



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2016/071

Judgment No.: UNDT/2019/163

Date: 18 November 2019

Original: English

Before: Judge Margaret Tibulya

Registry: Nairobi

Registrar: Abena Kwakye Berko

YABOWORK

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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JUDGMENT

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Counsel for the Applicant:  
Self-represented

Counsel for the Respondent:  
Yuki Daijo, ECA  
Amboko Wameyo ECA

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6. On 10 September 2010, the CHRSS and Chief/SSU informed the Applicant and her colleague that the payment of their SPA will be discontinued.

12. On 28 August 2012, the Applicant filed for management evaluation. The Management Evaluation Unit (MEU) communicated through Counsel for the Applicant and recommended that HRSS and the Applicant seek a classification review by the Office of Human Resources Management (OHRM) in New York.

13. There was correspondence between Counsel for the Applicant and MEU on the classification in October 2012, and MEU reiterated that classification was the way forward.<sup>3</sup>

14. On 4 December 2012, the Chief MEU wrote to the Applicant. MEU determined classification of the functions she was performing and recommended that a classification of the post be undertaken pursuant to AST 1998/9 (System for the classification of posts)<sup>4</sup>

15.

19. On 8 June 2013, the Applicant and her colleague submitted a detailed clarification with the relevant supporting documents. They copied the DOA and Chief/HRSS and other relevant colleagues on the email.

20. On 13 September 2013, the classification document was finalized and signed by the Applicant, her colleague and her FRO

21. The document was sent to OHRM/NY by the Chief/HRSS with a cover memo

He did not, however, append his signature to the classification document itself.

22.

was not clear exactly when the classification request was sent and whom it was addressed to. She and her colleague for several months after it was submitted.

23. In February 2014, the Applicant and her colleague were asked by the Chief/SSU to provide clarifications sought by OHRM. They did so promptly.

24. In December 2014, the Chief/HRSS met with the Applicant and her colleague and suggested mediation through the Ombudsman. He informed them that the classification outcome found the functions to be at the P level. He told them he did not wish to pursue classification and sign the document and would rather have the dispute mediated

25. In January 2015, the then Chief/HRSS left ECA for a different posting. A new Chief/HRSS was appointed in February 2015.

26. In April 2015, the new Chief/HRSS told the Applicant that he would like the FRO and the Applicant to redraft the classification document.

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<sup>6</sup> *Ibid.* annex 11.

<sup>7</sup> *Ibid.* annex 12.

27. On 8 June 2015, the Applicant, her colleague and a HR Officer were called to a meeting with the Chief/HRSS. They were informed that a classification request had not been submitted to OHRM. He asked that a new classification document be drafted by the FRO. The Applicant and her colleague informed the new Chief/HRSS that not only was there evidence of submission of a classification request, the former Chief/HRSS had even informed them of the outcome before he left.

been submitted to ECA Administration in November 2015.

35. On 25 January 2016, the Applicant wrote to the Chief/HRSS and asked that the details requested by OHRM be provided by 31 January 2016. She also received a verbal assurance on the informal settlement.

36. On 10 March 2016, the Chief/HRSS wrote to the Applicant and her colleague to inform them that ECA had withdrawn and cancelled the request for classification because there was a substantive error in the description of duties. He asked their FRO to redraft the classification document.

37. On 9 May 2016, the Applicant sought management evaluation of the decision to withdraw and cancel the classification, which was pending before OHRM because of the absence of the (then) <sup>11</sup>

38. a new classification document and asked that she review and sign it.

39. On 5 July 2016, the Applicant responded to her FRO and <sup>12</sup> ~~copy~~. The Applicant declined the invitation to sign the new classification document, provided reasons for so doing, and informed the FRO that she had submitted a request for management evaluation to challenge the decision of 10 March 2016.

40. There is on record a HRSS/SSU Task Allocation document, which shows the Applicant as a certifying officer and a team leader, and that her duties and responsibilities are equal to that of her colleagues at the professional level.<sup>13</sup>

41. The Applicant for the four years preceding this application, consistently exceeded performance expectations.<sup>14</sup>

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<sup>11</sup> *Ibid.* annex 18.

<sup>12</sup> *Ibid.* annex 19.





48. The Tribunal finds that the claim for retrospective payment of SPA is receivable.

Merits

49.

purely for purposes of being paid SPA, yet she was not performing the functions of any of these posts.

d. The initial P2 post in HRSS, the functions for which she was filling in for had been encumbered since 2006.

52. The Tribunal is in full agreement with Mr [redacted] highest level of General Services at GS7 in human resources, the Applicant should have objected to being irregularly paid SPA, rather than continue to request for it.

53. The Applicant Respondent is guilty of dilatory conduct and was not transparent in the way she handled her issues is incorrect and borders dishonesty on her part. Mr [redacted] annex 7 to the reply) is that at meetings with HRSS, it was explained to her that SPA payment could not be extended because all professional posts in the section had been filled. This evidence was not disputed. Also not disputed is the evidence that her request was the subject of many formal and informal face-to-face verbal meetings which she attended.

54. [redacted] one of the key complaints the Applicant raises, was also sufficiently explained. Mr Rao clarified that he signed the memo forwarding the classification document to the classification section in OHRM before he had an opportunity to review the contents and substance of the job description submitted for classification. He signed it in advance because at the time it was brought to his attention he was preparing to travel away from the office and considering that the matter had delayed and needed to be moved forward, he signed on the understanding that [redacted]



58. The Tribunal did not believe the evidence that Raoinformed the Applicant that the outcome of the failed classification exercise was at the level. The explanation (in annex 7 of the R reply) that he could not confirm the level of a position when he did not even agree with the content of the classification document

process to hold and that it was stalled only because he refused to sign on duties which he knew she did not perform, and they would not agree to write the documents to reflect the appropriate statements of duties and functions they performed must also be believed.

59. In *Hamayel* 2014 UNAT-459, the United Nations Appeals Tribunal held that it is mindful of the principle that the Commissioner General of UNRWA has an obligation to act in good faith and comply with applicable laws, and that mutual trust and confidence between the employer and the employee is implied in every contract of employment. Both parties must however act reasonably and in good faith. The Applicant in the present case failed in this.

60. There is credible evidence that the classification document indeed bore substantive errors. Paragraph 2 of annex 5 to the reply shows that there was a substantive error in BT /F4792 re W\*9(3i9t0.00000912 0 612 79Gof)-9(he) 79Gand f800(c)4(o

