



Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1418

Case No. 1490

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Spyridon Flogaitis, President; Ms. Brigitte Stern; Mr. Goh Joon Seng;

Whereas, on 28 June 2006, a staff member of the United Nations, filed an application that did not fulfill all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 15 August 2006, the Applicant, after making the necessary corrections, filed an Application in which he requested the Tribunal, inter alia:

“2. On the *merits and substance* ...

- (a) *to find and rule* that the Joint Appeals Board’s [(JAB’s)] proceedings violated the requirements of the Staff Regulations and Rules and pertinent administrative instructions by not addressing the [Assistant Secretary-General for Human Resources Management’s] obligations to comply with due process on the Applicant’s request for reclassification;
- (b) *to rescind* the ... decision of the Secretary-General ... that due process took place in the consideration of the Applicant’s request for reclassification, as well as the [Assistant Secretary-General for Human Resources Management’s] decision of 8 May 2006, in view of the violations of due process and of the disregard of [the International Civil Service Commission (ICSC)] Standards which have occurred before, during and after the [classification process];
- (c) *to order*, should the Respondent decide that the case should be remanded ... for institution or correction of the required procedure, in accordance with article 10 (2) of the Tribunal’s Statute, that [three] months’ net base salary be paid in the meantime to the Applicant as compensation;

- (d) *to order*, in the absence of action on item (c) by the Respondent, that the Applicant's request for reclassification of his post be conducted fairly by the Respondent within 90 days, in accordance with procedures, including clear reference to two independent classification analyses and to the relevant ICSC Classification Standards;
- (e) *to award* the Applicant appropriate and adequate compensation to be determined by the Tribunal for the actual, consequential and moral damages suffered by the Applicant since 1996, as a result of the Respondent's actions or lack thereof on his reclassification requests, for the harm to his career, and for the abusive delays in the handling of his case;
- (f) *to fix* pursuant to article 9, paragraph 1 of the Statute and Rules, in view of the abuses and excessive delays of this case, constituting exceptional circumstances, the amount of compensation to be paid in lieu of specific performance by the Secretary General within three months of the judgment, at three (3) year's net base salary."

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 22 January 2007, and twice thereafter until 9 March;

Whereas the Respondent filed his Answer on 26 February 2007;

Whereas the Applicant filed Written Observations on 18 April 2007;

Whereas the statement of facts, including the employment record, contained in the report of the JAB reads, in part, as follows:

“Employment history

... [The Applicant] commenced service with the United Nations in August 1974, serving on a series of fixed- and short-term appointments at the G-1 level with the Office of General Services (now, Office of Central Support Services [(CSS))). On 1 July 1977, he received a permanent appointment at the G-3 level. In April 1980, he was promoted to the G-4 level as Senior Clerk, Office of General Services. From 1 January 1984 - 18 May 1985, he was granted a special post allowance [(SPA)] at the P-1 level for interim service as Acting Telecommunications Engineer. [The Applicant] assumed his functions as Inventory and Supply Assistant in the same Office on 1 January 1985, at which time his post was upgraded from G-4 to G-6.

Summary of Facts

... On 2 August 1996, [the] Chief, Broadcast and Conference Engineering Unit, ... generated a note to the file stating that [the Applicant] had assumed the responsibilities of the abolished post of Chief of Logistics (P-3) in addition to his functions as Inventory and Supply Assistant. A Request for Classification and Recruitment form for [the Applicant's] post was signed by [the Officer-in-Charge], Broadcast and Conference Engineering Unit, on 16 December ... and by [the Applicant] on 18 December ... Approving signatures for the reclassification were absent.

... By a memorandum dated 20 October 2003, [the Applicant] submitted a request to his supervisor ... [for an SPA] 'to the vacant P-3 Post of Chief, Radio & Conference Unit .., as I have assumed the functions of this post in the interim period'.

... By a memorandum dated 31 October 2003, [his supervisor] informed [the Applicant] that, upon reviewing the duties of the P-3 post, he found that [the Applicant] had not been assigned nor had he been performing those functions. He therefore informed him that he could not support [his] request for an SPA.

... By a memorandum dated 12 November 2003 [addressed to his supervisor, the Applicant again] ... requested an SPA to the P-3 post, and requested reclassification of the post he currently encumber[ed] 'which since 1996 has incorporated the functions of the abolished P-3 post, that ... [the Applicant] continue[s] to assume'.

... By a memorandum dated 26 December 2003, [his supervisor responded, inter alia] ... that, with regard to the request for an SPA: '... Whilst the request for reclassification presented in December 1996 was signed by [the] then Chief, Broadcast and Conference Engineering Unit, it was not signed by [his] supervisor, nor by the Executive Office and therefore was not processed further'. He stated that the current request for an SPA, granted only to existing posts, pertained to an abolished P-3.

With regard to [the Applicant's] request for reclassification[, he responded]:

'5. The earlier request for reclassification submitted in 1996 was not supported by the supervisor of the Chief of your unit. The responsibilities and duties that you discharge have not changed since [December 1996, when the earlier request was not authorized]. Moreover, in my judgement the current classification ... at the GS-6 level is correct. This position is shared by my supervisor, [the] Director of Facilities and Commercial Services Division. ...'

In this light, he denied reconsideration of [the Applicant's] case.

... By a memorandum dated 21 January 2004 to the Secretary-General, [the Applicant] requested a review of [this] administrative decision ...

..."

On 27 February 2004, the Applicant lodged an appeal with the JAB in New York.

On 16 and 31 March 2004, a Classification Officer who had reviewed the Applicant's functions produced audit reports. Thereafter, on 29 April, the Applicant was advised that the functions outlined in his supervisor's 1996 note to the file and in the unclassified job description submitted were consistent with work at the GS-6 level. Accordingly, it had been determined that the job description for his post was "correct for all intents and purposes".

The JAB adopted its report on 9 August 2005. Its considerations, conclusions and recommendation read, in part, as follows:

"Considerations

20. The Panel examined the question of receivability and Respondent's challenge thereon. [The] Appellant appeals the decision not to reclassify his post to a P-3 and requests the JAB to recommend such a reclassification. [The] Respondent contends that the classification level of a post falls outside the purview of the JAB: a separate classification review process exists as well as a forum for classification-related appeals. The Panel notes an ambiguity under ST/AI/1998/9 [of 6 October 1998], entitled 'System for the classification of posts',] as to whether JAB recourse was

available to [the] Appellant, primarily due to the vagueness of what constitutes a ‘classification decision.’

21. Briefly summarized, under the [administrative instruction], incumbents who consider that the duties of their posts have been substantially affected by a restructuring within the office may request a review by [the Office of Human Resources Management (OHRM)]. ... A human resources officer makes a determination that a request for reclassification by the Executive Officer should be made based on a classification review or audit of a post. ... If so, the request is submitted to the Assistant Secretary-General (...) for Human Resources Management (...), and classification analysis is conducted independently by two classification or [human resources] officers. (...) The decision is taken by or on behalf of the [Assistant Secretary-General] based on that analysis. The incumbent may appeal the decision on the classification level of a post to the [Assistant Secretary-General] in writing ‘at the time of its classification’. (...) The responsible section in [OHRM] thereafter will submit a report with its findings and recommendation for decision by, or on behalf of, the Assistant Secretary-General. (...) If it is decided to maintain the original classification, the appeal, together with the report of the reviewing service or section, is referred to what in the instant case would be the New York General Service Classification Appeals Committee (...).

22. The Panel notes that in this case, [the] Appellant submitted the request for reclassification ... That request denied, he submitted within the proper time-frame a request for review of the administrative decision ... [Thereafter, OHRM conducted an initial classification review.] ... In this case, clearly [the] Appellant is appealing a classification review and the decision by OHRM not to request that his post be reclassified based thereon. In the absence of any specific language in the [administrative instruction], the Panel considers that, where a staff member appeals a decision regarding classification review, the JAB is competent to examine questions of due process in the taking of such a decision. However, in this case, [the] Appellant does not challenge the decision on procedural grounds – and upon its own examination of the record the Panel finds no evidence itself of a violation of due process, improper motive or arbitrariness. It is apparent that [the] Appellant specifically appeals the decision not to reclassify based on the substantive merits – i.e., based on the divergence between his estimation of the duties of his post and that emerging from the analysis of the [initial classification] review. Based on its reading of the [administrative instruction], the Panel considers that the JAB is not competent to examine the merits of such a disagreement.

...

24. With regard to the issue of the SPA, the Panel agrees that staff rule 103.11 and its executing instructions in ST/AI/1999/17 [of 23 December 1999, entitled ‘Special post allowance’,] envision a scenario distinct from [the] Appellant’s case: both require that a staff member take up functions of an existing post for a substantial but nevertheless limited amount of time. The functions which [the] Appellant claims to exercise since 1996 derive from a post abolished in that same year. As such, those functions are entirely inappropriate for an SPA, which ... is a discretionary grant rather than a staff right.

...

26. Nevertheless, the Panel considers, in light of [the] lack of clarity in [ST/AI/1998/9], and given the timely nature of [the] Appellant’s submission to the JAB, that it would be appropriate and in the interests of justice under the circumstances to preserve his right to a recourse and allow him to pursue an appeal under the appropriate procedures set out in ST/AI/1998/9, should he so desire.

Conclusions and recommendation

27. In light of the foregoing, the Panel *unanimously concludes* that an SPA grant is inappropriate in the context of the present case. No procedural flaw was either raised by [the] Appellant or found by the Panel, which concludes that, in light of ST/AI/1998/9, ... it has no competence to otherwise consider the appeal as regarding whether [his] post actually should have been reclassified. In this vein, however, the Panel observes that it would be appropriate to preserve his right to some recourse and allow him to pursue an appeal under the appropriate procedures set out in ST/AI/1998/9, should he so desire. This notwithstanding, the Panel *unanimously decides* to make no recommendation in the present case.”

On 23 September 2005, the Under-Secretary-General for Management transmitted a copy of the report to the Applicant and informed him as follows:

“The Secretary-General accepts the JAB’s findings and conclusions, and has decided to take no further action on your case. The JAB’s observation about allowing you to pursue an appeal with the Classification Appeals Committee, should you wish to do so, will be brought to OHRM’s attention.”

Consequently, on 26 October 2005, the Applicant appealed the classification level of his post. His appeal was forwarded to the New York General Service Classification Appeals and Review Committee (NYGSCARC), which reviewed the matter on 18 April 2006. In its report dated 5 May 2006, the NYGSCARC found:

“Conclusions and recommendations

30. ... [T]he Committee finds that the nature of the functions of the post was operational and procedural, and its objective was primarily to support the execution of the work programme of the section, entailing the performance of routine and repetitive duties under defined guidelines. Such would be consistent with the definition of work in the General Service category. The Committee further finds that the post was classified properly at the GS -6 level, and therefore recommends that it be maintained at the GS -6 level.”

On 8 May 2006, the Assistant Secretary-General for Human Resources Management wrote to the Applicant, informing him that she had accepted the NYGSCARC’s recommendation that the post be maintained at the GS -6 level.

On 15 August 2006, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant’s principal contentions are:

1. The Application is receivable.
2. The JAB erred in not addressing the responsibility of the Assistant Secretary-General, OHRM, to comply with due process on his request for reclassification.
3. His rights were violated.

Whereas the Respondent’s principal contentions are:

1. The Applicant's pleas concerning the JAB proceedings and the decision of the Respondent thereon are not receivable because they are time-barred.
2. The Applicant was accorded all due process in the handling of his classification appeal.
3. The decision not to reclassify the Applicant's post was a proper exercise of the Respondent's discretion.

The Tribunal, having deliberated from 11 to 26 November 2008, now pronounces the following Judgement:

I. The Applicant entered the service of the Organization in August 1974, serving on a series of fixed-term and short-term appointments at the GS-1 level in the Office of General Services. At the time of the events in question, the Applicant held a permanent appointment and was serving as a GS-6 level Inventory and Supply Assistant, CSS.

In 1996, the Chief, Broadcast and Conference Engineering Unit, prepared a note to the file stating that, in addition to his regular duties, the Applicant had assumed the duties of the abolished P-3 post of Chief of Logistics on 1 January 1985, at which time his post was upgraded from the GS-4 level to the GS-6 level. In December 1996, the Officer-in-Charge of the Applicant's Unit and the Applicant both signed a request for classification of the latter's post. According to the NYGSCARC, however, this request was never formally submitted for classification review.

On 20 October 2003, the Applicant requested an SPA "to the vacant P-3 post of Chief, Radio & Conference Unit/BCSS". On 31 October 2003, his supervisor responded that the Applicant had neither been assigned to, nor performed, the relevant duties. On 12 November 2003, the Applicant reiterated his request for an SPA and requested reclassification of his post which, he asserted, had incorporated P-3 functions since 1996. He was then informed that his 1996 request for classification had not been "processed" and that he could not be granted an SPA to an abolished post.

On 21 January 2004, the Applicant requested administrative review of the decisions not to grant him an SPA or to reclassify his post and, on 27 February 2004, he lodged an appeal with the JAB in New York.

Following the Applicant's request for administrative review, a Classification Officer audited his functions. He produced audit reports dated 16 and 31 March 2004. On 29 April 2004, the Applicant was advised that as the functions outlined in the 1996 note to the file and in the unclassified job description he had submitted were consistent with work at the GS-6 level, it had been determined that the job description for his post was "correct for all intents and purposes".

In its report dated 9 August 2005, the JAB concluded that an SPA would be "inappropriate" in the Applicant's case, as the Staff Rules envisaged a staff member "tak[ing] up functions of an existing post for a substantial but nevertheless limited amount of time", whereas the functions the Applicant claimed to have undertaken related to an abolished post. With respect to the classification process, it observed that,

pursuant to ST/AI/1998/9, it lacked competence to consider the appeal but that, in view of the lack of clarity in the ST/AI on this matter, “it would be appropriate to preserve his right to some recourse and allow him to pursue an appeal under the appropriate procedures set out in ST/AI/1998/9, should he so desire”. On 23 September 2005, the Applicant was informed that the Secretary-General had decided to accept the JAB’s findings and conclusions, and to take no further action on his case, but that “[t]he JAB’s observation about allowing [him] to pursue an appeal with the Classifications Appeals Committee, should [he] wish to do so, [would] be brought to OHRM’s attention”.

Thereafter, on 26 October 2005, the Applicant appealed against the classification level of his post and his appeal was forwarded to the NYGSCARC. The Committee reviewed the matter on 18 April 2006. In its report dated 5 May 2006, the Committee concluded that as

“the nature of the functions of the post was operational and procedural, and its objective was primarily to support the execution of the work programme of the section, entailing the performance of routine and repetitive duties under defined guidelines ... [it was thus] consistent with the definition of work in the General Service category”.

Accordingly, the Committee found the post was properly classified at the GS -6 level and recommended it be maintained at that level. On 8 May 2006, the Assistant Secretary-General for Human Resources Management advised the Applicant that she had accepted this recommendation.

On 15 August 2006, the Applicant filed his Application with the Tribunal.

II. With respect to the Applicant’s request for rescission of the Respondent’s decision arising from the recommendations of the JAB, the decision was conveyed to the Applicant on 23 September 2005. Under article 7 (4) of the Statute of the Tribunal, the Applicant had 90 days to appeal. The Applicant first attempted to file with the Tribunal on 28 June 2006. This is some nine months after 23 September 2005. Accordingly, the Tribunal rejects the requests pertaining to the recommendations of the JAB as not receivable, *ratione temporis*.

III. The Tribunal will now consider the Applicant’s contentions regarding his classification appeal before the NYGSCARC. His various requests thereon are founded on breach of due process.

IV. The Applicant contends that the Committee denied him due process because he was informed neither of its membership nor of the date of hearing. If he had known that the Panel included a certain Mr. M.P., he asserts, he would have objected as the latter was in the same division of OHRM as the Classification Officer who audited the Applicant’s functions. In addition, he claims that had he known that the two other members were of GS-5 and GS-6 levels, he would have objected to their participation. He contends that a reclassification request to the P-3 level could not competently, objectively and professionally be weighed by GS-5 and GS-6 staff members. The Applicant further alleges that the review by the Committee was cursory, and lacking in objectivity and professionalism.

The Applicant has offered no evidence of improper motive on the part of members of the Committee concerned. Nor has he shown in what way the GS-5 and GS-6 members' judgement could not competently, objectively and professionally weigh a reclassification request.

V. The Applicant further complained that he was not notified or invited to attend the meeting of the Committee. Section 6.10 of the administrative instruction only provides that a committee such as the NYGSCARC "may invite any staff member who may have information relevant to the appeal to appear before it". (Emphasis added.) There was, thus, no obligation on the part of the Committee to invite the Applicant to attend its meeting.

A staff member making allegations of prejudice, discrimination or other breach of due process bears the burden of proof. (See Judgement No. 1112, *Suresh* (2003).) In this case, although the review was concluded by the Committee at the request of OHRM "on an exceptional basis, ... thus avoiding a situation where a staff member would have no forum to present his case", the Applicant has not demonstrated how his appeal was not dealt with otherwise than in accordance with the administrative instructions and due process.

VI. The Applicant also requests the Tribunal to rescind the Respondent's decision not to reclassify his post. The Tribunal has always held that the Respondent has discretion in classification matters and will not substitute its judgement for that of the Respondent. In Judgement No. 396, *Waldegrave* (1987), it held:

"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 ... he did not exceed his discretionary authority in declining to classify the Applicant's post in the Professional category."

The Respondent's decision was in line with the recommendation of the Committee which, the Tribunal is satisfied, was arrived at with due observance of due process. This is clear from paragraphs 5 to 8 of its report:

"5. In accordance with the appeal procedures, the Committee [i.e., the NYGSCARC] requested the [Applicant] on 14 November 2005 to provide his comments on the findings and conclusion of CSS/OHRM ... and to confirm the completeness of the list of documents that were before the Committee in connection with his appeal. On 2 December 2005, the [Applicant] submitted a reply stating his strong disagreement with the findings and conclusions of CSS/OHRM, and providing arguments in support of his position. He also confirmed that the list of documents was complete and provided additional documents including copies of his [performance evaluation] reports from April 1992 through March 2006 ... Annexed to this report is a list of documents that were submitted to the Committee.

6. Prior to reviewing the case, the Committee sought the advice of OHRM on policy and procedural issues in light of the fact that the appeal pertained to a job description that had not been formally submitted for classification review. In its memorandum of 4 January 2006, OHRM requested the Committee to review the case, 'on an exceptional basis, to give both the [Applicant] and the Administration the benefit of its expertise, thus avoiding a situation where a staff member would have no forum in which to present his case.'

7. The Committee met on 18 April 2006 to consider the case. Present at that meeting were [names redacted by the Tribunal] who reviewed the materials and discussed the case at length. [Name redacted by the Tribunal] provided technical and administrative support, as Acting Secretary.

8. After undertaking a preliminary discussion on the circumstances of the case, the documents available, and the structure of the review, the Committee proceeded with an item comparison of the existing job description ... and the proposed job description dated December 1996."

VII. In view of the foregoing, the Tribunal dismisses the Application *in toto*.

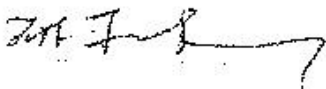
(Signatures)



Spyridon **Flogaitis**
President



Brigitte **Stern**
Member



Goh Joon Seng
Member

New York, 26 November 2008



Maritza **Struyvenberg**
Executive Secretary