



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2013/040

Judgment No.: UNDT/2015/056

Date: 23 June 2015

Original: English

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**Before:** Judge Nkemdilim Izuako

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

ZANGMO

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for the Applicant:**

Robbie Leighton, OSLA

**Counsel for the Respondent:**

Steven Dietrich, ALS/OHRM

Alister Cumming, ALS/OHRM

## **Introduction**

1. The Applicant is a Human Resources Assistant with the African Union/United Nation Hybrid Operation in Darfur (UNAMID) and currently works at the Regional Service Centre (RSC) in Entebbe, Uganda.

2. In her Application dated 16 July 2013, she is challenging the failure to reclassify her position following her request to the UNAMID Administration to do so. The Applicant submits that the Administration's failure to address her request for post reclassification represents a reviewable decision akin to a refusal to reclassify the post.

3. The Respondent filed a Reply on 19 August 2013 in which it is submitted, *inter alia*, that the Application is not receivable *ratione materiae* because the Applicant has not exhausted the internal remedy of an appeal against the decision on the reclassification of a post under sections 5 and 6 of ST/AI/1998/9 (System for the reclassification of posts).

8. On 19 December 2011, the Applicant was placed on a roster of pre-approved candidates for the position of Human Resources Assistant at the FS-5 level.

9. Thereafter, on 24 January 2012, the Applicant sent an email to one Jose Da Anunciacao who was in charge of Staffing/Post Management at UNAMID asking for advice on the requirements for a reclassification of her post.

10. When she did not receive a reply, the Applicant wrote to the then acting Chief Civilian Personnel Officer (CCPO), Mr. Tinkamanyire Mugisha, on 28 January 2012 asking that he send a request for a re-classification of her post. When Mr. Mugisha did not respond, she approached him in person to reiterate the request. He asked for her job description and told her he would work on her request.

11. In subsequent discussions they held afterwards, he continued to assure the Applicant that he was working on the matter although he had not asked the Applicant to fill and submit the required forms for post reclassification. On 1 March 2012, Mr. Mugisha told the Applicant that he had been asked to put all post reclassifications on hold until the arrival of a new CCPO who would be arriving soon.

12. In April 2012, the new CCPO, Mr. Aggrey Kedogo, arrived at the mission. Two days later, the Applicant approached him on the same matter. He told her that such reclassification was not automatic and promised to speak to Mr. Mugisha and get back to her. The Applicant who did not get any feedback from the new CCPO continued to go to him between April and August 2012 and he repeatedly assured her that the matter was being worked on.

13. On 6 August 2012, Mr. Kedogo sent the Applicant a memorandum reassigning her to the RSC in Entebbe as from 1 September 2012. When she asked him if the reassignment to Entebbe would affect the reclassification she was asking for; he reassured her that it would not and that since she was going to Entebbe as a UNAMID staff member, he would continue to pursue the reclassification issue.

14. When the Applicant went to see the Director of Mission Support (DMS) on 6 September 2012, he was surprised that the matter was still pending but also confirmed that UNAMID would deal with it. He then asked the Applicant to complete a formal request for reclassification which she had never been told to fill by the CCPO.

15. The Applicant proceeded on transfer to Entebbe on 8 September and sent the filled classification form to the CCPO on 21 September 2012. In his reply, he told her that he would make a case for her post reclassification to the Field Personnel Division of the Department of Field Support (FPD/DFS). She also sent a copy of the reclassification form to Mr. Anunciacao on 23 October 2012 at his request.

16. On 25 October 2012, UNAMID sent a reclassification request in respect of three Human Resources Assistant positions in UNAMID from FS-4 to FS-5 including that of the Applicant to certain officers in FPD/DFS, New York.

17. On the same day, Morteza Mirmohammad, Chief Organizational Design and Classification Unit (ODCU), FPD/DFS responded stating that there was difficulty regarding the reclassification of posts in UNAMID. He added that there was also a new development that was not in favour of reclassification because it had been decided that support posts should not be reclassified until UMOJA was implemented as it could impact on the support posts in the mission including that of the Applicant. This response was copied to the CCPO, Mr. Kedogo.

18. On 17 December 2012, the Applicant who had continued to remind the UNAMID officials of her request wrote to her supervisor, Mr. Gurung, complaining about the delay in considering her reclassification request. He told her by telephone on the same day that the CCPO ought to have informed her that FPD was unwilling to reclassify the post.

19. She then immediately wrote to Mr. Kedogo asking for the official correspondence from FPD so as to contact them directly. He replied the same day that he would be in Entebbe soon and that he could discuss the matter with her then.

20. On 21 December 2012, the Applicant and the CCPO met in Entebbe and held a discussion. Mr. Kedogo asked to be given up to 15 January 2013 to resolve the situation. On 27 February 2013, she wrote to him asking for an update but he replied that the possibility of her reclassification was under review as part of the RSC, Entebbe.

21. The Applicant then concluded that the Administration did not intend to consider her request for a reclassification of her post and on 5 March 2013 made a request to the Management Evaluation Unit (MEU). On 18 April 2013, MEU returned a finding that there was no reviewable decision in the case.

22. Thereafter on 17 July 2013, the Applicant filed the present Application.

### **Receivability**

23. The Respondent had argued that this Application is not receivable. The reasons advanced for this argument are that: (i) the Applicant has not exhausted the internal remedy of an appeal against the decision on the reclassification of posts under section 5 of ST/AI/1998/9

25. Section 5 is unequivocal that the singular ground upon which a classification decision may be appealed is that the classification standards were applied wrongly and that the said error resulted in classifying the post in issue at the wrong level.

26. In the instant case, there was no attempt or effort made to reclassify the Applicant's post. The claim is not that the Applicant's post was wrongly reclassified. Therefore she did not even have any *locus standi* to seek that internal remedy.

27. The Respondent's preliminary objection that this App

d. The failure of the Administration to address the Applicant's request for a reclassification of her post from FS-4 to FS-5 is to all intents and purposes a refusal to do so and is unlawful. The implied refusal is unlawful because it is in breach of art. 23.2 of the Universal Declaration of Human Rights which provides that everyone without any discrimination has the right to equal pay for equal work.

e. This right is applicable to staff members of the United Nations system

- c. that the Applicant be compensated for the delay in processing her request.

### **Respondent's submissions**

31. A summary of the Respondent's case is as follows:

- a. The Administration had decided not to conduct a reclassification analysis of the Applicant's post which means that the said request for classification was denied.

- b. The decision not to reclassify the post was lawful as it was a discretionary decision predicated on the forthcoming review of UNAMID's staffing structure and anticipated changes in support function posts in the Organization in consequence of the implementation of the UMOJA project.

- c. There was no unreasonable delay on the part of the mission in submitting the reclassification request in respect of the Applicant's post as the Applicant had no right to have her request submitted to FPD/DFS within a specified period of time.

- d. There is no right to compensation for delay in the absence of a violation of a right under the Staff Regulations or Rules.

- e.



official print-out showing a table of twelve Human Resources Assistants in UNAMID. The print-out is exhibited to support the Applicant's case that although she is on FS-4, she performs the same functions as some of her colleagues who have been promoted to FS-5.

33. In his Reply to the Application, the Respondent prayed the Tribunal to reject the Applicant's Annex 13 and rule it inadmissible evidence under art. 18.1 of the Tribunal's Rules of Procedure (ROP).

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39. The Tribunal notes that during the cross-examination

45. There is also evidence that although some officers in the same unit who had been on the same FS-4 level as the Applicant and placed on the FS-5 roster at the same time as her in December 2011, were later promoted to vacant FS-5 level posts.

46. Annex 13 without more cannot be conclusive evidence that the Applicant while an FS-4 HR Assistant did exactly the same work as her colleagues on the FS-5 level. The Respondent's Annex R1 contains the generic job profiles for the Human Resources Assistant on the FS-4 level as held by the Applicant and Human Resources Assistant at the FS-5 level who the Applicant alleged performed the same functions.

47. A close comparison of the FS-4 and FS-5 levels shows a good deal of similarity in the two posts. However, the FS-5 posts have certain added responsibilities. These include certain supervisory work and the conducting of research on precedents, policy rulings and procedures.

48. A basic principle of law is that a party who alleges a fact bears in principle the burden of proving its veracity. In the present case, the Applicant has failed to make out a proper case of unequal pay for equal work.

Was there unreasonable delay on the part of the ~~omissi~~ submitting the classification request in respect of the Applicant's post?

51.

disgraceful ineptitude in dealing with the Applicant's request, the Tribunal does not find that the Applicant is entitled to any compensation. It need not be emphasized that Managers should be alive to their responsibility to deal with their supervisees' reasonable requests in a timely manner and with the necessary dispatch.

### **Conclusion**

57. The Tribunal finds that there was unreasonable delay on the part of the mission in submitting the classification request in respect of the Applicant's post but, in the circumstances of the case, does not award any compensation to the Applicant.

(Signed)

Judge Nkemdilim Izuako

Dated this 23<sup>rd</sup> day of June 2015

Entered in the Register on this 23<sup>rd</sup> day of June 2015

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi