

Introduction

1. The Applicant contests the decision of 19 April 2010 whereby the Office of Human Resources Management, United Nations Secretariat, refused to classify at the P-4 level the post which she occupied at the P-3 level.
2. She requests that the Respondent should pay her the sum of USD 67,500 for the material and moral damage suffered.

Facts

3. The Applicant joined the United Nations Conference on Trade and Development (“UNCTAD”) in Geneva in 1980. After the restructuring of the Central Statistics and Information Retrieval Branch of UNCTAD, the Applicant, who then held a P-3 post, was appointed in May 2005 by lateral transfer within the Branch to the position of Chief of the Central Support and Reference Unit.
4. On 12 July 2006, the Applicant wrote to the Deputy Secretary-General of UNCTAD requesting that her post should be reclassified to the P-4 level and, if possible, to the P-5 level. In particular, she stated that her request was based on administrative instruction ST/AI/1998/9, which provides that requests for the classification or reclassification of a post shall be made when the duties and responsibilities of the post have changed substantially as a result of a restructuring within an office.
5. On 25 February 2009, the Applicant submitted to the Director of the Division on Globalization and Development Strategies, her second-level supervisor, a request for reclassification action form which she had signed and completed in her own name and that of her direct supervisor, the Chief of the Central Statistics and Information Retrieval Branch.
6. On 25 May 2009, the Applicant sought information from the Director of the Division on Globalization and Development Strategies regarding the outcome of her request of 12 July 2006. She recalled that she had reiterated her request verbally on several occasions in 2008 and 2009 and had submitted the request for

reclassification action form on 25 February 2009. She asked him to provide a written reply by 15 June 2009 at the latest.

7. On 15 June 2009, the Applicant's direct supervisor recommended that the Director of the Division on Globalization and Development Strategies should not reclassify the Applicant's post to P-4. On the same day, the Director informed the Applicant that he was not in a position to recommend the reclassification of her post.

8. On 26 June 2009, the Applicant wrote to the Chief of the Human Resources Management Service of the United Nations Office at Geneva ("UNOG") to request reclassification of her post. She referred explicitly to sections 1.1(b) and 1.3 of administrative instruction ST/AI/1998/9 and attached the request for reclassification action form she had sent to the Director of the Division on Globalization and Development Strategies on 25 February 2009.

9. By memorandum of 29 July 2009, the UNOG Human Resources Management Service, relying on section 1.3 of administrative instruction ST/AI/1998/9, informed the Applicant that her request of 26 June 2009 had been deemed receivable but that, after consideration of her functions and job description, the P-3 level had been maintained.

10. By memorandum of 23 September 2009 addressed to the Assistant-Secretary-General for Human Resources Management in New York, the Applicant appealed against the decision to classify her post at the P-3 level, referring to the provisions of ST/AI/1998/9, sections 5 and 6.

11. The Applicant retired on 1 December 2009.

12. By letter of 19 April 2010, the Office of Human Res

- b. In requesting that her post should be reclassified, the Applicant

- b. In order for a classification decision to be lawful, it should be taken by a human resources officer in accordance with sections 2.2 and

protection. The decision of the Office of Human Resources

6.1 Appeals shall be submitted in writing to:

a) The Assistant Secretary-General for Human Resources Management, in the case of appeals regarding [p]osts in the Professional category...

...

6.3 Appeals must be submitted within 60 days from the date on which the classification decision is received.

6.4 The appeal shall be referred for review to:

a) In the case of appeals submitted to the Assistant Secretary-General for Human Resources Management, the responsible office in the Office of Human Resources Management, which will submit a report with its findings and recommendation for decision by, or

deeming non-receivable the Applicant's appeal against the decision not to reclassify her post to the P-4 level. It was therefore also in error that the case was not referred to the Classification Appeals Committee.

29. The Applicant requests the Tribunal to award her compensation for the damage resulting from the irregularities detailed above.

30. In that connection, it should be recalled that in order to grant compensation, the Tribunal must establish a connection between the irregularities committed by the Administration and the damage suffered by the Applicant.

31. In this case, the Applicant was deprived of access to remedy in that she could have brought her request for her post to be reclassified to the P-4 level before the Classification Appeals Committee. The Tribunal must therefore assess the likelihood that the Classification Appeals Committee would have recommended reclassification of her post to the P-4 level.

32. The Tribunal first notes that on 15 June 2009, the Applicant's direct supervisor recommended that her post should not be reclassified. He explained that no P-4 posts appeared to be available at UNCTAD and that it was highly unlikely that such a post would be allocated in the budget for 2010-2011, and that the duties of any potential P-4 level post would not correspond to the needs of the Central Statistics and Information Retrieval Branch. By memorandum of 29 July 2009, and acting on the basis of the job description which the Applicant had herself drafted, the senior human resources officer at UNOG determined that the P-3 level should be maintained, allocating it a score of 1595 on the points rating sheet. In her application, the Applicant did not challenge that score or attempt to demonstrate that her post should have been reclassified to the P-4 level.

33. In the absence of such demonstration, the Tribunal can only consider that it was very unlikely that the Classification Appeals Committee would have recommended that the post should be reclassified to the P-4 level and that such a decision would then have been taken.

34. At the hearing, Counsel for the Applicant explicitly ruled out the possibility that she could have been promoted to the litigious post before her retirement on 1 December 2009. However, he maintained that the reclassification of her post to the P-4 level, albeit belatedly, would have entitled her to a retroactive special post-allowance for a P-4 post.

35. But in the absence of “a valid and available post number confirming the existence of a post approved at the appropriate level in the budget”, reclassification of the Applicant’s post to the P-4 level would have required action on the part of the Office of Programme Planning, Budgets and Accounts and subsequent approval by the General Assembly (see, along the same lines, Judgment Jaen UNDT/2010/165). On the basis of the case file, there is no reason to believe that those bodies would have confirmed the reclassification. It is therefore highly unlikely that the Applicant would have been granted a special post allowance.

36. It follows from the foregoing that the unlawful action did not cause clear material damage to the Applicant.

37. As regards moral damage, the Applicant has maintained that it consisted in the bad faith shown to her by the Administration and the unjust and unfair treatment to which she was subjected. The only question before the Tribunal is that of the legality of the decision not to reclassify her post following a request submitted by the Applicant on 26 June 2009. The Tribunal cannot take into account moral damage suffered before that date. It nevertheless considers that the denial of a remedy enabling the Applicant to present her case and allowing her the opportunity to gain recognition of her responsibilities from her supervisors resulted in moral damage and that, on those grounds alone, she should be awarded the sum of USD 1,500.

Conclusion

38. In view of the foregoing, the Tribunal DECIDES:

- a. The Respondent is ordered to pay the Applicant USD 1,500 in moral damages;
- b. The abovementioned compensation shall bear interest mpt