



Case No.: UNDT/GVA/2010/029
(UNAT 1626)

Judgment No.: UNDT/2010/064

Date: 14 April 2010

6. On 1 September 2001, the applicant was promoted to the G-4 level as Records Clerk, Distribution and Sales Section. On 1 January 2002, she was given a two-year fixed-term appointment.
7. On 31 January 2003, the applicant and her line supervisors requested reclassification of her post to the G-4 level.
8. On 1 January 2004, her contract was extended for two years and, on 1 September 2004, she was assigned to the Sales and Marketing Section.
9. In January 2005, the applicant was informed that the reclassification request of January 2003 had been denied; on 28 January 2005, she complained to her supervisor, the Head of the Sales and Marketing Section, regarding the non-reclassification of her post.
10. On 22 February 2005, the applicant sent a memorandum to the New York Ombudsman complaining of “physical and administrative harassment”.
11. On 29 March 2005, the applicant sent a memorandum to the Chair of the Classification Appeals Committee.
12. On 9 May 2005, the applicant submitted to the Office of Internal Oversight Services a complaint concerning her transfer from Publications Services to the Sales and Marketing Section, which she claimed was to her disadvantage, and asked for an investigation to be conducted, adding that since 2001 her complaints of harassment had not been addressed.
13. On 8 June 2005, the applicant sent a memorandum to the Chief of the Division of Administration complaining of the transfer of her post to the Sales and Marketing Section.
14. On 5 August 2005, the Office of Internal Oversight Services informed the applicant that her complaint had been reviewed and that it was within the purview of the Human Resources Management Service of UNOG.
15. On 1 November 2006, the applicant’s appointment was extended for a year.

16. On 19 January 2006 the applicant's counsel sent a letter to the UNOG Director of Administration asking the administration to reclassify her post, do a performance appraisal and credit her with her annual leave, and asking the Office of Internal Oversight Services to investigate the numerous complaints of harassment filed by the applicant since 1998.

17. On 24 January 2006, the applicant's counsel sent another letter to the UNOG Director of Administration, followed by a third letter on 14 February 2006 and a fourth on 16 May 2006.

18. On 30 January 2006, the UNOG Director of Administration replied to the applicant's counsel that the administrative procedures necessary to extend the applicant's contract had been begun and that the other issues raised in his letters were under review; she would be contacting him again as soon as possible.

19. On 19 July 2006, a new three-year contract was offered to the applicant, retroactive to 1 January 2006.

20. In a letter dated 21 July 2006, the applicant's counsel submitted to the Secretary-General a request for review of the issues relating to compensation for the harassment to which the applicant had been subjected, the refusal to renew her contract for a period of three years and the refusal to investigate how she had been treated, and requested an apology from the Organization for not having put a stop to the harassment she had endured.

21. In a letter dated 3 August 2006, the officer in charge of the Administrative Law Unit acknowledged receipt of the applicant's request for review dated 21 July 2006.

22. On 30 October 2006, the applicant's counsel sent the Secretary-General another letter whose contents were almost identical to those of his letter of 21 July 2006.

23. The same day, the applicant submitted an incomplete appeal to the Geneva Joint Appeals Board (JAB), which was completed on 11 January 2007.

24. The Geneva JAB submitted its report to the Secretary-General on 28 November 2007. The Board concluded on the one hand that the only points at issue were the decision not to grant the applicant an extension of her contract for a period of three years, the decision not to reclassify her position at the G-6 level, and finally the decision of the Office of Internal Oversight Services not to conduct an investigation, and on the other hand that her appeal against these decisions was either moot or time-barred. The Board therefore recommended that the appeal be dismissed.

25. In a letter dated 8 February 2008, the Under-Secretary-General for Management informed the applicant that the Secretary-General had decided to follow the recommendation of the Geneva JAB.

26. On 10 April 2008, the applicant's counsel applied for an extension of the 90-day time limit to submit a application to the United Nations Administrative Tribunal. As of 10 July 2008, a motion to institute proceedings was submitted.

27. On 1 January 2009, the applicant's appointment was extended for three years. As of 2 February 2009, the applicant was temporarily transferred to the NGO Liaison Unit within the Office of the Director-General.

28. On 1 December 2009, following her application, the applicant was selected for the post of Liaison Assistant in the Director General's Office and promoted to the G-5 level.

29. Under the transitional measures set out in resolution 63/253 of the United Nations General Assembly, the case being still pending before the United Nations Administrative Tribunal when that body was dissolved on 1 January 2010, it was referred to the United Nations Dispute Tribunal.

30. In a letter dated 18 March 2010, the Tribunal informed the parties that the judge intended to raise the issue of the lateness of the appeal under Administrative Instruction ST/AI/1998/9 "System for the Classification of Posts" and invited them to make submissions on that point.

31. On 23 March 2010, the applicant's counsel responded to the above-mentioned letter, pointing out that the applicant had never received official notification of the decision to refuse the reclassification of her post.

Contentions of the parties

32. The Applicant's principal contentions are:

a. As regards the refusal to reclassify her post at the G-5 level:

- (i) The applicant claims that on 29 March 2005 she filed an appeal with the Classification Appeals Committee against the refusal to reclassify her post, pursuant to the procedure set out in Administrative Instruction ST/AI/1998/9, Section 5. That appeal was submitted within the 60-day time limit following notification by her line supervisor, in late January 2005, of the classification decision on her post;
- (ii) On 22 April 2005, the Chair of the an appeal
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- (v) The Ombudsman did not play his role in a transparent manner and made no attempt to resolve the dispute;
- (vi) The Office of Internal Oversight Services failed in its mission by refusing to undertake an investigation on the grounds that her

realized that her reclassification application had been implicitly rejected and submitted her request for review to the Secretary-General before 1 June 2006;

- d. As regards the application relating to the applicant's allegations of harassment, she had two months to ask the Secretary-General to reconsider the refusal of the Office of Internal Oversight Services to investigate. She was informed of the Office's refusal to investigate on 5 August 2005 and so had until 5 October 2005 to challenge that decision before the Secretary-General. In fact she did not do so until 21 July 2006;
- e. The applicant's other requests are inadmissible on the grounds that no appeal was made to the Secretary-General.

Judgment

As regards the refusal to reclassify the applicant's post to the G-5 level

34. The applicant contests the decision whereby the Secretary-General followed the recommendation of the Geneva JAB, which considered that her appeal against the refusal to reclassify her post to a higher level was time-barred.

35. In taking that decision, the Secretary-General based himself on the failure to meet the appeal deadline laid down in Staff Rule 111.2(a) then in effect, which reads as follows:

“A staff member wishing to appeal

Appeals Committee. That is obviously contrary to the above-mentioned Administrative Instruction.

47. Thus, as the Committee gave no ruling, no implicit decision can be inferred, and the applicant was within her rights in applying, as she did, to the United Nations Administrative Tribunal to have the refusal to reclassify her post overturned.

48. It follows from the foregoing above that the decision to refuse the reclassification of the applicant's post was illegal, as the administration failed to follow the specific appeals procedure set out in Administrative Instruction ST/AI/1998/9. That decision must therefore be overturned.

49. A ruling is now required on the damage resulting from the unlawful decision above, which is now overturned. On 31 January 2003 the applicant and her supervisor requested a reclassification of the G-4 post she held, but she received no notification of the refusal until the end of January 2005, some two years later—an unusually long time for such a decision process. It is apparent from the file that the decision announced in January 2005 contained at least one error, regarding the number of points awarded to factor 9, "training/experience", in the post's rating sheet. As a result, the applicant lost a good chance to have her post reclassified within a reasonable time, which in the Tribunal's view would be three months from the application for reclassification.

50. It may further be supposed that the applicant, had she obtained the reclassification of her post to the G-5 level, would have had a good chance to be appointed to that post within a reasonable time, which the Tribunal estimates at nine months.

51. Thus, if the administration had, without unreasonable delay, made a decision on the applicant's request, she would have had a good chance of being appointed to a G-5 level post by January 2004 and so of being paid at that level. The damages suffered by the applicant must be calculated as follows: the difference in salary received between the G-4 and G-5 levels during the period from 1 February 2004 to 1 December 2009, on which date she was actually promoted to the G-5 level, an

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- c) The applicant's other claims are dismissed.

Judge Jean-François Cousin

So ruled on 14 April 2010

Entered in the Register on 14 April 2010

Víctor Rodríguez, Registrar, UNDT (Geneva)