

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

*Registry's translation,
the French text alone
being authoritative.*

G.
v.
UNESCO

124th Session

Judgment No. 3835

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms B. G. against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 29 November 2014, UNESCO's reply of 23 March 2015, the complainant's rejoinder of 16 April and UNESCO's surrejoinder of 22 July 2015;

Considering Article II, paragraph 5, 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 received a special post allowance, challenges the denial of her request for the reclassification of her post.

In January 2003 UNESCO published "The revised classification standard for posts in the General Service category", the basic working tool of the Job Evaluation Committee which was responsible for determining the grade of posts by evaluating the updated job descriptions of staff members in the category concerned before making a recommendation to the Director-General on how to classify each post. In December 2011 the Bureau of Human Resources Management recommended that the Director General should introduce, as soon as possible, the new General Services Master Standard formulated by the International Civil Service Commission for all vacant posts and unoccupied positions when the job

description had changed, with the proviso that, if the new standard had a negative impact on an occupied post, the former standard should apply. The Director-General approved the introduction of the new standard on 6 January 2012.

At the material time, the complainant held a post at grade G-4 in the Natural Sciences Sector. On 19 April 2012 her supervisor drew the attention of the Director of the Bureau of Human Resources Management to the fact that, since 1 January, the complainant had been performing not only her own duties but also those of a grade G-6 post the incumbent of which had been transferred. For that reason, on the basis of Staff Rule 103.17, which provides for the payment of a special post allowance with effect from the beginning of the fourth consecutive month of service in a higher-grade post, he requested that the complainant should receive that allowance as from 1 April 2012. On 13 June, he was asked to supply an updated job description for each of the posts in question. On 24 September he forwarded the requested documents, reiterated his request for the grant of a special post allowance to the complainant and also requested the upgrading of her post from G-4 to G-6. By a memorandum of 22 November, the Director of the Bureau of Human Resources Management informed the Assistant Director-General for the Natural Sciences Sector that it was necessary to conduct a review of the distribution of tasks assigned to staff performing support functions within the sector, that an evaluation of the updated job description of the complainant's post in light of the new classification standard would not support payment of such an allowance, but that if tasks were reallocated, the Bureau would be prepared to conduct an evaluation of that job description.

On 17 December the complainant submitted a protest to the Director-General against the "decision" contained in the memorandum of 22 November 2012 and requested the payment of a special post allowance. By a memorandum of 30 January 2013, the Director of the Bureau of Human Resources Management advised the complainant's supervisor that, pending a possible review of the distribution of tasks, the two updated job descriptions had been evaluated on the basis of the new classification standard, as a result of which the complainant's post

had been confirmed as being at the G-4 level – a copy of the evaluated job description dated 9 November 2012 was enclosed with the memorandum – and the G-6 post of which she was performing the duties had been downgraded to G-4. Owing to that downgrading, the complainant was not entitled to receive a special post allowance. On 7 February 2013 the complainant was informed that her protest was deemed irreceivable, since the memorandum of 22 November 2012 did not constitute a challengeable administrative decision.

On 27 February 2013 the complainant submitted a further protest to the Director-General, challenging the decision contained in the memorandum of 30 January. As this protest was rejected on 8 April 2013, she submitted a notice of appeal to the Appeals Board in which she requested the upgrading of her post and promotion with effect from 1 January 2012.

The Appeals Board delivered its report on 11 July 2014 after hearing the parties. It recommended that the complainant should be granted a special post allowance for the period 1 January 2012 to 11 November 2012, the date on which it considered the G-6 post to have been downgraded, the reclassification of her post and the payment of a sum equivalent to three months' salary in compensation for the moral injury which she had suffered.

By a memorandum of 23 September 2014, which constitutes the impugned decision, the complainant was informed that the Director-General had decided to accept the recommendation that she should be paid a special post allowance, but only for the period from 1 April 2012 to 9 November 2012, and to reject the two other recommendations. The complainant retired on 31 October 2014.

The complainant asks the Tribunal to order UNESCO to reclassify her post as of 1 January 2012 and to draw “all the legal consequences therefrom”, to grant her three months' salary in compensation for moral injury and to award her costs in the amount of 3,000 euros.

UNESCO asks the Tribunal to dismiss the complaint as unfounded.

CONSIDERATIONS

1. The complainant impugns the decision denying her request for reclassification of her post.

2. Among the numerous pleas on which the complainant relies in order to impugn that decision, one is of decisive importance for the outcome of this dispute, namely that regarding the application to the complainant of the new post classification standard, which the Director-General agreed to introduce in the Organization without any announcement and which was therefore inapplicable to staff members. Consistent precedent has it that a rule is enforceable only from the date on which it is brought to the notice of those to whom it applies (see, for example, Judgments 963, under 5, and 2575, under 6).

3. In the instant case, the Organization does not deny that the new standard used to assess the classification of the complainant's post had not been published by the date of the classification decision. By relying on a text that was not yet applicable to staff members, the Director-General rendered her decision unlawful. The unlawful nature of this decision was all the more serious for the fact that, as is plain from the file, the new classification standard was less favourable to the complainant.

4. Moreover, the complainant is right in contending that insufficient reasons were given for the impugned decision, as the Director-General failed to provide any explanation as to why she did not follow the Appeal Board's recommendation in this regard, in breach of the requirements established by the case law (see Judgment 3208, under 11, and the case law cited therein).

5. It follows from the foregoing that the impugned decision must be set aside, except in respect of the sums already granted to the complainant as a special post allowance.

6. The Tribunal cannot order the Organization retroactively to reclassify the complainant's post, as she requests, since it is not within the Tribunal's competence to issue injunctions against organisations (see Judgment 3506, under 18).

7. As the complainant has now left the Organization, it is not appropriate, in these circumstances, to refer the case back to UNESCO for evaluation with a view to reclassifying her post.

8. Having regard to all the facts of the dispute, the Tribunal considers that the various forms of injury suffered by the complainant may be fairly redressed by awarding her compensation, which shall be set *ex aequo et bono* at 30,000 euros.

9. She is also entitled to costs, which the Tribunal sets at 500 euros.

DECISION

For the above reasons,

1. The impugned decision is set aside to the extent indicated under 5, above.
2. UNESCO shall pay the complainant 30,000 euros in compensation for injury under all heads.
3. It shall also pay her costs in the amount of 500 euros.
4. All other claims are dismissed.

In witness of this judgment, adopted on 1 May 2017, Mr Claude Rouiller, President of the Tribunal, Mr Patrick Frydman, Judge, and Ms Fatoumata Diakité, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 28 June 2017.

(Signed)

CLAUDE ROUILLER PATRICK FRYDMAN FATOUMATA DIAKITÉ

DRAŽEN PETROVIĆ