G.

v.

UNESCO

129th Session **Judgment No. 4221**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs U. G. against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 11 September 2018 and corrected on 11 October 2018, UNESCO's reply of 21 January 2019, the complainant's rejoinder of 1 February, corrected on 21 February, and UNESCO's surrejoinder of 6 June 2019;

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

Having examined the written submissions;

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

The complainant challenges the rejection of her request for reclassification of her post.

At the material time, UNESCO Culture Sector was responsible for six International Conventions. One of these Conventions was the 2001 Convention on the Protection of the Underwater Cultural Heritage (hereinafter the "2001 Convention") on which the complainant started to work when she was promoted to the post of *programme specialist* at grade P-3 on 1 August 2010 at UNESCO Headquarters. According to her 2010 job description, she was, among other duties, expected to "serve as Secretary [of] the [2001] UNESCO Convention". She held a two-year fixed-term appointment which was extended several times and is due to expire on 31 July 2020.

On 6 June 2011 the Director-General decided to restructure the Culture Sector, which resulted in the grouping of the six International Conventions into a single division and the creation of a new Section managed by Mr H., who became the complainant's immediate supervisor. On 17 June, as a result of this restructuring, Mr H. sent the complainant – who was on maternity leave since 9 May – a copy of the new job description for her post. The 2011 job description specified that the complainant was "charged with the implementation of the 2001 Convention [...] and monitoring of the implementation of [it] and related programmes, projects and activities". The function of Secretary of the 2001 Convention was assigned to Mr H.

On 20 June the complainant wrote Mr H. an email disagreeing with the change in her new job description and suggesting to wait until her return from maternity leave to discuss it. On the same date he responded that the modified job description reflected the changes caused by the restructuring of the Culture Sector and that it was impossible to wait for her return because this would block the whole restructuring exercise. The complainant answered that she would discuss her new job description on 23 June during a Section meeting and inquired with the Bureau of Human Resources Management (HRM) whether she had to accept or refuse the change "of title" in her job description. She was informed that the title of a post was subject to changes in accordance with the International Civil Service Commission (ICSC) master standards of job classification. On 23 June the complainant and Mr H. discussed the 2011 job description which, at the end of the meeting, they both signed.

On 23 September the complainant returned from maternity leave. On 29 September her 2011 job description was reviewed by a classification officer who classified her post at grade P-3. On 10 October 2011 Mr H.'s post was reclassified from P-4 to P-5 grade, given his position as Secretary of several Conventions, including the 2001 Convention, and his role as Chief of the new Section within the Culture Sector.

The Culture Sector was restructured again on 1 May 2014. On 24 June the complainant submitted a request for reclassification of her post to grade P-4 based on Staff Rule 102.2 invoking a "substantial modification" in her responsibilities. On the same day she submitted a request for a desk audit of her post. On 26 August the complainant was informed that her new overall supervisor (the head of the new division into which Mr H.'s Section had been incorporated) had assumed the function of Secretary of the 2001 Convention.

By a decision of 27 November 2014, the Director-General rejected the complainant's request for reclassification. The complainant was advised that, if she considered that her duties and responsibilities had changed substantially since 2011, HRM would ask the Culture Sector to ensure that her job description was valid or to submit an updated job description. On 18 March 2015 the complainant asked to be provided with "an official decision" on the classification of her post, arguing that her responsibilities had increased since 2011 and that her post had been wrongly classified from the outset.

HRM received an updated job description in April 2016 and on 12 May an external classification officer evaluated the complainant's post at grade P-3. The complainant was informed accordingly on 14 June. On 20 June she let the Administration know that she was not willing to sign the "inaccurate" 2016 job description and reiterated her request for a desk audit.

A desk audit was conducted on 20 September 2016. The final desk audit report was communicated to the complainant and her supervisors on 21 November. The complainant's supervisors signed the report on 29 November. Mr H. commented that, given the low ratification rate of the 2001 Convention, the workload in the Secretariat was reduced and not comparable to that of other Conventions, so that the complainant's post was correctly classified. On 1 December the complainant returned a signed copy of the report together with a memorandum expressing her disagreement with "the inaccuracies contained therein" and requesting a reclassification of her post at grade P-5, failing which she would lodge an appeal. The memorandum was transmitted to her supervisors who

provided further comments in favour of a P-3 classification of her post on 21 December 2016.

Following all these comments, the desk auditor recommended that the complainant's post be classified at grade P-3. On 15 February 2017 the HRM classification officer confirmed the P-3 grade classification. The complainant was informed accordingly by a letter of 17 February, which she states that she received on 1 March.

On 5 March 2017 she submitted a protest to the Director-General contesting the decision of 17 February and requesting the reclassification of her post at grade P-5 and a "reaffirmation" of her status as Secretary of the 2001 Convention. Alternatively, she claimed damages in an amount corresponding to "the difference between a P-3 and a P-5 post for having been employed as Secretary of the 2001 Convention in 2010 and for performing, on insistence of the management, all duties in relation to this function at [grade] P-5 until today". She lodged an appeal with the Appeals Board in April.

Her protest was rejected on 2 June 2017 on the grounds that her post was correctly classified at grade P-3 and that she had not submitted a protest for the "reaffirmation" of her status as Secretary of the 2001 Convention within the prescribed time limit. On 30 April 2018 the Appeals Board issued its report in which it recommended that the appeal be considered as time-barred insofar as it was directed against the removal of the complainant's title as Secretary of the 2001 Convention from her job description. The Board found that it did not have the required technical means to evaluate and classify the complainant's post and recommended that her request for reclassification be rejected. It nevertheless recommended that the complainant be paid a special post allowance from October 2011 until her post was correctly classified on the duties that she actually performed or until she truly ceased to perform those duties. By a letter of 7 August 2018, which constitutes the impugned decision, the complainant was informed of the Director-General's decision to endorse the first two recommendations of the Appeals Board and to reject the third one.

In the meantime, the complainant had lodged on 20 March 2018 a formal complaint of harassment against Mr H. Having been informed of the Director-General's decision to close the case, she had submitted a protest on 23 July 2018. She then lodged an appeal with the Appeals Board in January 2019.

The complaint filed with the Tribunal seeks the setting aside of the impugned decision, the drawing up of a new job description, the retroactive reclassification of the complainant's post based on the new job description reviewed by an independent outside classification officer and compensation or the payment of a "special allowance" for the salary differential between a P-3 and P-5 post, including all benefits, pension contributions and step increases, together with interest. The complainant also claims damages for the moral injury resulting from alleged harassment and the material injury which she considers she has suffered, additional damages for the excessive delay in the internal appeal procedure and the alleged breach of her procedural rights, as well as costs. She further asks that, in her case, the desk audit and Appeals Board procedures shall not be any more a "pre-condition to appealing to [the Tribunal] until their profound revision". In her rejoinder, the complainant requests the Tribunal to clarify expressly that, if she is transferred to another post, she has an acquired right to a P-5 post and she also claims additional punitive damages for severe harassing behaviour.

UNESCO asks the Tribunal to dismiss the complaint as irreceivable insofar as it concerns the change of the complainant's original job description in 2011, and as unfounded in its entirety.

CONSIDERATIONS

1. The complainant requests an oral hearing pursuant to Article 12 of the Tribunal's Rules. The request is rejected as the Tribunal considers that the issues raised in this case can fairly be resolved on the detailed submissions, materials and documents which the parties have provided.

2. Paragraph 7(a) of the Statutes of the Appeals Board requires a staff member stationed at Headquarters, as a first step to contest an administrative decision, to submit a protest in writing to the Director-General, through the Director of HRM, within one month of receiving the contested decision. In her protest of 5 March 2017 to the Director-General (as in her detailed appeal to the Appeals Board) the complainant contested the decision of 17 February 2017 which confirmed that her post had been appropriately classified at grade P-3 pursuant to the ICSC's master standards of job classification after a desk audit was conducted. She stated that she received the 17 February 2017 decision on 1 March 2017. The desk audit was conducted on the basis of the new 2016 job description. In her 5 March 2017 protest the complainant requested the reclassification of her post at grade P-5 and a "reaffirmation" of her status as Secretary of the 2001 Convention. That status was removed from her job description following the 2011 restructuring of the Culture Sector. She also requested an award of damages in an amount corresponding to "the difference between a P-3 and a P-5 post" if her first two requests were not granted.

3. In her complaint, the complainant specifically "[impugns] the final administrative decision of the Director-General of UNESCO, received [by her] on 7 August 2018". In that decision, the Director-General accepted the Appeals Board's recommendation that the complainant's appeal be considered as time-barred insofar as it was directed against the "decision" that was taken in June 2011 to remove the title of Secretary of the 2001 Convention from her job description.

4. In the second place, in the impugned decision the Director-General accepted the Appeals Board's recommendation to reject the complainant's request to reclassify her post at grade P-5. The complainant insists that the desk audit was not conducted in accordance with the applicable rules and procedures.

5. In the third place, the Director-General did not accept the Appeals Board's recommendation to pay the complainant a special post allowance from October 2011 until her post was correctly classified on

the duties that she actually performed or until she truly ceased to perform those duties. The Tribunal however finds that the Director-General was correct as the Board's recommendation was made in error. This is because under Staff Rule 103.17, which provides the basis for the payment of a special post allowance, this payment is to be made where a staff member is called upon to assume, temporarily, most or all of the functions of a post of a higher grade for a period of more than three months. This was certainly not the case here, as the complainant herself observes.

6. In her brief, the complainant seeks moral damages for harassment. She states that since she requested the desk audit, management began to publicly degrade, ridicule, belittle and bully her and intentionally inflicted emotional distress upon her causing her to develop serious medical problems. It is noted that she had in fact filed a formal harassment complaint to the Director-General in March 2018 against Mr H. due to "his creation of an intimidating, hostile, degrading, humiliating and offensive work environment over [...] six years". On 5 July 2018 she was informed of the Director-General's decision to close her case for lack of evidence in support of her allegations. She has challenged that decision in a separate internal appeal procedure, which is outside the scope of this complaint.

7. The complainant's request that, in her case, the desk audit and Appeals Board procedures shall not be any more a "pre-condition to appealing to [the Tribunal] until their profound revision" will also be dismissed as it raises an issue which does not fall within the Tribunal's purview. The request, which she makes in her rejoinder, for the Tribunal to clarify expressly that, if she is transferred to another post, she has an acquired right to a P-5 post and her claim for additional punitive damages for severe harassing behaviour will also be dismissed. According to the Tribunal's case law, a complainant may not, in her or his rejoinder, enter new claims not contained in the original complaint (see, for example, Judgment 4092, consideration 10).

8. Regarding the complainant's challenge to the impugned decision that her appeal be considered as time-barred insofar as it was directed against the June 2011 "decision" to remove the title of Secretary of the 2001 Convention from her job description, consistent principle has it that a complainant must comply with the time limits and the procedures, as set out in the organisation's internal rules and regulations (see, for example, Judgment 3947, consideration 4, and the case law cited therein). Paragraph 7(a) of the Statutes of the Appeals Board required the complainant to submit a protest in writing to the Director-General, through the Director of HRM, "within a period of one month of the date of receipt of the [contested] decision". The complainant accepts that she received the "decision" in June 2011 but did not submit a protest against it within the required time. She however insists that her right to contest the June 2011 "decision" to remove the title of Secretary of the 2001 Convention from her job description was "fully preserved" despite the passage of time because "unethical measures, including deceit and threat, [kept] her from appealing against the decision of her supervisors to change her [j]ob [d]escription in 2011".

9. The complainant's case is that when she was informed in June 2011 that the title was removed from her job description, she immediately questioned it in writing and orally with the responsible officer in HRM. She was informed that she could not appeal the revision of her job description and that the change in title was not substantial since a post's title could be subject to changes under the applicable ICSC master standards of job classification. She asserts that those standards were password protected and therefore intentionally made inaccessible to her. The Tribunal notes that the email exchanges produced by the complainant show that on 17 June 2011 Mr H. transmitted a copy of the complainant's new job description which came out of the 2011 restructuring process to her. She was on maternity leave at the time. He requested her to look at it with a view to discussing it with him as soon as possible. In her response of 20 June 2011 the complainant stated that her new job description appeared to be "a considerable and disadvantageous change" from that for which she was employed but that she was unable to measure the exact change as she was not in the office.

She suggested that it would have been appropriate to discuss it in October 2011 on her return from leave when she would have been able to check the implications thoroughly with HRM before expressing an opinion. She expressed the hope that the change in her job description did not reflect dissatisfaction with her performance and wondered why it was needed. In response, Mr H. assured her that the change did not imply any dissatisfaction with her performance but reflected the changes caused by the restructuring of the Culture Sector. He further informed her that it was not possible to await her return from leave to discuss the matter as that would have hindered the restructuring exercise. They agreed to meet on 23 June 2011, during a Section meeting, to discuss the matter and both signed the 2011 job description on that date. On 20 June 2011 the complainant had also inquired with the responsible officer in HRM whether she had to accept or whether she could have refused the subject change in her job description. He replied that, as long as the substance and functions of the post were not modified, he was not clear about her objections as the title of a post was subject to changes in accordance with the ICSC master standards of job classification.

10. There is nothing in those exchanges or any other evidence presented by the complainant which shows that she was prevented by deceit or threat from appealing against the subject job description in 2011. The Tribunal sees no circumstances on which to hold that, in breach of its duty of care to the complainant, the Administration attempted (as the Tribunal severely sanctions consistent with Judgment 2282, consideration 11) to keep her from exercising her right to appeal the June 2011 "decision". Moreover, contrary to the complainant's contention that the applicable ICSC master standards of job classification were password protected and therefore inaccessible to her, the standards would have been available to the complainant and all staff members in Appendix 3 A to the Human Resources Manual. Accordingly, the complainant's plea that the Director-General erred in accepting the Appeals Board's recommendation that her appeal be considered as time-barred insofar as it was directed against the "decision" that was taken in June 2011 to remove the title of Secretary of the 2001 Convention from her job description is unfounded.

11. The basic guiding principles in the Tribunal's case law concerning classification of posts were stated as follows, for example, in Judgment 4000, considerations 7, 8 and 9:

> "7. In Judgment 3589, in which the reclassification of a post was also challenged, the Tribunal stated the following, in consideration 4:
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> 'It is well established that the grounds for reviewing the classification of a post are limited and ordinarily a classification decision would only be set aside if it was taken without authority, had been made in breach of the rules of form or procedure, was based on an error of fact or law, was made having overlooked an essential fact, was tainted with abuse of authority or if a truly mistaken conclusion had been drawn from the facts (see, for example, Judgments 1647, consideration 7, and 1067, consideration 2). This is because the classification of posts involves the exercise of value judgements as to the nature and extent of the duties and responsibilities of the posts and it is not the Tribunal's role to undertake this process of evaluation (see, for example, Judgment 3294, consideration 8). The grading of posts is a matter within the discretion of the executive head of the organisation (or the person acting on her or his behalf) (see, for example, Judgment 3082, consideration 20).'
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> 8. As to the main factors that are to be taken into account in a reclassification process, the Tribunal has relevantly stated as follows, in Judgment 3764, consideration 6:
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> 'It is for the competent body and, ultimately, the Director-General to determine each staff member's grade. Several criteria are used in this exercise. Thus, when a staff member's duties attach to various grades, only the main ones are taken into account. Moreover, the classification body does not rely solely on the text of the Staff Regulations and Staff Rules and the job description but also considers the abilities and degree of responsibility required by each. In all cases grading a post requires detailed knowledge of the conditions in which the incumbent works.'
>
> 9. The classification of a post involves an evaluation of the nature and extent of the duties and responsibilities of the post based upon the job description. It is not concerned with the merits of the performance of the incumbent (see, for example, Judgment 591, under 2).
>
> [...]."

12. That the classification of a post is to be based essentially on the nature of the duties and the level of the responsibilities that attach thereto is emphasized, for example, in Staff Rules 102.1 and 102.2. The basic statements of principles in Item 3.1, entitled "Post classification

system", of the Human Resources Manual are also noteworthy. Paragraph 8 states as follows:

> "The basic principles governing post classification in UNESCO are the following:
>
> a) The principle of 'equal pay for work of equal value' (or achieving fairness in the equitable remuneration of staff).
>
> b) UNESCO's classification system is a rank-in-post system. Posts are classified on the basis of the requirements of the job and not on the basis o[f] the incumbent's profile or performance.
>
> c) Posts are classified in accordance with the applicable classification standards established by the [ICSC]."

13. The complainant contends that the impugned decision wrongly determined that her post was correctly graded at P-3. She submits that the desk audit (and by extension the post classification) was not conducted in accordance with the applicable rules and procedures. She specifically argues that the desk audit was tainted by errors of law and of fact as it was conducted "under doubtful circumstances" and was based on a "willfully falsified [j]ob [d]escription" because her duties as Secretary of the 2001 Convention were omitted therefrom. Her submissions on this ground may be summarized as follows: pursuant to Rule 26.2 of the Rules of Procedure of the Meeting of States Parties of UNESCO to the 2001 Convention, on 26 March 2009 the Director-General nominated her as the Secretary of the Convention, announced it to the Meeting of States Parties and presented her as such to the Permanent Delegations. The Director-General did not subsequently appoint, announce or present another person as the Secretary to the Meeting of States Parties to that Convention. She has since carried out the duties of Secretary of that Convention. They were therefore wrongly omitted from her job description in her job classification process. The plea is unfounded.

14. Rule 26.2 of the above-mentioned Rules of Procedure states as follows:

> "The Director-General of UNESCO shall appoint an official of the Secretariat of UNESCO to act as Secretary to the Meeting, and other officials who shall together constitute the Secretariat of the Meeting."

The Secretary to the Meeting of States Parties to the 2001 Convention carries out the required duties accordingly. The functions and responsibilities of the Meeting of States Parties are set out in Rule 3 of the Rules of Procedure. Under Rule 5 the Meeting is convened by the Director-General in ordinary session at least once every two years or in any extraordinary Meeting which the Director-General convenes at the request of a majority of the States Parties. The duties of Secretary of the 2001 Convention were assigned to Mr H. in his job description and there is no evidence that the Director-General appointed the complainant as Secretary to a Meeting of States Parties after the 2011 restructuring process. The evidence shows that subsequently she attended the Meeting as an official of the Secretariat. In 2014 her new overall supervisor was designated as Secretary of the 2001 Convention in an announcement made by the Assistant Director-General ad interim for Culture on behalf of the Director-General to all staff of the Culture Sector. The provisional list of participants of the fifth session of the Meeting of States Parties in April 2015 had the complainant listed as *programme specialist*. Her new overall supervisor was listed as the Secretary of the 2001 Convention. The complainant's overall performance review for 2014-2015 stated that she exercised the functions of focal point to support the Secretary of the 2001 Convention. The title of Secretary of the 2001 Convention was removed from the complainant's job description following the 2011 restructuring of the Culture Sector and it was again omitted from her job description following the 2014 restructuring process. These "decisions" were ultimately approved by the Director-General. There was therefore no error in the omission of that title from the 2016 job description or in the decision that the complainant's post was correctly graded at P-3.

15. It follows from the foregoing conclusion that the complainant's contention that the decision to classify her post at grade P-3 is tainted with abuse of authority is also unfounded. In any event, she provides no evidence to support that contention (for such a requirement see, for example, Judgment 3939, consideration 10, and the case law cited therein). Her contention that the decision to classify her post at grade P-3 violated the principle of equal pay for work of equal value is also unfounded.

The duties and responsibilities of the posts with which she seeks to compare the duties and responsibilities of her post are not similar. In any event, it is not within the Tribunal's remit to conduct an analysis of the posts with which the complainant seeks to compare her post for the subject purpose (see, for example, Judgment 4000, consideration 9).

16. The complainant provides no evidence that shows that the Appeals Board was not properly constituted or that its members were partial in the sense stated in considerations 5 and 6 of Judgment 2667. Neither has she provided credible evidence to support her contention that the Board was not an independent, neutral or transparent body which was biased in favour of the Administration, or that her right to a fair hearing before the Board was violated in breach of the Organization's duty of care to her. These pleas are therefore unfounded.

17. The complainant seeks damages on the ground that her right to a fair trial and to professional legal help during the desk audit or before the Appeals Board was breached. This claim is unfounded. There is no regulatory provision or statement in the case law that makes it mandatory that a staff member be represented by counsel either during the conduct of a desk audit or in the internal appeal proceedings (see, for example, Judgments 995, consideration 5, 1763, consideration 10, 1817, consideration 8, and 2660, consideration 8).

18. The complainant also seeks damages on the ground that her right to be heard within a reasonable time was violated. She submits that the Administration caused delay in order to prevent her access to the Tribunal by "installing procedures allowing continuously and generally for unlimited delays". She states that she was first made to wait for two years for a desk audit "under the legally wrong pretence of the need for a prior renewal of her [j]ob [d]escription" and that the Administration requested extensions of time limits which delayed the Appeals Board's procedure. The result, she states, is that she began the procedure for the reclassification of her post on 24 June 2014 but could only bring the matter to the Tribunal some four years later. Having noted the activities during the reclassification process, including the various applications

made by the complainant, the Tribunal concludes that there was no inordinate or unreasonable delay that requires an award of damages to be made to the complainant. The claim is therefore unfounded.

19. In the foregoing premises, the complaint will be dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 28 October 2019, Ms Dolores M. Hansen, Vice-President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 10 February 2020.

DOLORES M. HANSEN

GIUSEPPE BARBAGALLO

HUGH A. RAWLINS

DRAŽEN PETROVIĆ