
Case No.: UNDT/GVA/2011/024

Judgment No.: UNDT/2011/178

Date: 18 October 2011

Introduction

1. By an application sent on 15 May 2011, the Applicant challenges the classification decision notified to him on 15 March 2011 in relation to the post of Senior Legal Adviser. He also challenges the decisi

Senior Legal Adviser. His application was eventually rejected in Judgment Gehr UNDT/2011/142 dated 12 August 2011.

11.

16. On 15 May 2011, the Applicant filed with the Tribunal the application which forms the subject of the present Judgment. The Respondent filed his reply on 23 June 2011.

17. On 10 August 2011, the Respondent produced, at the request of the Tribunal, copies of the classification requests and decisions regarding the generic job profile of Senior Programme Officer (Terrorism Prevention) and the post of Senior Legal Adviser.

18. A hearing was held on 20 September 2011, to which the Applicant and

classification of posts). The generic job profile for the position of Senior Legal Adviser does not reflect the generic job profile for the post of “Senior Legal Officer – P5”;

c. The decision that the classification should have retroactive effect from 1 April 2010 is tainted by procedural flaws. According to section 4.1 of ST/AI/1998/9, classification decisions shall become effective on the first day of the month following receipt of a request for classification submitted pursuant to section 2.2. This section states that requests for classification must include, inter alia, an up-to-date organizational chart and a complete and up-to-date job description for the post in question. In view of the fact that the TPB organizational chart was produced on 11 March 2011 only, the request for classification could not have been validly submitted before that date and the classification decision could not become effective as from 1 April 2010;

d. The Applicant’s 2010-2011 performance was not appraised on the basis of the draft terms of reference of 12 February 2010 or those of 15 June 2010, in breach of the principle of legal certainty. The decision to use terms of reference which were not used to determine the functions of the post of Senior Legal Adviser must be considered as arbitrary;

e. The Applicant has been subjected to harassment, as evidenced by his reports of misconduct and the fact that his reporting officers made some remarks which were inconsistent with the ratings they gave him in the context of his 2009-2010 performance. He further suffered harassment as a result of the contested decisions.

21. The Respondent’s principal contentions are:

a.

b.

e. In his memorandum of 11 February 2010 to the Executive Director, the Officer-in-Charge of DTA recommended, “taking into account that the ... ePAS cycle [would] end ... on March 31, 2010 ... that changes in assignments be reflected where appropriate by the ... supervisors, and that the new supervisory lines for ePAS purposes take effect as of April 1, 2010”.

Issues

22. This case raises several issues. The Tribunal will first examine the authority of UNOV to classify the position of Senior Legal Adviser. It will then consider the regularity ofcc t

Tribunal quoted with approval Judgment No. 3016 (2011) of the Administrative Tribunal of the International Labour Organization, in which the latter considered (emphasis added):

classification process and the implementation of the classification decision as

essential core competencies”. This website further distinguishes generic job profiles from individual job descriptions in that the former, having been approved by the Assistant Secretary-General for Human Resources Management at Headquarters, are “pre-classified” and serve as a basis for vacancy announcements whereas the latter should be submitted for each new post for classification.

purpose of classification and from those [he] had r

49. The Applicant's fixed-term appointment was extended for one year from 1 February 2010 and for an additional 11 months from 1 February 2011. Administrative instruction ST/AI/2010/5 (Performance Management and Development System), which entered into force on 1 April 2010, thus applied to the Applicant's 2010-2011 performance appraisal.

50. ST/AI/2010/5 does not refer to terms of reference for the purpose of appraising a staff member's performance. Rather, it provides for the preparation

51. The Tribunal notes at the outset that, after his reassignment was confirmed on 11 December 2009, the Applicant submitted at the request of the Chief of TPB, his first reporting officer, a draft work plan on 29 January 2010. The following “main outputs/activities” were enumerated in this work plan:

- Serve as TPB’s focal point for overall guidance and take the lead in the area of countering nuclear, chemical and biological terrorism ...
- Contribute to the development, pilot-test and integrate in TPB’s overall TA delivery a comprehensive legal counter-terrorism training curriculum for criminal justice officials in the area of nuclear, biological, and chemical terrorism ...
- Contribute to the development of an on-line training and follow-up Action Plan, through the establishment of a TPB on-line platform ...
- Take the lead in the area of operational partnerships, undertake joint activities and provide input for activities in the area of countering nuclear, biological and chemical terrorism ... with ... relevant organizations ...
- Set up and follow up on relevant partnership arrangements and elaborate related concept papers ...
- Maintain a roster of substantive experts and national officers in the area of biological, chemical and nuclear terrorism for provision of external expertise and participation in UNODC/TPB activities ...
- Provide legal advice on the mandate of the Branch ...
- Advise on and interpret for the Branch legal provisions, including those contained in the legal he ayBnLk-v35-YYH-FBpL3vY-3YMBmLgartferroris .
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measurement through a statement of success criteria. The goals listed in the work plan are the following:

- elaborating a programme of work for UNODC/TPB in the area of chemical, biological, radiological and nuclear terrorism;
- leading the mobilization of extra-budgetary resources necessary for the implementation of the programme of work;
- initiating and maintaining partnerships in the area of countering chemical, biological and nuclear terrorism;
- contributing to the development of the TPB curriculum initiative in respect of chemical, biological, radiological and nuclear terrorism;
- providing guidance for and contributing to the delivery of TPB technical assistance;
- providing policy advice to the Chief of TPB and Director of DTA;
- performing managerial responsibilities related to the 2009-2010 performance cycle not yet completed.

54. Apart from the last item, these goals reflect the main functions described by the Chief of TPB in her email of 11 December 2009. In addition, they do not substantially differ from the “duties” listed in the draft terms of reference of 12 February 2010 or from the “responsibilities” detailed in the terms of reference of 15 June 2010. The Applicant, who was aware of the main functions of the post of Senior Legal Adviser and who was given the opportunity to prepare and discuss with his first reporting officer a draft work plan, is thus not justified in claiming that his 2010-2011 performance appraisal infringed the principle of legal certainty.

Allegations of harassment

57.

Tribunal may not award punitive or exemplary damages. Therefore, the Tribunal can only reject the claim for compensation.

Conclusion