



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2012/065

Judgment No.: UNDT/2014/087

Date: 26 June 2014

Original: English

Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Abena Kwakye-Berko

PEDICELLI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
Katya Melliush, UNON

Introduction

1. The Applicant is a Meetings Services Assistant at the United Nations Environment Programme's (UNEP) Secretariat of the Convention on Biological Diversity (SCBD).
2. In her Application dated 26 November 2012, amended on 24 September 2013, she is contesting the decision to introduce the Global Classification Standard (GCS) for General Service (GS) positions in Montreal following a renumbering exercise at this duty station. She avers that this resulted in a *de facto* demotion by one level of both the job and the personal level of each incumbent and that there was a failure to ensure due process
3. The Respondent filed a Reply on 28 December 2012 in which it is asserted

8. In March 2010, the International Civil Service Commission (ICSC) promulgated a new seven-level job classification standard for GS and related categories within the United Nations Common System organizations.

9. On 10 February 2011, her appointment was converted to a permanent appointment which would have retroactive effect as of 30 June 2009.

10. On 16 March 2012, Joerg Weich, then Chief, Recruitment and Planning Section, HRMS/UNON, was informed by Linda Comeau-Stuart, a Human Resources Officer at the International Civil Aviation Organization (ICAO), that ICAO was moving ahead with the implementation of a new seven-level GS classification standard and the seven-level salary structure on 1 April 2012 and that a renumbering exercise would be conducted to align to the seven-

contractual conditions of the individual staff members. A renumbering exercise was not required in the case of staff whose posts were already classified by UNEP/UNON and therefore already on the 1-7 classification scale from the outset. An indication of the *de facto* implemented 1-7 salary scale is the lack of promotion of any staff member at the SCBD to the former G8 levels over the past 14 years.

21. The rule of downgrading each staff member by one level in order to conduct the conversion from the 1-9 salary scale to the global 1-7 level has negative practical effects on her career. One such affect would be to deprive her of possible future entitlements that would only be granted to staff members at the higher level.

22. The generic renumbering exercise constitutes a breach of subsection 2.2 of ST/AI/1998/9. While the word “renumbering” refers to a process of calculation whereby the conventional 9 level salary structure is simply converted to the seven level salary structure, the effect of this process results in a substantial “reclassification” of posts.

23. The proposed SCBD renumbering exercise may affect salary calculations, and result in inconsistencies in job descriptions and revise supervisory reporting lines, carries the elements of a “reclassification” resulting in

change in budgetary allocation cannot be used as an excuse to alter a contractual commitment. Her permanent contract was awarded in 2009 and was issued by the United Nations headquarters in New York. There are no conditions attached to the contract. The

- b. Salary adjustment to reflect the correct remuneration of a UNEP classified G7 step 10; and
- c. Salary adjustment to reflect the correct remuneration of a UNEP classified G7.

The Respondent's case

31. The Respondent submitted that until May 2012, the Montreal duty station was known to have a nine-level GS salary scale with posts numbered from GS-1 to GS-9 as was promulgated regularly by the ICSC in the compendium of salary scales for the GS category of staff. In reality, however, SCBD GS staffs were all employed within the GS-2 to GS-8 levels under the nine-level scale.

32. Pursuant to art. 11(a) of its statute, the ICSC establishes and reviews both headquarters methodology and non-headquarters methodology for surveys of best prevailing conditions of employment of GS and other related categories.

33. In recent years, the ICSC has promulgated a new seven-level job classification standard for GS and related

36. ICAO began the renumbering exercise in 2011. In mid-March 2012, ICAO informed UNON/HRMS of 1 April 2012 as the effective date of the alignment of the Montreal duty station to the GCS and to the new job description format.

37. UNON/HRMS proceeded to implement the new GCS for GS posts in Montreal following the lead agency; staff were informed of this by email by Mr. Elmi.

38. UNON/HRMS postponed the implementation of the new numbering

Applicant. The Applicant's salary and benefits remain as they were prior to the implementation of the decision. The only change for the Applicant is that rather than being called a "G-7", she is called a "G-6" level staff member.

42. The Respondent has a right and an obligation to implement the renumbering exercise. The Respondent is required to implement the decision of the ICSC which in the present case involved the application of the GCS. ICAO has been the lead agency in respect of the salary scales in Montreal for years. It is normal and natural for UNON to follow ICAO's salary scales and there is nothing arbitrary or discriminatory in this.

43. Contrary to her assertions, the Applicant was not demoted.

44. Contrary to the Applicant's contentions that because ICAO conducted a review of the classification of posts prior to the implementation of the seven-level scale her due process rights were violated, the Respondent submits that there is no correlation between the renumbering exercise and a reclassification exercise. That ICAO chose to conduct a review at the same time as implementation of the GCS is irrelevant. The renumbering exercise was not a reclassification exercise and the Applicant's post is correctly classified as GS-6 under the GCS.

45. The Applicant has suffered no loss following the renumbering exercise and there is no injury to compensate.

46. The Applicant's claim lacks merit and is premature. The Management Evaluation Unit noted that the Applicant's complaint was moot when viewed in light of the classification review taking place. If the Applicant contends that her post was wrongly classified at the GS-6 level under the GCS, her recourse in the

Legal Issues

48. The legal issues arising for determination in this case are the following:

- a. Is this Application receivable?
- b. Did the renumbering exercise at the

52. What constitutes an administrative decision depends on the nature of the

Secretary-General has no discretionary authority in this respect, his implementation of the ICSC decision to renumber posts is not an administrative decision under art. 2 of the UNDT Statute.

59. In the present case, the Applicant contends that the implementation of the renumbering of her post will have adverse effects on her rights including her career advancement but she did not place any evidence before the Tribunal to show that the contested decision was taken solely with respect to her or that there are legal consequences arising from the renumbering exercise and adversely affecting her. The Applicant has not suffered any downgrading in her salary and emoluments or in her functions. At best her concerns are speculative. The Applicant has not shown that she has a cause of action in this Application.

Did the renumbering exercise at the SCBD result in a violation of any of the Applicant's rights?

60. Notwithstanding its findings on the issue of receivability, the Tribunal has carefully reviewed the Applicant's contentions in respect to the alleged violations of her rights during the renumbering exercise. The Applicant submitted that had she known at the time of applying for the position that a renumbering exercise would subsequently affect her promotion, that she would not have accepted the appointment and would have taken up an offer to join the United Nations Office in Bonn.

61. The Applicant submitted that at no time was she informed that her recruitment in Montreal would be subject to a transition from a nine-level salary scale to a seven-level classification system nor was she ever alerted of its implication on her career development. The Applicant argues that she has been effectively demoted. The Tribunal finds that the renumbering exercise followed a promulgation, in March 2010, by the ICSC of a new seven-level job classification standard for GS and related categories within the United Nations Common System organizations whereas the Applicant's recruitment took place on 29 August 2006.

62. The Applicant argues that the basis of the appointment is that personal level cannot be changed regardless of the post held but provides no evidence to support this position.

63. The Tribunal finds that the Applicant's appointment to the SCBD in 2006