Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

N.

v.

WHO

121st Session **Judgment No. 3585**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs A. M. N. against the World Health Organization (WHO) on 22 October 2012 and corrected on 1 November 2012, WHO's reply of 6 February 2013, the complainant's rejoinder of 3 April and WHO's surrejoinder dated 4 July 2013;

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

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

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

The complainant, who joined WHO in August 2005 as a technical officer at grade P-3 on a temporary appointment, was granted a fixed-term contract in January 2008. One year later she wrote to her first-level supervisor and the Human Resources Department (HRD) asking them to begin the process of upgrading her post. She stated that she was aware of two ways of doing it: either she or the department could initiate the request. HRD replied that she should draft a revised post description to be discussed and approved by her first-level supervisor before being sent to HRD to be processed. On 18 February 2009

the complainant met with her first-level supervisor to discuss her reclassification. Several exchanges ensued between the complainant, her first-level supervisor and the Administration concerning the reclassification but no decision was made by the said supervisor. The complainant therefore wrote to her second-level supervisor, the Director of the Department of Human Resources for Health (HRH), asking him to "intervene". On 18 May he replied that she should meet again with her first-level supervisor to discuss the matter. The first-level supervisor wrote to the complainant on 19 May indicating that she was awaiting an update from the Administration, as it was understood that the matter would be referred "outside the Department" for action.

On 21 May 2009 the complainant filed an appeal with the Headquarters Board of Appeal (HBA) contesting her performance appraisal reports for 2008 and the decision to refuse to reclassify her post from grade P-3 to grade P-4. The HBA's proceedings were suspended pending an administrative review with a view to reaching an amicable settlement. The Director of HRD invited the complainant on 4 January 2010 to submit a memorandum to HRD explaining why a change in grade was justified in her case; the memorandum would then be shared with her supervisor who would have to comment before the post description was sent to the Classification Specialist to be assessed. The complainant replied in March 2010 that she wished the appeal proceedings to resume as she disagreed with the Director's proposal as to the procedure to be followed; she so informed the HBA on 9 April 2010. In the meantime, on 31 March, she filed an internal appeal contesting her 2009 performance appraisal report. The proceedings resumed with respect to her first appeal; the HBA examined at the same time her second appeal. It recommended, in its report of 20 July 2012 on both appeals, that the Director-General reject the appeals as irreceivable with respect to the reclassification claim, on which no final decision had been taken. It recommended that the appeals should otherwise be dismissed as unfounded. By a letter of 3 August 2012 the Director-General informed the complainant that she had decided to endorse the HBA's findings in that respect. That is the impugned decision.

In February 2011, while the HBA's proceedings were pending, and following the retirement of her first-level supervisor, the complainant initiated a request for reclassification with her second-level supervisor. By the time the request reached HRD on 16 June 2011, a major restructuring was underway during which the examination of all reclassification requests was postponed and numerous posts, including that of the complainant, were abolished. She applied for a new P-3 post, to which she was appointed in January 2012.

On 10 May 2012 the Director of HRD informed her that her request for classification of June 2011 was rejected. She explained that it would have been impossible and "meaningless to even attempt to retroactively establish past facts of a post" which had since ceased to exist.

The complainant asks the Tribunal set aside the impugned decision of 3 August 2012. She also asks the Tribunal to confirm that her post "is a P4 or a P5 post" and to order WHO to classify it accordingly. Alternatively, she asks the Tribunal to order WHO to constitute a classification panel immediately and to have her post reclassified within ten days of the Tribunal's order. She also seeks damages in an amount equivalent to the difference between the salary she received while holding the P-3 post and the amount she would have received had her post been classified at grade P-5 (or P-4). She further claims moral damages in the amount of 30,000 Swiss francs and costs.

WHO asks the Tribunal to dismiss the complaint as irreceivable and, in any event, devoid of merit.

CONSIDERATIONS

1. The complainant seeks an order to quash the impugned decision, which the Director-General issued on 3 August 2012. In that decision, acting on the recommendation of the HBA, the Director-General dismissed the complainant's two internal appeals from decisions concerning her 2008 and 2009 performance appraisal reports and the re-classification of her post. Although the complaint seeks to quash the

impugned decision, the complainant makes no mention of the decision that relates to her 2008 and 2009 performance appraisal reports. She sets out her claim in her brief as follows:

> "The specific decision that the Complainant is challenging is contained in the Director-General's letter dated 3 August 2012 [in which] the Director-General approves the HBA's recommendation to dismiss the Complainant's complaint against failure to re-classify her post as irreceivable."

2. In her rejoinder, the complainant confirms that her challenge is against the impugned decision of 3 August 2012 insofar as it relates to the re-classification aspect of the internal appeals by stating as follows:

> "The decision which the complainant impugns, is that of the Director-General delivered on 3 August 2012 regarding the repeated failure of the Organization to reclassify the complainant's post. In this decision the Director-General approved the HBA's recommendation that the complainant's appeal is irreceivable due to the complainant's failure to exhaust all internal means of redress. The Director-General asserts that this resulted in a lack of a final decision capable of being appealed."

3. In addition to seeking an order to quash the impugned decision, the complainant seeks an order confirming that the post which is in question is a P-4 (or a P-5), rather than a P-3 post, and she wishes the Tribunal to order that WHO is to classify the post as such. Alternatively, she seeks an order that WHO immediately reconstitutes a classification panel to classify her former post within ten days of the Tribunal's order; and to award her retrospective compensation, moral damages and costs.

4. The Tribunal notes that, in the impugned decision, the Director-General stated "that [the complainant's] appeal against the refusal to reclassify [her] position to P4 [was] irreceivable pursuant to Staff Rule 1230.8.1". This provision states as follows:

> "No staff member shall bring an appeal before [the] Board until all the existing administrative channels have been tried and the action complained of has become final. An action is to be considered as final when it has been taken by a duly authorized official and the staff member has received written notification of the action."

5. The HBA found that the complainant had not used the correct procedure in seeking the reclassification of her former post and recommended the dismissal of the internal appeal for irreceivability on the grounds that the complainant had not exhausted internal remedies.

6. The complainant states that she had submitted her re-classification request to her first-level supervisor and had also submitted an application for re-classification to HRD in 2011 as well. She further states that on 10 May 2012, the Director of HRD acknowledged receipt of her application and supporting documents, which she had submitted a year earlier, and rejected the request for reasons other than for faulty procedure. This was a reference to the decision of 10 May 2012, which is not properly the subject of the present complaint. This matter was not before the HBA when it heard the two relevant internal appeals. The complainant however insists that the Director-General erred in dismissing her appeal against WHO's failure to re-classify her post when she raised the matter in 2009 and in 2010. She states that she submitted two applications concerning the re-classification to different persons. She further states that the process for seeking re-classification is so confused and uncertain that even WHO itself did not seem to know how it should work.

7. The re-classification of a post may be initiated either internally by the requesting staff member, or by the staff member's Unit or by the Department. Neither the Unit nor the Department requested it in present case. Where, as in the present case, the staff member requested the re-classification of a post that she held at WHO's Headquarters, the exercise is governed by Staff Rule 230. The relevant procedural provisions for post classification at WHO's Headquarters are contained in paragraphs 110 and 120 of section III.2.1 of WHO's HR e-Manual.

8. Staff Rule 230 states as follows:

"In accordance with procedures established by the Director-General, a staff member may request a re-examination of the classification of the post which

> he occupies and any staff member may request a re-examination of the classification of any post under his supervision."

9. The procedure established by the Director-General is contained in paragraphs 110 and 120 of section III.2.1 of WHO's HR e-Manual, which provide as follows:

> "110 Staff members who feel that the classification of their position warrants re-examination may initiate a review through the supervisor in the on-line workflow system in accordance with Staff Rule 230.
>
> The supervisor must either certify the contents as reflecting the duties and responsibilities actually assigned or state what is not agreed with and why before forwarding the draft post description to the Classification Specialist. Normally, positions will not be reviewed more than once every two years, unless there are significant changes in the level of duties and responsibilities.
>
> The supervisor should ensure that the required position parameters (proposed changes in grade and/or title) are changed and approved in the HR Plan before submitting the revised position description.
>
> 120 All requests for classification reviews should be substantiated by:
>
> - the related position description or a generic position description (where this is not available in the on-line workflow system);
> - a current organization chart (where this is not available in the on-line workflow system);
> - a memorandum and other documents as required, in the case of a submission by a staff member for the position they occupy, explaining why a change in the grade of the position is considered justified."

10. These provisions provide a formal process by which a staff member may request a post re-classification. They put the onus upon the staff member, the complainant in the present case, to initiate the process by way of the on-line workflow system and making the request through the supervisor. Among other things, the complainant was required to submit a revised draft post description for her supervisor to review and approve as well as a revised post description. The staff member was also required to submit a memorandum to justify the change in the grade of the position.

11. There is no evidence that the complainant did these things even after she agreed to put her appeal in this matter to the HBA on hold and the Director of HRD provided her with some advice. In effect, so far as the impugned decision of 3 August 2012 is concerned, the complainant did not take the steps that were procedurally required in order to obtain a re-classification of her post and to have obtained a final decision from the duly authorized official. She had not used all the existing administrative channels to ensure that the action which she requested had become final as Staff Rule 1230.8.1 required her to do. Accordingly, the Director-General correctly decided to dismiss the complainant's internal appeal relating to her request for the re-classification of her P-3 post to a P-4 post as irreceivable. Her complaint is irreceivable as she had not exhausted internal means of redress, as Article VII, paragraph 1, of the Tribunal's Statute requires. It will accordingly be dismissed in its entirety.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 27 October 2015, Mr Giuseppe Barbagallo, Vice-President of the Tribunal, Ms Dolores M. Hansen, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 3 February 2016.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

HUGH A. RAWLINS

DRAŽEN PETROVIĆ