Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

R.

v.

UNIDO

128th Session **Judgment No. 4163**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr F. A. R. against the United Nations Industrial Development Organization (UNIDO) on 18 July 2017 and corrected on 9 August, UNIDO's reply of 16 November 2017, the complainant's rejoinder of 15 March 2018 and UNIDO's surrejoinder of 2 July 2018;

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 challenges the decision not to process his request for the reclassification of his post on the ground that he had separated from the Organization.

The complainant joined UNIDO in October 2010 as an Electronics Technician at the G-5 level under a three-year fixed-term contract, which was renewed in October 2013.

By an email of 7 February 2014 the complainant requested that his supervisor initiate the reclassification of his post in accordance with the procedure set out in the relevant Administrative Instruction. He alleged that since his recruitment, the level of functions and responsibilities assigned to him did not correspond to his job description. On 21 August

2014 the complainant and his supervisor finalized a revised job description, which was submitted to the Administration.

In December 2014 the Executive Board recommended that the Director-General suspend the ongoing 2014 reclassification exercise of encumbered posts pending revision of the UNIDO classification system and policy. Staff members were informed of the Director-General's decision to follow that recommendation by an Information Circular dated 6 February 2015.

By an email of 9 February 2015 the complainant's supervisor responded to the complainant's query about the status of his reclassification request by referring to the Information Circular. On 13 March 2015 the complainant received confirmation that the reclassification exercise for 2014 had been suspended.

On 15 September 2016 the complainant was informed that the Director-General had decided to "let [his] fixed-term appointment expire" due to unsatisfactory performance. The complainant separated from UNIDO on 17 October 2016 when his contract expired.

By a letter of 31 October 2016 the complainant requested that the Director-General take a "final decision on the reclassification". On 23 December 2016 he was informed that the reclassification of his post was "no longer applicable due to [his] separation from service". On 20 February 2017 the complainant sent a letter to the Director-General asking him to review the decision of 23 December 2016.

On 18 July 2017 the complainant filed a complaint before the Tribunal challenging the implied rejection of the claim made on 20 February 2017.

The complainant asks the Tribunal to set aside the decision of 23 December 2016 and to remit the matter back to UNIDO to complete the classification exercise within 30 days of the public delivery of its judgment. In the event that his former post is found to be at the G-6 level, the complainant asks the Tribunal to order that he be paid the difference between what he earned at the G-5 level and what he would have earned at the G-6 level with effect from 7 February 2014 or, at the

latest, from 21 August 2014, with interest. He seeks 20,000 euros in moral damages and 7,000 euros in costs.

UNIDO requests the Tribunal to dismiss the complaint as irreceivable for failure to exhaust internal remedies and subsidiarily as unfounded in its entirety.

CONSIDERATIONS

1. The complainant commenced employment with UNIDO in 2010 as an Electronics Technician at the G-5 level. In 2014 the complainant sought the reclassification of his post. It appears that by August 2014, the relevant documentation for consideration of the reclassification request had been finalised and submitted. In February 2015, staff were informed in an Information Circular that the review of reclassification requests for encumbered posts submitted in 2014 would be suspended. The complainant separated from UNIDO on 17 October 2016 when his contract expired. At that time his classification request had not been answered.

2. On 31 October 2016 the complainant wrote to the Director-General requesting, amongst other things, that he "take a final decision on the reclassification". This request was met with a response in a letter from the interim Director of the Department of Human Resources Management dated 23 December 2016. In relation to the reclassification request, the Director said: "The reclassification of a post is not triggered by the staff member and in your particular case, such action is no longer applicable due to your separation from service." By letter dated 20 February 2017, the complainant wrote to the Director-General asking him to review and reverse the decision of 23 December 2016 concerning the reclassification. Before the complainant filed his complaint with the Tribunal on 18 July 2017, no response had been provided by UNIDO to the request for review. Thus the complainant impugns in these proceedings the implied rejection of his request for review.

3. It is necessary to deal with a preliminary issue raised by UNIDO, which contends the complaint is irreceivable. It does so on the basis that the complainant has not exhausted internal means of redress. Foundational to this argument is that the complainant could have challenged the decision to suspend reclassification requests for encumbered posts submitted in 2014, communicated to staff in February 2015, but did not do so. Had he challenged that decision, he could have exhausted internal means of redress assuming, of course, that he was unsuccessful at the various stages of internal review and appeal. It appears to be common ground having regard to the reply and the rejoinder that the suspension decision remained in force at least until the date of the complainant's rejoinder. However, the decision of 23 December 2016 was a decision which did not apply or depend upon the suspension decision, but rather involved a decision not to process the complainant's request for reclassification because he had separated from the Organization. This is a decision materially different in character from any decision based on the suspension decision. Accordingly it is irrelevant that the complainant did not seek to challenge either immediately or subsequently the suspension decision. The complaint is receivable.

4. In his pleas, the complainant relies on Judgment 2658. For relevant purposes, that judgment affirms the principle that a request for the reclassification of a position of a staff member while the person was a member of staff can be pursued after and notwithstanding that the person had separated from the organization. In its pleas, UNIDO seeks to distinguish that judgment having regard to the differing facts in this case. However, the points of distinction have no bearing on the applicability of the principle just discussed. It follows that the reason given in the decision of 23 December 2016 is legally flawed and that that decision should be set aside.

5. It is convenient, at this point, to turn immediately to the relief sought by the complainant. He seeks the setting aside of the decision of 23 December 2016 and an order referring the matter back to UNIDO to complete the classification exercise. He seeks material damages. He seeks moral damages in the sum of 20,000 euros for "breach of good faith and injury to his dignity" and 7,000 euros in costs.

6. Even though the decision of 23 December 2016 should be set aside having regard to the principle applied in Judgment 2658, it does not follow that the matter should be remitted to UNIDO for the purposes of completing the reclassification exercise. Three matters militate against that course. The first is that there would be no reclassification exercise if the suspension decision remains in force. As noted earlier, the complainant appears to accept in his rejoinder that the suspension decision remains in force and, more importantly, does not argue, to use the language in Judgment 2658, that there has been "an egregious and inexcusable delay in the [classification] process". There is no material before the Tribunal to suggest the suspension decision does not remain in force at this point in time. The second is that the Tribunal has, in an earlier judgment, declined to refer a matter concerning an unresolved reclassification request back to the organization given that the complainant, in that case, had left the organization (see Judgment 3834, consideration 7). The third is that the complainant's former position, in substance, was classified at the G-5 level for the purpose of filling it when the complainant separated from the Organization. The suspension decision provided, by way of exception, for the processing of classification requests for "new posts or vacant posts approved for recruitment".

7. The complainant seeks material damages on a basis that is not identified in the pleas, though in the pleas he refers to the letter of 31 October 2016 as explaining their rationale. However, that letter says nothing about why material damages arising from the failure to reclassify his post are justified.

8. The complainant is not entitled to moral damages on the bases claimed. If the suspension decision still operates then there has been no breach of good faith. Whether there had been, even arguably, injury to his dignity would depend on the fact that he had occupied a position classified at a level lower than the appropriate level. But that is entirely hypothetical and indeed, as just noted, the position was treated as a G-5 level position for the purpose of filling it after the complainant separated from the Organization.

9. None of the relief sought by the complainant is warranted save for setting aside the decision of 23 December 2016 and the implied decision rejecting his request for review. The complainant has had some limited success and an order for costs should be made in the complainant's favour in the sum of 4,000 euros.

DECISION

For the above reasons,

1. The decision of 23 December 2016 and the implied decision rejecting the complainant's request for review are set aside.
2. UNIDO shall pay the complainant 4,000 euros in costs.
3. All other claims are dismissed.

In witness of this judgment, adopted on 20 May 2019, Ms Dolores M. Hansen, Judge presiding the meeting, Mr Michael F. Moore, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 3 July 2019.

DOLORES M. HANSEN

MICHAEL F. MOORE

HUGH A. RAWLINS

DRAŽEN PETROVIĆ