



Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1470

Case No. 1542

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. Goh Joon Seng;

Whereas, on 31 July 2007, a staff member of the United Nations, filed an Application containing
pleas which read, in part, as follows:

“II. PLEAS

10. ... *[T]o find:*

(b) that the present [A]pplication is receivable under Article 7 of its Statute.

....”

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 24 January 2008, and once thereafter until 25
February;

Whereas the Respondent filed his Answer on 19 February 2008;

Whereas the Applicant filed Written Observations on 30 April 2008;

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

“Appellant’s Professional Record

... The [Applicant] entered the service of the United Nations Conference on Trade and Development (UNCTAD) on 9 December 2001 in Geneva, Switzerland. She was granted a fixed-term appointment as a Legal Officer (level P-4, step 1).

... On 9 December 2003, [the Applicant’s] fixed-term appointment was extended for two more years and her step was raised to III.

... On 9 December 2005, the [Applicant] was promoted to the P-5 level, step I. Her functional title changed to Chief of Legal Section.

Summary of Facts

... In March 2001, the [Applicant] applied for a fixed-term position as Legal Officer, P-4, in the Trade Logistics Branch at UNCTAD. By letter dated 31 August 2001, ... Human Resources ..., HRMS, UNOG advised the [Applicant] that she had been selected for the above-mentioned position.

... By e-mail dated 8 October 2001, the [Applicant] contacted ... Human Resources ..., HRMS, UNOG, asking [them] to reconsider the step at which she was appointed. [The Applicant] wondered whether the fact that ‘[she has] 11, not 10 years relevant professional experience and hold[s] several qualifications not mentioned in the vacancy announcement had been sufficiently taken into account’.

... By e-mail dated 10 October 2001, ... Human Resources ..., HRMS, UNOG, asked [the Applicant] to clarify when she exactly obtained her LLM (Masters of Law) and to provide ... a copy of the LLM diploma. Furthermore, [the Applicant was] informed ... that ‘our calculation considers only the number of years of relevant none-repetitive [sic] and progressive experience’ and that ‘giving full credit to your background and qualifications (10 years and 1 month after the LLM), [the Applicant is] eligible to be put, as per the UN standard, at level P-4/1 of the salary scale.’

... By letter dated 11 October 2001, the [Applicant] reiterated that she was convinced that her relevant professional experience and qualifications exceeded the requirements set out in the vacancy announcement for the position she was offered and that therefore, she should be appointed at a higher step of the P-4 scale than the first step.

... By e-mail dated 16 October 2001, ... Human Resources ..., HRMS, UNOG, further explained the way steps are calculated in the UN and reconfirmed that the level/step i.e. P-4, step 1 offered to the [Applicant] would remain unchanged.

... On 22 January 2002, the [Applicant] signed the letter of appointment accepting the appointment at step 1, grade P-4.

... On 19 October 2004, the [Applicant] requested the Assistant Secretary General, Office of Human Resources Management to review the decision to appoint her at step 1 of the P-4 grade. On 29 October 2004, the Chief, Administrative Law Unit, New York acknowledged receipt of the [Applicant]’s letter.

... On 14 December 2004, a Human Resources Officer, UNOG, contacted the [Applicant] asking her to submit a P 11 form, as well as copies of her academic degree in order to proceed with the request expeditiously.

... On 18 January 2005, the [Applicant] contacted a Human Resources Officer, enquiring whether she would soon receive a response.

....”

On 28 January 2005, the Applicant lodged an appeal with the Joint Appeals Board (JAB) in Geneva. The JAB adopted its report on 21 December 2006. Its considerations and recommendation read, in part, as follows:

“Considerations

21. Concerning admissibility *ratione materiae*, the Panel confirmed that the Appellant did indeed contest an administrative decision under the terms of Staff Regulation 11.1, namely the decision to ‘appoint [her] at step 1 at the P 4 grade’ upon initial appointment.

22. Concerning admissibility *ratione temporis*, the Panel took note of the Respondent’s contention that the appeal was time-barred and recalled Staff Rule 111.2 (a) which at the time read ...:

‘A staff member wishing to appeal an administrative decision pursuant to staff regulation 11.1 shall, as a first step, address a letter to the Secretary-General requesting that the administrative decision be reviewed; *such letter must be sent within two months from the date the staff member received notification of the decision in writing*’. (emphasis added)

23. The Panel found that the date of the administrative decision was the 22 January 2002 when the Appellant signed her letter of Appointment. Considering the two-month time limit, the Appellant had until 22 March 2002 to write to the Secretary-General requesting administrative review of the decision. The Panel noted that the Appellant’s letter to the Secretary-General was dated 19 October 2004 and therefore almost two years and nine months later. The Panel stressed that the Appellant had not met the time limit stipulated in Staff Rule 111.2 (a).

24. The Panel then proceeded to verify whether exceptional circumstances existed motivating a waiver from the statutory time limit. It recalled that according to Staff Rule 111.2 (f)

‘An appeal should not be receivable unless the time limits specified in paragraph a) above have been met or have been waived, in exceptional circumstances, by the panel constituted for the appeal’.

and that Art. 13 of the Rules of Procedure of the Geneva Joint Appeals Board stated that

‘When the question of receivability has been raised, the Panel constituted to consider the appeal shall rule first on this preliminary issue. The Panel may request statements, supporting evidence and comments relating to this issue and shall decide, on the basis thereof, if exceptional circumstances justify a waiver of the time-limits under Staff Rule 111.2(f), bearing in mind that the onus of proving exceptional circumstances lies with the Appellant’.

25. It noted that the Appellant argued that at the time she did not have access or knowledge of the existence of any written guidelines to determine the step. According to her, she only learned about the ‘Guidelines for Determination of Level and Step of Recruitment to the Professional Category and above’ when they were posted on the UNCTAD Intranet on 30

September 2004 and that it was only then that she realised that guidelines must have existed when she was initially appointed.

26. In view of this argumentation, the Panel examined whether the contention that she neither knew nor had access to the guidelines in force at that time could be considered as exceptional circumstances. It recalled that UNAT had constantly held that ‘only circumstances beyond the control of the Appellant, which prevented the staff member from submitting a request for review and filing an appeal in time, may be deemed to constitute exceptional circumstances’ (Judgments No. 372, *Kayigamba*, 1986, No. 913, *Midaya* 1999, No. 1106 *Iqbal* 2003) and that this definition was applied strictly. Furthermore, it stressed that in UNAT Judgment No. 1213 *Wyss*, the Tribunal insisted on the importance of procedural rules being respected as they were of utmost importance for ensuring the well functioning of the Organization.

27. The Panel noted that the Appellant’s exchange of e-mails and letters with the Human Resources Officer prior to appointment shows that she understood that the UN operates according to set criteria in classifying qualification and experience and had requested that consideration be given to revising her step for her appointment level. Thus, following her appointment, in the Panel’s view, there were no circumstances beyond the control of the Appellant which prevented her from requesting review within the time limits. She could have contacted Human Resources anytime after entry on duty to inquire on which basis the decision to appoint her at step 1 had been taken. Therefore, the Panel deemed the appeal to be inadmissible *ratione temporis*.

28. Finally the Panel remarked that according to Staff Rule 103.15

‘A staff member who has not been receiving an allowance, grant or other payment to which he or she is entitled shall not receive retroactively such allowance, grant or payment unless the staff member has made written claim: In the case of the cancellation (...); in every other case, within one year following the date on which the staff member would have been entitled to the initial payment.’

29. It pointed out that this provision was applicable to the Appellant’s case and that it would have allowed the Appellant within the time frame of one year e.g. until 22 January 2003 to take action against the decision to grant her only step 1. The Panel noted that the Appellant had also remained passive in this regard. It further noted that the Appellant stressed that no guidelines were available to staff members either in printed or electronic form, i.e. in the UN Human Resources Handbook. However, Staff Rules are easily accessible. Thus, there was an ample period of time for the Appellant to contact Human Resources and request clarification as to the basis on which the decision to appoint her at P-4, step 1 had been taken and to take action to invoke Staff Rule 103.15.

Conclusions and Recommendations

30. The Panel concludes that the appeal is time-barred and therefore inadmissible. Therefore, it recommends the Secretary-General to reject the appeal as inadmissible.

Special Remark

31. The Panel stressed that external candidates unfamiliar with the United Nations procedures and rules will generally accept the views of OHRM in good faith in deciding to comply with offered appointment levels. It would be good practice, however if the Administration were to inform the incoming staff member also of the provision/guideline upon which its decisions were based. This would be especially helpful in cases where staff were recruited externally and were not familiar with the UN system as yet.”

On 10 May 2007, the Officer-in-Charge for Management transmitted a copy of the report to the Applicant and informed her that:

“The Secretary-General accepts the JAB's findings and, in accordance with its unanimous recommendation, has decided to take no further action in this case. Pursuant to Staff Rule 111.2(p), this decision is ‘the final decision on the appeal’. Therefore, any recourse in respect of it should be addressed to the Administrative Tribunal.”

On 31 July 2007, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The Application is receivable. There was no delay in submitting the request for administrative review as she was not aware of the existence of a claim before late September 2004, when the Revised Grading Guidelines were posted on the UNCTAD intranet.
2. Alternatively, any delay was not unreasonable, but due to exceptional circumstances beyond her control.

Whereas the Respondent's principal contentions are:

1. The Application is not receivable.
2. The Applicant has not shown that there are exceptional circumstances warranting the JAB's waiver of the applicable time-limits.

The Tribunal, having deliberated from 21 July to 31 July 2009, now pronounces the following Judgement:

I. The facts in this case are not in dispute. The Applicant was a Senior Lecturer in law at the University of Southampton (UK) when the Organization issued on 30 January 2001, an internal and external Vacancy Announcement for a P-4 Legal Officer for UNCTAD in Geneva. The qualifications and experience that were required for the job were, inter alia, an advanced university degree in law with specialization in commercial maritime transport law and at least 10 years experience in commercial maritime law, of which preferably five years were expected to be at the international level.

II. The Applicant applied for this post in March 2001. She was offered a two years' fixed-term contract at the P-4, step 1 level, subject to medical clearance and reference checks. The exact date of appointment was left to be determined. She accepted this offer on 5 September 2001, and was appointed to the post effective 9 December 2001, as witnessed by the letter of appointment dated 2 January 2002 (mistakenly dated as 2 January 2001). It is not in dispute that she signed the letter of appointment on 22 January 2002.

III. In August 2001, the Applicant was notified of her selection. Prior to joining the Organization, the Applicant entered into email correspondence with the HRMS, UNOG, on several matters, including her request to be appointed at a higher level within the P-4 grade. In an email to the HR officer dated 8 October 2001, the Applicant noted the following:

“I would like you to reconsider the step at which I am appointed. I do understand that the UN operates according to set criteria in classifying qualifications and experience. However having again read the vacancy announcement I wonder whether the fact that I have 11, not 10, years relevant professional experience and hold several qualifications not mentioned in the vacancy announcement has been sufficiently taken into account. As you can see from my CV I completed my LLM degree in September 1990 and have been in full time employment in the field of commercial maritime law since 1.11.1990. I also hold a PhD in a relevant field and am a fully qualified lawyer in both a common law jurisdiction (UK Barrister) and a civil law jurisdiction (Greek Dikigoros). I believe that my additional experience and qualifications should qualify me for appointment at a somewhat higher level of the [P-4] Grade and would therefore be grateful if you would kindly consider revising the step at which I am appointed.”

IV. On 16 October 2001, the HR Officer, with whom she communicated earlier, responded that by giving full credit to the Applicant’s background and qualifications, she was eligible to be graded “as per the UN Standards at level P-4, step 1 of the salary scale.” He further stated the following:

“I need to reconfirm that the United Nations calculation for level/step purposes take into account only one of the advanced university degrees that a candidate holds, i.e., the degree which together with the minimum number of years of work experience fits better in the requirements needed for a candidate to be considered at the [P-4] level. All other degrees and /or activities /associations are irrelevant for these purposes ... under these considerations I reconfirm that the level/step i.e. [P-4]/I offered to you remains unchanged.”

V. The Tribunal notes that the reasons and considerations which led to that reconfirmation are not strictly relevant for the purposes of this Judgement. What is relevant however is that it was only on 19 October 2004, two years and nine months after her signing the letter of appointment, on 22 January 2002, that the Applicant submitted a request for administrative review under Chapter XI of the Staff Rules against the decision to appoint her initially at the P-4, step 1 level. The Applicant contends as follows:

“As my qualifications and relevant professional experience were in excess of those required in the relevant vacancy announcement I asked the responsible HR official prior to recruitment on two occasions (by email and letter) for a reconsideration of the step within Grade at which I would be appointed. In response to both requests, I was informed, quite categorically, that my qualifications and experience beyond those required in the vacancy announcement were, according to UN rule not relevant for purposes of determining the Step within Grade.”

VI. The Applicant’s contention, which is not contested by the Respondent, is that it was not until 30 September 2004, that the 1994 Grading Standard Guidelines were publicized on the UNCTAD Intranet. The Applicant argues that at that point she realized that there must have been earlier written guidelines on the subject. It was then that she requested and obtained the 1994 Guidelines. Consequently, she contends that it was only then that she was in a position to reach an informed conclusion that the guidelines and

criteria had been wrongly applied in her case. She argues that until she reviewed the Guidelines she did not know that she had a proper legal basis to challenge the decision of the Administration about her entry step level. The 1994 Guidelines were not made available to staff in any form until 30 September 2004. She maintains that she had “no reason ... to suspect at any time that written Guidelines existed at all and/or that any UN policies or guidelines may not have been observed.” On the contrary, she accepted in “good faith” that the “relevant rules”, albeit uncodified, had been duly applied, and therefore, she concluded that there was no basis to challenge her step level on the information available to her at that time until her receipt of the 1994 Guidelines.

VII. The Tribunal notes the JAB’s conclusion that the Applicant’s request for administrative review of her entry step level filed in October 2004 was time-barred. It is to be noted that in October 2001 correspondence concerning her entry step level had taken place between the Applicant and the Organization. She could not have done anything other than to make a decision whether or not to accept the appointment at the level offered. She decided to accept the offer that was made to her and was fully aware of her step level when she signed her letter of appointment in January 2002.

VIII. It was much later when the Guidelines were published that she became aware that the decision was actually based on written Guidelines, and she could have challenged this decision. In other words, she could not have acted until she learnt of the existence of the relevant Guidelines.

IX. The Respondent’s position is that Applicant had a responsibility to inquire immediately, i.e., within two months from the time she joined the Organization. The Respondent’s claim is that she should have examined these practices and procedures, and had she done so, she could have determined for herself whether she had a right to recourse. The Tribunal does not agree with the Respondent’s contentions that there existed “rules” in the formal sense to put the Applicant, as a new entrant, on notice to make further inquiries on this subject - all within the two months required under the staff rule 111.2 (a) to initiate an appeal process.

X. Moreover, in the Tribunal’s view, it would be unreasonable and unrealistic to expect a new entrant into the system to insist on the production and proof of the relevant practices and procedures that were applied to determine her entry level. In the circumstances of this case, the Tribunal does not take the view that the Applicant - even as a lawyer - had a duty to challenge the decision, the moment she joined the Organization. The Tribunal considers that to require a staff member, immediately after joining the Organization, to challenge a decision would encourage an unnecessarily litigious environment in the workplace. However, the Tribunal does not expect anything but vigilance on the part of a staff member as to his or her rights and adherence to time limits as set out in the Staff Rules. But the circumstances at issue here are different. Thus, the Tribunal accepts in substance the Applicant’s contention that she was entitled

to rely that her step level was appropriately determined. There was no justified basis for her to ask for an administrative review on this matter as early as January 2002. It was different when she learnt -albeit much later- that she might have reasons, correctly or otherwise, to question this decision. As she sought administrative review within the required time limits from the time she learnt of the Guidelines, the Tribunal finds her appeal not to be time-barred. Therefore, the Tribunal remits this case for an answer on the merits by the Respondent.

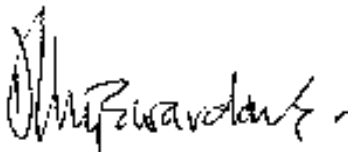
XI. In view of the foregoing, the Tribunal:

1. Declares that the Applicant's appeal before the JAB was receivable and that the Board was mistaken in its finding that the appeal was not receivable *ratione temporis*;
2. In order to guarantee due process, orders the Respondent to submit his arguments on the merits of the case by 8 September 2009; and
3. Declares that the Applicant may submit a reply, if any, to the Respondent's answer on the merits by 15 October 2009.

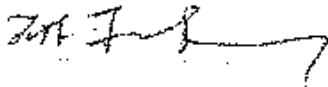
(Signatures)



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



Dayendra Sena **Wijewardane**
Second Vice-President



Goh Joon Seng
Member

Geneva, 31 July 2009



Tamara Shockley
Executive Secretary