

The Administrative Tribunal,

Considering the complaint filed by Ms C. L. against the World Health Organization (WHO) on 8 February 2002 and corrected on 14 May, the WHO's reply of 2 August, the complainant's rejoinder of 6 November 2002 and the Organization's surrejoinder of 7 February 2003;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and disallowed the complainant's application for the hearing of witnesses;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant, who has French nationality and was born in 1953, joined the WHO in July 1989. In November 1998 she was assigned to post No. 1.4208 2 as Personnel Assistant at grade G.5 in the Management Support Unit (MSU) of the General Management Cluster. A colleague, who was a Personnel Assistant at grade G.6 on post 1.42078, left the WHO on 30 January 1999 and the complainant immediately took over the duties of that post. From 1 May to 31 August 1999 she received extra pay, under what was then Staff Rule 320.4 (now 320.5) for taking over the functions of a higher graded post. The position was filled on 23 August 1999. From 1 September the complainant no longer received extra pay but continued to perform tasks previously allocated to the G.6 position.

Staff Rule 230 provides that a staff member "may at any time request a re-examination of the classification of the post which he occupies". In comments on her appraisal report for the period from 1 December 1998 to 30 November 1999, which she signed on 16 February 2000, the complainant requested a reclassification of her post to G.6. Both of her supervisors considered that there was a need to revise her post description. A new one was drawn up and received by her department on 26 June. A desk audit was conducted on 29 June 2000.

On 20 October 2000 the complainant wrote to the Manager of her unit wanting to know the outcome of the desk audit and whether a recommendation had been made to upgrade her post; she requested that the upgrading take effect from September 1999. By a memorandum of 14 December 2000 the Manager informed her that, as stated in previous discussions, in late October it had been decided to undertake a review of all 30 MSU human resources posts and that because no final decision had been taken on the level of her post, it too would be reviewed in the forthcoming exercise. He said that an external classifier would undertake the necessary desk audits between 22 January and 31 March 2001. The complainant sought the cancellation of what was to be a second desk audit for her post, but learned that it was to go ahead. It took place on 7 March 2001. Meanwhile, on 13 February 2001, having received no definitive reply to her request for reclassification, the complainant notified her intention to appeal to the Headquarters Board of Appeal. She asked that her post be upgraded to grade G.6 from 1 September 1999.

In its report of 5 September 2001 the Board considered that the complainant's appeal was receivable, that it was not empowered to make any recommendation concerning the grade of her post and that any appeal concerning the classification *per se* would only become possible after the review had been completed. In its opinion the post could have been reclassified by 1 September 2000 before the overall review was decided upon and it recommended that any resulting change of grade should take effect retroactively from that date.

By a decision of 9 November 2001 the Director-General informed the complainant that she would reserve her decision on the issue of retroactivity until the outcome of the classification review process was known and would inform her separately regarding the effective date for any resulting salary change. That is the decision the complainant impugns.

The review was completed after the Organization had filed its reply on the present complaint, and the complainant's post was upgraded. By a letter of 19 August 2002 the Director-General informed the complainant that the reclassification of her post had been made retroactive to 1 September 2000.

B. The complainant argues that she has filed her complaint within the statutory time limit and that *ratione temporis* it is receivable. Her main pleas are the following.

First, by failing to reclassify her post within a reasonable period of time following her initial request, the Organization acted in breach of the Staff Rules and Regulations. Rule 230 allows a staff member to request a reclassification of post "at any time" and in the absence of any clearly defined time limits it is to be assumed that the Organization must conduct a classification review within a reasonable time frame. In her case, there was an inordinate delay. After the initial desk audit the Organization failed to finalise the process and did not communicate its intentions to her either.

Secondly, the Organization's failure to complete the process within a reasonable time amounted to misuse of procedure. The Organization disregarded one of the underlying principles of the international civil service - that members of staff must be paid commensurate with the level of their duties. In her case, it took no account of the fact that she had been performing G.6-level duties since early 1999.

Thirdly, the Organization acted in breach of the principle of equal treatment by failing to reclassify her post at the same time as it reclassified the posts of two of her colleagues. Their posts were upgraded in mid-2000 within a reasonable time, and there was no reason for not treating her request similarly. She contends that the review of her post should have been conducted ahead of the global review of human resources posts, particularly as plans for the latter were not in place before January 2001.

Lastly, she argues that the delay stemmed from personal prejudice against her.

The complainant claims the following redress: (1) an order that the WHO is to reclassify her post at grade G.6; (2) an order that the reclassification should be made "fully retroactive to September 1999", with payment of the extra salary and emoluments she would have received at grade G.6 from that date; (3) in the event that the Tribunal orders the reclassification to grade G.6 but does not make it retroactive, she seeks "acting pay" from September 1999 until such date as the reclassification takes effect; (4) moral damages; (5) costs; (6) interest on all amounts awarded; and (7) such other relief as the Tribunal deems justified. She also asks the Tribunal to order the production of relevant documents.

C. In its reply the Organization contends that the complaint is irreceivable. The classification review of the complainant's post was under way but so far no decision had been made either concerning the grade of the post or the effective date of any resulting change of salary, and so there was no final decision to challenge.

In preliminary comments it points out that there is an MSU for each of the clusters at the WHO. They have a common structure and for certain posts it became essential to use generic post descriptions. It became clear that reviewing MSU posts in isolation and departing from generic post descriptions would "profoundly affect" the organisational design of MSUs. Individual requests for reclassification were therefore held in abeyance until a global review of human resources posts could be carried out. The existing classification procedures were not suited to assessing generic job descriptions and so new procedures were developed; they were announced to staff by a Cluster Note of 15 February 2002. The relevant Standing Committee was put in place and the classification reviews could then resume.

In deciding to consider the grading of the complainant's post in an organisational context instead of in isolation the Organization contends that it acted responsibly and its actions constituted a proper exercise of discretionary authority. There was no breach of the rules or abuse of discretion.

It denies that there was breach of equal treatment. The examples of two other staff members invoked by the complainant do not support her argument. Their situations differed in law and in fact from the complainant's. In her case, the postponement of the review occurred for organisational reasons and personal prejudice played no part. It took time to put in place the necessary procedures and to review her post.

Addressing the complainant's claims, it points out that under no circumstances could the requested reclassification

take effect from September 1999, because her revised post description was submitted only in late June 2000. Moreover, her claim for "acting pay" from September 1999 is a new claim, and as such is irreceivable. The same applies to her claim for moral damages, since it was not put forward in her internal appeal.

D. In her rejoinder the complainant points out that the classification procedure was completed in August 2002 and her post was upgraded to G.6. She takes the view that since the Director-General rendered a final decision on the matter on 19 August 2002 all the necessary conditions for receivability have been duly met. Now that her post has been upgraded the first of her claims for redress has been met. She presses her other claims for relief and reiterates her pleas.

The outstanding issue remains the effective date of the reclassification, which the Director-General ultimately set at 1 September 2000. The complainant states that this position ignores the fact that she had been performing G.6 duties since 1 February 1999, and argues that the reclassification ought to have been made retroactive to 1 September 1999, the date at which she ceased to receive "acting pay" for assuming the duties of post 1.42078.

The Organization's comments on the background to the reclassification procedure are in her opinion not a valid defence. There was no need to postpone a decision on the grade of her post. The complainant also takes the view that the issue of retroactivity to 1 September 1999 was properly appealed before the Headquarters Board of Appeal.

E. In its surrejoinder the Organization notes the complainant's comment that the conditions of receivability have now been met and says that in arguing thus she is implicitly confirming that there was no final decision to appeal against when she filed her complaint. Her complaint was therefore irreceivable, regardless of the fact that a final decision has now been rendered.

It points out that the complainant herself states in her submissions that the reclassification should have been undertaken within a reasonable time, and notably by 1 September 2000. She has thus obtained satisfaction in this respect. It contends that her claim to full retroactivity to 1 September 1999 has no basis in law or in fact.

CONSIDERATIONS

1. The complainant, who at the material time held grade G.5, was performing the duties of a vacated G.6 post as well as her own. From 1 May until 31 August 1999 she received extra pay in accordance with WHO Staff Rule 320.4 (now 320.5) which provides:

"A staff member may be officially required to assume temporarily the responsibilities of an established post of a higher grade than that which he occupies; such temporary arrangements shall not be continued for more than 12 months. As from the beginning of the fourth consecutive month of such service, the staff member shall be granted non-pensionable extra pay normally equal to, but not exceeding, the difference between his current pay, consisting of net base salary, post adjustment and allowances, and that which he would receive if promoted to the post of higher grade."

Subsequently, when that post was filled, the complainant continued to discharge the duties of a Personnel Assistant, under a generic post description.

2. Staff Rule 230 allows a staff member to request a reclassification of post "at any time". In the annual appraisal report which she signed on 16 February 2000 the complainant asked for her post to be reclassified at grade G.6.

The complainant's first and second-level supervisors agreed that a new post description was needed and a new one was drawn up.

3. Between March and August 2000, some 19 requests for classification reviews were submitted. In view of the need to consider all these reviews in context and not in isolation, the Organization decided to conduct an overall review of the matter, as regards human resources functions, with the assistance of an external classifier.

4. In response to a memorandum of 12 December from the complainant, the Manager of her MSU replied on 14 December recalling the decision to engage an external classifier to undertake a review of all 30 MSU human resources posts. He informed her that the review would begin on 22 January 2001. He went on to say that in view

of that "latest development and the fact that no final decision had been taken on the classification review of [her] post, it [would] be reviewed along with the other MSU HR posts during the forthcoming exercise".

5. On 13 February 2001 the complainant filed an appeal with the Headquarters Board of Appeal seeking the upgrading of her post to "at least" G.6 level as from September 1999 and payment of the difference in salary from that date. On 5 September 2001 the Board concluded that, the complainant's post "could and should have been reclassified by 1 September 2000" that is, before it was decided in late October to undertake a complete review of all human resources posts, including that of the complainant. The Board recommended that the result of the classification review, which was being carried out at the time it met, should therefore be made retroactive to 1 September 2000.

6. On 9 November 2001 the Director-General informed the complainant that as the grade of the revised post description had not yet been finally determined, she would reserve her decision both on the issue of retroactivity and the effective date of any change in salary that may result until the classification review had been completed.

7. On 8 February 2002 the complainant filed her complaint with the Tribunal. Her claims are set out under B above.

8. The Organization maintains that the complaint is irreceivable since there was no final decision by the Director-General in the impugned 9 November 2001 letter on the grading of the post or on the effective date of any change in salary. A decision on these matters had to be held in abeyance until the completion of the overall organisational classification review of all human resources posts.

9. The WHO justifies the delay in reviewing the level of the complainant's post on the ground that it could not be considered in isolation but only in the context of the organisational design. This does not constitute an abuse of procedure or a breach of the rules.

10. It alleges that there was no basis in the complainant's claims of breach of equality and personal prejudice in the reclassification process.

11. Meanwhile, the complainant's post was reclassified and upgraded to grade G.6 on 3 August 2002. The Director-General then resumed her consideration of the complainant's internal appeal with the view to taking a decision on the issue of the effective date of the reclassification. By a letter of 19 August 2002, she informed the complainant that she had exceptionally agreed to the retroactive reclassification of the post with an effective date of 1 September 2000, as recommended by the Board.

12. As the complainant's post has been reclassified and upgraded to grade G.6, the issue of reclassification has become moot. Likewise, the date at which the reclassification took effect is not indicative of unreasonable delay on the part of the Organization since it was brought back to 1 September 2000, which was only some six months after the complainant made her request for reclassification. It therefore caused her no injury.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 9 May 2003, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Vice-President, and Mrs Florida Ruth P. Romero, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 16 July 2003.

Michel Gentot

James K. Hugessen

Florida Ruth P. Romero

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 23 July 2003.