substance.

III. In a sense, the issue of the appropriate procedure to have the case brought before the Tribunal has now been put to rest by the parties themselves. Despite his initial position that the case should proceed through peer review, the Respondent has accepted that the Application to the Tribunal is receivable. The Tribunal wishes to take this opportunity to confirm that the Recourse Panel is undoubtedly a joint staff-management review body within UNDP, and is a direct parallel to the Classification Appeals Committee in the United Nations Secretariat. The Tribunal considers it only logical that a decision based on the findings of the Recourse Panel should be appealable to the Tribunal, without further recourse to the JAB, regardless of whether the parties have agreed on the facts. In the event of a lacuna in the ascertainment of the facts, it is for the Tribunal itself to take cognisance of that situation and to make any appropriate orders it considers necessary.

IV. Substantively, the Applicant has alleged that she is not satisfied with the findings of the Recourse Panel and the decision based thereon. She contends that the reclassification of her post was based on “incorrect factual information provided by [her] supervisor” which the Recourse Panel failed to properly “examine” or “verify”. This complaint relates primarily to a written statement dated 7 May 2004 which the Applicant’s supervisor made to the Recourse Panel pursuant to the latter’s request for clarification. This request was presented both to the Applicant and her supervisor. The Applicant was not given an opportunity to comment on her supervisor’s statement and she now claims that this was a “violation of her due process rights”.

It should be noted that the Recourse Panel was well aware of the dispute between the Applicant and the Administration regarding the classification of her post and the disparity between the duties and responsibilities she claimed to be performing and the formal description of her post. The Applicant had expressed her disappointment

with the grade level of her post and had, in January 2004, indicated her decision to appeal this matter. When, therefore, the Recourse Panel met on 26 March and 11 June, it was cognisant of the disagreement which had arisen. In the circumstances, the Tribunal considers that transparency of the process would have been better served had the Recourse Panel ensured that the statements made by each party were made available to the other for comment. This is particularly so in view of its quasi-judicial nature, a “joint appeals body” under the auspices of article 7 of the Statute of the Tribunal. In the Tribunal’s view, the Administration’s failure to provide the Applicant with her supervisor’s comments did amount to a putative violation of her rights of due process.

In Judgement No. 1246 (2005), the Tribunal held that “there are cases ... where procedural irregularities at an early stage have an inevitable direct impact on the decisions in the following stages and may not be retroactively cured”. Likewise, in Judgement No. 1058, *Ch’ng* (2002), it found there are “cases where the lack of due process at an early stage has an inevitable direct impact on the decisions in the following stages”. In the instant case, however, the Tribunal does not consider the technical violation of the Applicant’s rights to vitiate the ultimate decision. (See generally Judgements No. 983, *Idriss* (2000) and No. 984, *Abu Ali* (2000).)

The classification process advanced on the basis of an agreed job description signed and acknowledged by both parties as recently as August 2003. Moreover, there was clearly no intention on the part of the Administration to conceal from the Applicant the input of her supervisor, because the letter of 19 April 2004 invited her comments and clearly spelled out that her supervisor was also being invited to do so. Thus, the Applicant was made fully aware of the steps being taken. Even at the late stage of July 2004, when the Applicant was given an explanation of how the Recourse Panel had arrived at its decision, reference was made to her supervisor’s input. The Tribunal takes the view that, given that the Applicant had been formally notified of the existence of the document in question, it was incumbent on her to ask at the first opportunity to see it, and to comment thereon, if she considered it important. It would have been a reasonable, indeed minimal, effort towards safeguarding her interests for the Applicant to have made such a request. The Tribunal finds that, whilst staff members enjoy rights of due process, and the Respondent has the duty to protect same, a staff member may not neglect to take reasonable steps to protect his or her own interests in a timely fashion and, later, attempt to rely upon the Administration’s acts or omissions as vitiating the impugned decision.

V. As a discrete matter, the Applicant also claims that her rights of due process were violated when “the report” of the Recourse Panel was withheld from her, although she believed it had been transferred to the Administration together with the findings of the Recourse Panel. There is clearly some confusion in this respect: the Respondent maintains that, notwithstanding the reference included in the Recourse Panel’s recommendation, as quoted in paragraph II of this Judgement, there was no separate “record” accompanying the minutes; rather, the findings of the Recourse Panel are as set forth in the minutes dated 11 June 2004. The Tribunal accepts the position of the Respondent that no independent “record” exists, and notes that no such document appears in the files pertaining to this particular case.

The Tribunal appreciates the Applicant’s disappointment at the casualness with which the Recourse Panel appears to have acted in a matter which was undoubtedly important to her as a staff member but, again, considers

that this does not amount to a fatal irregularity. The Applicant was entitled to a reasoned response to her appeal which was provided by the detailed letter sent to her. The letter indicated that the relevant material was examined, weighed and an evaluation made, albeit one which was not in her favour.

VI. Whilst the case before the Tribunal hinges on the rights of due process and the technical rights of the Applicant, it is apparent that the actual basis for her unhappiness is that she feels aggrieved and is weighed down by a sense of injustice that her dedication and performance were not properly recognised. The Tribunal has, of course, consistently held that

“[it] cannot substitute its judgement for that of the Secretary-General in job classification matters. Judgement No. 396, *Waldegrave* (1987), paragraph XV. This point is not in dispute. The Tribunal must, however, consider whether there was a material error in procedure or substance, or some other significant flaw in the decision complained of.” (Judgement No. 541, *Ibarria* (1991). See also Judgements No. 792, *Rivola* (1996); No. 1073, *Rodriguez* (2002); No. 1080, *Gebreanenea* (2002); and, No. 1136, *Sabet and Skeldon* (2003).)

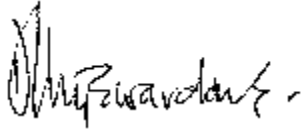
In a sense, the Applicant rails not against the classification procedure but against principles of bureaucracy evident in the international civil service. In such systems, the classification of posts is not necessarily related to the quality of incumbents and the fact that a staff member may perform above and beyond the duties of his/her post does not give rise to a right to reclassification of the post. This does not detract from the excellence of such a staff member’s performance, however, and it is to be hoped that the system will encourage him or her towards a successful and accomplished career in which the interests of both staff member and Organization are served.

VII. In conclusion, the Tribunal finds that the procedural irregularities in this case neither vitiated the impugned decision nor violated the Applicant’s rights of due process such as would merit an award of compensation. Thus, it holds that the decision of the Respondent not to classify her post higher than ICS-6 was not vitiated by any extraneous considerations, prejudice or improper motives. Accordingly, the Application is rejected in its entirety.

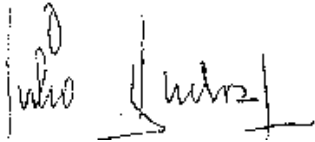
(Signatures)

A handwritten signature in black ink, appearing to read 'J. R. Scott', written in a cursive style.

Jacqueline R. **Scott**  
First Vice-President

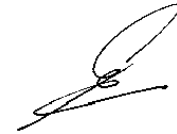


Dayendra Sena **Wijewardane**  
Second Vice-President



Julio **Barboza**  
Member

Geneva, 27 July 2007



Maritza **Struyvenberg**  
Executive Secretary