



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D 'APPEL DES NATIONS UNIES

Judgment No. 2017-UNAT-805



Gorelova
(Appellant)

v.

Secretary General



Registrar:

Weicheng Lin

than those stipulated in [her] job description”

Therefore, I request appropriate and suitable financial compensation for the 16 years of work during which I was performing tasks at a higher level than those in my job description, without receiving the remuneration mandated by the ICAO Service Code.

I look forward to receiving a positive response with regard to my request.

7. By memorandum dated 16 May 2012, the D/ADB responded and conveyed to Ms. Gorelova that the post she formerly held in the Russian Section (prior to the restructuring exercise) had been thoroughly reviewed and repeatedly confirmed at the appropriate (G-5) grade level and that “she had received communication to this effect”. The memorandum further stated that “there was no basis to grant her financial compensation, and therefore, her request could not be considered”.

8. On 14 June 2012, Ms. Gorelova wrote to the ICAO Secretary General claiming “appropriate and suitable financial compensation for 17 years of work during which she has been performing tasks at a higher level than those in her job description”. In her letter, she noted that she had asked for a thorough review of the process since 2009 but none had been conducted despite the IOM of 4 October 2011 stating that the post had been properly graded in 2007.

9. In response to the aforementioned memorandum, on 26 June 2012, the ICAO Secretary General stated, *inter alia*:

As I had previously advised in my letter of 9 November 2011, your duties and responsibilities were objectively reviewed on several occasions and on each occasion they were confirmed to be consistent with the requirements of your grade level. This was also communicated to you by the Director, Bureau of Administration and Service in a recent IOM dated 16 May 2012.

The ICAO Secretary General also advised that: “[I]n view of the above, there is no basis upon which I can grant you additional monetary compensation for work done that is consistent with the requirements of your post.”

10. By letter to the AJAB dated 18 July 2012, Ms Gorelova submitted an appeal requesting the AJAB to award “suitable financial compensation for 17 years of work during which she has been performing tasks at a higher level than those in her job description”. In her letter of appeal, Ms. Gorelova provided an account of her work history and her uneasy relationship with the then-Chief, Russian Section. She further contended that she had been discriminated against

Submissions

Ms. Gorelova's Appeal

14. Ms. Gorelova submits that the AJAB erred on a question of fact leading to a manifestly unreasonable decision, and erred in law in concluding that her appeal was time-barred.

15. In particular, she contends that the AJAB erred on questions of fact in several regards when it found that Ms. Gorelova's letter of 2 November 2011 and her letter of 9 May 2012 made identical claims on "exactly the same" facts. First, the AJAB failed to take into account that the ICAO Secretary General had advised in the letter of 9 November 2011 that a restructuring exercise was on the way, which would result in a new evaluation of her functions in her new assignment. Therefore, there were no objective grounds for Ms. Gorelova to conclude from the 9 November 2011 IOM that a decision had been taken not to review her post, which might have triggered the relevant time limits. Second, the AJAB incorrectly concluded that she had already made a compensation claim in her letter of 2 November 2011, whereas in fact she had simply requested a review of her post description and was advised that it would be undertaken in connection with the LPB restructuring exercise. Third, the AJAB failed to consider that new facts motivated and underpinned her request for compensation in her IOM of 9 May 2012 including irregularities in the LPB restructuring process.

16. Accordingly, she claims that the "original impugned decision was taken on 16 May 2012 denying a review and compensation for performance of duties at the higher level prior to and after the 2011 LPB restructuring exercise" and her appeal to the AJAB, dated 18 July 2012, was thus timely filed.

17. Based on the foregoing, Ms. Gorelova requests that the Appeals Tribunal (i) vacate the impugned decision; (ii) remand the matter to the AJAB for a consideration of the merits; (iii) order payment of moral damages for injury caused to her dignity in the amount of six months' net based salary; and, (iv) refer the case to the ICAO Secretary General to enforce accountability. In support of her request for a referral for accountability under Article 9 of the Appeals Tribunal Statute (Statute), she points to

appeal system would do well to be abolished”, which makes it an adequate case “for referral to the [ICAO] Secretary General for appropriate action to audit the internal appeal function of the organization”.

The ICAO Secretary General's Answer

18. The ICAO Secretary General's Answer.

compensation”—ostensibly distinguishing it from her 2 November 2011 request—is not credible as she did not relate her request to the restructuring exercise but merely repeated her previous request. The 16 May 2012 response simply reiterated the Administration’s position on the correct classification of Ms. Gorelova’s post and merely confirmed the earlier decision communicated to

Advisory Joint Appeals Board (unless the Secretary General and the applicant have agreed to submit the application directly to the Tribunal);

...

2. The conditions governing appeals are

29. ICAO Staff Rule 111.1 stipulates:

Formal review and appeal

2. In accordance with Article XI of the Staff Regulations, a staff member shall have the right to a review by the Secretary General of any decision falling under Regulation 11.1, and a subsequent right under Regulation 11.2 to lodge an appeal against the result of such review with the Advisory Joint Appeals Board (in this Rule referred to as “the Board”). In compliance with Regulation 11.5 and Rule 111.5, the decision referred to in Regulation 11.2 may be appealed to the United Nations Appeals Tribunal. When informing a staff member following either review or appeal action, the Secretary General shall, where appropriate, advise the staff member as to possible further recourse actions.

In the present case the aforementioned requirements for the Appeals Tribunal’s jurisdiction are fulfilled, as the appeal was filed against a decision by the ICAO Secretary General dated 14 March 2017 (and communicated via a letter dated 4 April 2017), in accordance with the recommendation of the AJAB dated 17 February 2017.

Main issue: receivability of the appeal to AJAB

30. The AJAB held that Mr. Gorelova’s appeal was time-barred. We will now examine the merits of this ruling.

31. ICAO Staff Rule 111.1 establishes, in relevant paragraphs, the procedure to challenge an administrative decision:¹

5. (...) A staff member who wishes to appeal the decision referred to in Regulation 11.1 shall, as a first step, address a letter to the Secretary General requesting that the decision be reviewed. *Such a letter shall be sent within 30 calendar days of the time the staff member received notification of the decision in writing.*

6. If the staff member wishes to appeal against the answer received from the Secretary General, the appeal in writing shall be submitted to the Secretary of the Board within 30 calendar days from the date of receipt of the answer; *if no reply has been received from the Secretary General within 30 calendar days of the date the letter was received by him, the appeal shall be submitted within the following 30 calendar days.* A copy of the letter of appeal shall be sent by the staff member to the Secretary General.

¹ Emphases added.

40. As we have stated in *Siciliano*,⁴

... Mr. Siciliano appeals the decision (...) to suspend him without pay. The ICAO Secretary General challenges the receivability of Mr. Siciliano's appeal of that decision on the ground that he failed to request its review as required by ICAO Staff Rule 111.1(5) and also failed to request a waiver of time to file his appeal before the AJAB pursuant to Staff Rule 111.1(8).

... ICAO's Staff Rule 111.1(5) provides *inter alia*, that:

... A staff member who wishes to appeal the decision referred to in Regulation 11.1 shall, as a first step, address a letter to the Secretary General requesting that the decision be reviewed. Such a letter shall be sent within 30 calendar days of the time the staff member received notification of the decision in writing.

... ICAO's Staff Rule 111.1(7) provides ~~th~~ a staff member who fails to observe the time limits indicated shall lose the right to appeal, unless an application is made for the delay to be waived. Mr. Siciliano, like any staff member who wishes to appeal a decision, had to complete the first step of making a formal request for a review of the decision to suspend him without pay. He has not done so and has thus waived his right to appeal that decision.

... In the circumstances, that aspect of Mr. Siciliano's appeal is not receivable.

41. One could argue that Ms. Gorelova requested compensation for the first time in her memorandum of 9 May 2012. Based on that premise, the 16 May 2012 letter would be the relevant administrative decision and her failure to request administrative review of the 9 November 2011 decision would not be relevant for the receivability of the appeal to the AJAB. That argument, however, does not stand. First, because her request dated 2 November 2011 already expressly mentioned that she "should be compensated for the [previous] years", as a consequence of her main demand for review of her post description. Secondly, because, although her subsequent request was phrased differently (compensation for performance of tasks at a higher level than those of her job description), it was based on the same factual and substantive situation that had already been assessed under her previous, unsuccessful request for review of her post description.

4

42. There could indeed not be any compensation granted without a prior decision that her post description was incorrect.⁵ In other words, Ms. Gorelova's premise appears to be incorrect, since the compensation requested was a natural consequence of a claim of rectification in her post description, which had, however, been continuously rejected. The relief claimed by Ms. Gorelova is hence intertwined with the unchallenged previous decision of the Administration that her post had been correctly graded.⁶

43. In this respect, we have already stated in *Kazazi*.⁷

... [T]he Appeals Tribunal has consistently held that the reiteration of an original administrative decision, if repeated by questioned by a staff member, does not reset the clock with respect to statutory timelines; rather the time starts to run from the date on which the original decision was made. For this reason, a staff member cannot reset the time for management review by asking for a confirmation of an administrative decision that has been communicated to him earlier. Neither can a staff member unilaterally determine the date of an administrative decision.

44. In view of the foregoing, we agree with the AJAB that the letter dated 9 November 2011 conveyed a clear and definite administrative decision, namely, that her post graded at the G-5 level was consistent with the duties and responsibilities she was carrying out. This decision produced direct legal consequences for Ms. Gorelova. Therefore, the time limit to contest the decision within the time line established by the Staff Rules began as of the date of receipt of this letter.

45. Furthermore, we note that Ms. Gorelova's job description was not affected by the restructuring exercise that was carried out at the time of the decision taken on 9 November 2011. As emphasised, Ms. Gorelova should have requested a timely review of the contested decision, since there was no guarantee that her job description would be modified in order to grant her claim.

⁵ As mentioned, there was nothing new in her subsequent requests and the factual basis is the same.

⁶ Impugned AJAB opinion, paragraph 2.4. In this respect, the introductory statement of her letter dated 9 May 2012 confirms that conclusion: "I wish to draw your attention to major discrepancies between the functions I fulfil in my job, my job description, and my remuneration". Also, the statement mentioned in the IOM dated 14 June 2012, in which Ms. Gorelova declared that she did not agree with the assessment of her request for correction of grade, since she was allegedly performing functions beyond the secretarial stage and thus incorrectly classified at the G-5 level. She stated that she

46. Even assuming, *arguendo*, that the original administrative decision was taken on 16 May 2012, as Ms. Gorelova contends, the filing of an appeal before the AJAB on 18 July 2012 would also be time-barred, as set forth in ICAO Staff Rule 111.1(6) transcribed above, and also, in light of ICAO Staff Rule 111.1(5), not receivable *ratione materiae*.⁸

47. The appeal rests upon misguided grounds and Ms. Gorelova failed to demonstrate

50. In *Cohen*, we stated:¹⁰

... The exercise of the power of referral for accountability in terms of Article 9(5) of the Statute must be exercised sparingly and only where the breach or conduct in question exhibits serious flaws. (...) There is accordingly no justifiable basis to refer for accountability.

51. In light of the strict application of this provision and the ICAO Secretary General's reasonable submissions, we reject the demand for referral for accountability in this case. However, we strongly recommend that complaints be dealt with in due course.

52. In view of the foregoing, the appeal fails and there is no need to address the merits of the case.

¹⁰ *Cohen v. Registrar of the International Court of Justice*, Judgment No. 2017-UNAT-716, para. 46 (internal citations omitted).

Judgment

53. The appeal is dismissed and the decision of the ICAO Secretary General is affirmed.

Original and Authoritative Version: English

Dated this 27th day of October 2017 in New York, United States.

(Signed)

Judge Halfeld, Presiding

(Signed)

Judge Thomas-Felix

(Signed)

Judge Knierim

Entered in the Register on this 8^h day of December 2017 in New York, United States.

(Signed)

Weicheng Lin, Registrar