



**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2017-UNAT-758

**Pedicelli
(Appellant)**

v.

**Secretary-General of the United Nations
(Respondent)**

JUDGMENT

Before: Judge Richard Lussick, Presiding
Judge Dimitrios Raikos
Judge Martha Halfeld

Case No.: 2016-1035

Date: 14 July 2017

Registrar: Weicheng Lin

Counsel for Ms. Pedicelli: George G. Irving

Counsel for Secretary-General: Wambui Mwangi

JUDGE RICHARD LUSSICK, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNDT/2016/188, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 17 October 2016, in the case of *Pedicelli v. Secretary-General of the United Nations*. Ms. Lisa Pedicelli filed her appeal on 30 November 2016, and the Secretary-General filed his answer on 30 January 2017.

Facts and Procedure

2. As found by the Appeals Tribunal previously:¹

... Ms. Pedicelli is a Meetings Services Assistant at the Secretariat of the Convention on Biological Diversity (SCBD) based in Montreal. The SCBD is part of the United Nations Environment Programme (UNEP), which is headquartered in Nairobi and administered by the United Nations Office at Nairobi (UNON).

... Ms. Pedicelli joined the Organization in June 1998 at the G-6 level. On 29 August 2006, she took up service with the SCBD as a General Services staff member at the G-7 level.

... In March 2010, the International Civil Service Commission (ICSC) promulgated a new seven-level job classification standard [the Global Classification Standard (GCS)] for General Services (GS) [GCS-GS] and related categories within the United Nations Common System.

... On 10 February 2011, Ms. Pedicelli's appointment was converted to a permanent appointment with retroactive effect as of 30 June 2009. At the time, she held a post at the G-7 level, Step 10.

... In March 2012, the International Civil Aviation Organization (ICAO), which acts as the lead agency for ICSC and UN Common System matters in Montreal, announced that in April 2012 it would commence the conversion from the nine-level salary scale then applied to GS staff at the Montreal duty station to the seven-level salary scale promulgated by the ICSC.

... In late March 2012, UNON's Human Resources Management Service informed the SCBD staff that, pursuant to the ICAO's lead, it would renumber SCBD posts in order to align them with all the other United Nations organizations at the seven-level structure. As a result of the realignment, G-7 level posts, including Ms. Pedicelli's post, would henceforth be renumbered as G-6 level posts.

¹ *Pedicelli v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-555, paras. 2-12.

... In early May 2012, a number of staff members, including the Appellant, received Personnel Action forms confirming their new grade. Ms. Pedicelli's Personnel Action form indicated that effective from 1 April 2012 she was appointed at the G-6 level, Step 10.

... On 20 May 2012, Ms. Pedicelli requested management evaluation of the decision to "reclassify and/or downgrade [her] salary scale level from G7 to G6 due to the introduction of the [GCS] for [GS] positions" at the SCBD in Montreal. She claimed that the renumbering exercise amounted to a downgrading of her post, breached Administrative Instruction ST/AI/1998/9 (System for the Classification of Posts), and was conducted without due diligence in the planning and implementation phases.

... On 28 August 2012, the Management Evaluation Unit (MEU) advised Ms. Pedicelli that her request was moot. The MEU found that SCBD's "realignment exercise" appeared premature and that the SCBD uniformly renumbered all posts without regard to the actual functions and description of each post or tailoring the process. However, while the MEU considered that the renumbering exercise should have been carried out by the SCBD in a non-arbitrary manner that respected the rules of natural justice, the contested decision, i.e., the "realignment exercise", had been rendered moot as the SCBD was conducting a classification exercise pursuant to Administrative Instruction ST/AI/1998/9.

... On 26 November 2012, Ms. Pedicelli filed an application with the UNDT contesting the manner in which SCBD implemented the [GCS] for GS-positions in Montreal, namely by a unilateral renumbering exercise that resulted in a *de facto* reclassification of posts down one level in breach of ST/AI/1998/9. She requested, inter alia, reinstatement to her personal grade at the level of G-7, Step 10, and related salary adjustments.

... On 26 June 2014, the UNDT issued [Judgment No. UNDT/2014/087] and dismissed Ms. Pedicelli's application on the basis that it was not receivable. The UNDT found that Ms. Pedicelli had failed to challenge an "appealable administrative decision" in that the contested decision was made by the ICSC and not the Secretary-General, and the latter had no discretionary authority in proceeding with implementing the ICSC's decision. The UNDT further found that the contested decision was not taken solely with respect to Ms. Pedicelli, nor did the renumbering exercise give rise to legal consequences that adversely affected her given that her functions, salary and emoluments remained the same even after her post was reclassified at the G-6 level. Consequently, it found that Ms. Pedicelli had no standing to contest the decision. Notwithstanding its findings on receivability, the UNDT also considered the merits of Ms. Pedicelli's claims, and found that her application did not disclose a cause of action.

3. On 22 August 2015, Ms. Pedicelli appealed Judgment No. UNDT/2014/087.

4. On 2 July 2016, the Appeals Tribunal ruled that Ms. Pedicelli's application was receivable and remanded the case to the Dispute Tribunal for *de novo* consideration. In reaching its decision, the Appeals Tribunal found that the Dispute Tribunal had failed to consider Ms. Pedicelli's Personnel Action Forms that "reflected her respective salary scale and level for the periods under contest and evidence, as [Ms. Pedicelli claimed], that after implementation of the realignment exercise her salary was reduced".² The Appeals Tribunal concluded that the UNDT thus had erred on a question of fact leading to a manifestly unreasonable decision.

5. On 17 October 2016, the Dispute Tribunal issued the impugned Judgment dismissing Ms. Pedicelli's application. The UNDT concluded that: (1) the realignment exercise had a legitimate organizational objective and was not a classification exercise within the meaning of Administrative Instruction ST/AI/1998/9; and, (2) Ms. Pedicelli failed to demonstrate that the alignment of her post to conform with the GCS for GS positions had a detrimental impact on her salary or pension benefits.

Submissions

Ms. Pedicelli's Appeal

6. The UNDT erred in law and fact resulting in a manifestly unreasonable decision. It also failed to exercise its jurisdiction by not adjudicating Ms. Pedicelli's central claim – namely, that neither the renumbering exercise nor the subsequent classification of the encumbered post justified the downward change in her personal grade level from the G-7 level to the G-6 level, adversely affecting her contractual rights under her permanent appointment.

7. The UNDT misstated several facts regarding the numbering exercise and the number of levels (nine, not seven) under the original Montreal salary scale. Its legal analysis was also flawed when it conflated the classified level of a post with personal grade and when it failed to examine the implications of Ms. Pedicelli's permanent appointment for the renumbering exercise. The SCBD had never indicated that its posts were different (one grade below) than other posts within the United Nations – not even when, in 2009, Ms. Pedicelli was granted her permanent appointment which was at the G-7 level, as evidenced by the corresponding Personnel Action. The UNDT erroneously concluded that the renumbering exercise was exempt from the requirements of Administrative Instruction ST/AI/1998/9 and that, since the outcome of the

² *Ibid.*, para. 32.

classification was no different from the initial realignment/renumbering exercise, Ms. Pedicelli suffered no real loss; rather, it contravened ST/AI/1998/9 and directly and adversely impacted Ms. Pedicelli's permanent appointment.

8. The UNDT erroneously limited its consideration to the issue of whether Ms. Pedicelli suffered a salary loss. Its approach overlooked a number of important considerations; namely, that personal grade is more than salary level and is not the same as the classified level of a post. Further, the Administration's action was not neutral. While Ms. Pedicelli's new salary was slightly higher than what she had received under the old scale, her *de facto* demotion resulted in her salary being about USD 7,000 less (on an annualized basis) than the new salary she would have received had she remained at the same G-7 Step 10 level. The Administration's unilateral change of Ms. Pedicelli's personal grade adversely impacts her salary, future pension benefits as well as her seniority within the United Nations as she is no longer eligible to apply for transfer to G-7 level posts within SCBD or elsewhere in the Organization.

9. The UNDT also misconstrued the effective date of the new salary scale as 1 May 2012 when it was supposed to take effect on 1 April 2012. Ms. Pedicelli thus "remain[ed] at the G-7, step [10] level through April 2012 although she was not paid according to the new salary scale in effect as of 1 April 2012".

10. Ms. Pedicelli respectfully requests that the Appeals Tribunal reverse the impugned Judgment and award "appropriate compensation for actual and moral damages[, ...] [i]ncluding the differential in pay should her G-7 level be restored and [USD] 60,000 in moral damages for harm to her career and reputation and violation of her contractual rights".

The Secretary-General's Answer

11. The UNDT correctly determined that the only issue before it related to what Ms. Pedicelli regarded as the downgrading of her personal grade. Ms. Pedicelli's challenges to the realignment exercise and the classification process are not receivable *ratione materiae* because she did not seek management evaluation of either the classification decision or the realignment exercise.

12. Ms. Pedicelli was not demoted *de facto* or otherwise. Demotion is a disciplinary measure imposed for misconduct, which is not at issue here. Ms. Pedicelli's post was not reclassified to a lower level, nor was she given lower level duties or a reduction in salary or any other benefits. The change was purely a change in nomenclature to ensure consistency across the board in the

GS salary scales across the United Nations Common System. The GCS equivalent of her G-7 level post under the ICAO GS salary scale was a G-6 level post under the GCS. Ms. Pedicelli effectively seeks a promotion in the absence of a competitive staff selection process or a classification exercise finding that the duties she performs rise to the G-7 level post under the GCS.

13. In the event the Appeals Tribunal finds receivable Ms. Pedicelli's challenges to the realignment exercise and/or the classification process, Ms. Pedicelli has failed to identify, let alone demonstrate, that the UNDT committed a reversible error of fact or law. The UNDT did not conflate the two procedures; rather, it noted that both resulted in the same conclusion – that Ms. Pedicelli's post was correctly graded at the G-6 level under the GCS. Her other claims are all without merit. Finally, the UNDT correctly concluded that there was no basis to support Ms. Pedicelli's claims for compensation and she has not provided on appeal any evidence of harm suffered as required to support an award of compensation.

14. The Secretary-General respectfully requests that the Appeals Tribunal dismiss the appeal in its entirety.

Considerations

15. Our first decision³ dealt with Ms. Pedicelli's appeal against a UNDT Judgment which dismissed her application as not receivable as she had failed to challenge an appealable administrative decision. The reason for the UNDT's decision was that the contested decision was made by the ICSC and not the Secretary-General, who had no discretionary authority in proceeding with the implementation of the ICSC's decision. The Dispute Tribunal further found that the contested decision was not taken solely with respect to Ms. Pedicelli, and that she did not establish that the renumbering exercise gave rise to legal consequences that adversely affected her, given that her functions, salary and emoluments remained the same even after her post was renumbered at the G-6 level. Consequently, she had no standing to contest the decision.⁴

16. In reviewing the UNDT's Judgment, we agreed that the Secretary-General was duty bound to implement decisions of the ICSC as directed by the General Assembly in resolution 67/241 (Administration of Justice at the United Nations), and that such decisions are of a

³ *Pedicelli v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-555.

⁴ *Ibid.*, paras. 23-24.

general application and are therefore not reviewable. We noted, in light of the Appeals Tribunal's definition of an administrative decision susceptible to challenge, as prescribed in *Andati-Amway*⁵ and *Lee*,⁶ as being one which produces "direct legal consequences affecting a staff member's terms and conditions of appointment", that the Appeals Tribunal has found in several cases that challenges to the ICSC's decisions were not receivable insofar as the ICSC is "answerable and accountable" only to the General Assembly and not the Secretary-General, to whom ICSC decisions cannot be imputed in the absence of any discretionary authority to execute such decisions.⁷ We held that, for the most part, such decisions are of a general application and therefore are not reviewable.⁸

17. However, what led to our decision to remand the case to the Dispute Tribunal was Ms. Pedicelli's claim that the renumbering exercise had an adverse and direct impact on her in that it had resulted in her salary being reduced. In support of that allegation she had annexed to her UNDT application, as well as her appeal brief, her Personnel Action Forms which reflected her respective salary scale and level for the periods under contest, which she claimed was evidence that, after implementation of the renumbering exercise, her salary was reduced. We decided that in those circumstances, the decision under challenge should be treated as an administrative decision. We found that the Dispute Tribunal erred in not considering the merits of Ms. Pedicelli's claim of financial loss. We therefore ordered that the case be remanded to the Dispute Tribunal for *de novo* consideration of that claim.⁹

18. As will be seen, at the hearing of the case on remand, Ms. Pedicelli conceded that the information provided by her as annexes to her application to the UNDT were submitted in error and they had not been submitted to the Appeals Tribunal to prove that she had suffered a reduction in salary.¹⁰

19. In the decision at hand, the UNDT showed that it was left in no doubt regarding the reason for the remand. It correctly held that:¹¹

⁵ *Andati-Amwayi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-058, paras. 17-19.

⁶ *Lee v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-481, para. 49.

⁷ *Pedicelli v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-555, para. 27.

⁸ *Ibid.*, para. 28.

⁹ *Ibid.*, paras. 29-35.

¹⁰ Impugned Judgment, paras. 25 and 37.

¹¹ *Pedicelli v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-555, paras. 28-29.

... A staff member who raises a credible claim which needs to be tested ought not to be shut out at a preliminary stage. There is a difference between a claim that is clearly not receivable because it does not challenge an administrative decision within the meaning of art. 2.1 and a claim which on the face of it raises an apparently credible challenge that a decision of general application has an adverse impact on an individual staff member. Such a claim has to be determined on its merits...

... Whether or not the Applicant actually suffered a detriment goes to the merits of her claim and is not to be dismissed on the ground of non receivability particularly in circumstances where the evidence put forward is not taken into account. [...] The Appeals Tribunal's direction is that the UNDT should now examine the evidence *de novo* since it had not previously been examined by the UNDT as the trier of fact. Any other reading of the Appeals Tribunal's Judgment would lead to an absurd conclusion.

20. The UNDT was correct in construing its duty on remand as “to examine *de novo* whether [Ms. Pedicelli's] contention is correct that she suffered a financial loss and a downgrading of her personal grade as a direct consequence of SCBD's 'realignment exercise'”.¹²

21. The UNDT noted Ms. Pedicelli's explanation “that appended to her original appeal were a list of annexes which contained documents submitted in error with her initial application to the UNDT. These documents were not submitted to the Appeals Tribunal to prove that she underwent an absolute reduction in salary and that was never her contention.”¹³

22. The UNDT consequently found that “the only issue seems to relate to what [Ms. Pedicelli] regards as a downgrading of her personal grade”.¹⁴

23. The Dispute Tribunal gave Ms. Pedicelli the opportunity “of providing evidence, arguments and submissions to justify her claim that she was subjected to a classification exercise and not a renumbering exercise and that as a result she suffered a loss”.¹⁵

24. The UNDT concluded that there was no merit in her claim of downgrading of her personal grade.

¹² Impugned Judgment, para. 30.

¹³ *Ibid.*, para. 37.

¹⁴ *Ibid.*, para. 38.

¹⁵ *Ibid.*, para. 33 (referring to *Pedicelli v. Secretary-General of the United Nations*, Order No. 427 (NBI/2016)).

25. Ms. Pedicelli claims in her appeal that the UNDT:

... failed to identify and properly adjudicate the central issue that formed the basis of [her] claim, namely, that neither the renumbering exercise nor the subsequent classification of the encumbered post justified the downward change in [her] personal grade level. [She] is not challenging the introduction of a new classification standard or the classification level that was assigned to her post. She is arguing that her personal grade level is an individual contractual entitlement that may not be changed unilaterally outside the narrow exceptions allowed by the Staff Rules.

26. We find that this submission is without merit. In our view, the UNDT was correct in rejecting her claim of downgrading of her personal grade. We find no error in its reasons for doing so. Firstly, it found that the renumbering exercise “had a legitimate organizational objective of introducing the GCS for GS positions throughout the [United Nations Common System]. Accordingly, the grade level of staff in SCBD Montreal had to be aligned to conform with the GCS. In the circumstances it was not an exercise in classification within the meaning of ST/AI/1998/9.”¹⁶

27. Secondly, the UNDT found that it was an established fact “that when [Ms. Pedicelli] submitted her post to a proper classification, it was graded at GCS-level G-6 which is equivalent to her previous grade”.¹⁷ The UNDT found that the outcome of the classification was no different to the alignment/renumbering exercise and she remained at GCS level 6. The UNDT found that the evidence established that “even if a formal classification exercise had taken place prior to the realignment of her post to conform with the GCS she would not have retained the G-7 grade which was an anomaly within the system”.¹⁸

28. Further, we find no error in the UNDT’s decision that Ms. Pedicelli had failed to show that the alignment of her post to conform with the GCS had any detrimental impact on her salary or pensionable benefits.

29. The UNDT found that her calculations of pecuniary loss were based on the flawed assumption that she was wrongly placed at GCS level 6 instead of GCS level 7. It consequently found no merit in her claims of pecuniary loss and also rejected her claims for

¹⁶ Impugned Judgment, para. 39.

¹⁷ *Ibid.*, para. 40.

¹⁸ *Ibid.*, para. 41.

reinstatement of her personal grade level to G-7 Step X and her claim for moral damages for loss of opportunity and damage to her professional reputation as being without basis.¹⁹

30. Ms. Pedicelli claims that the downgrading of her personal grade from the G-7 level to the G-6 level represents a *de facto* demotion within the United Nations system. This claim is also without merit. There was no evidence that she was placed on a lower graded position, nor given lower level duties, nor did she suffer a reduction in salary or other entitlements. In fact, she concedes that the new salary that was implemented in May 2012 was slightly higher than her salary under the old scale. We find no error in the UNDT's conclusion that it was established on the evidence that she would not have retained the G-7 grade even if a formal classification exercise had been conducted prior to the realignment of her post to conform with the GCS.²⁰ The new GCS merely renumbered her post and did not result in her being downgraded.

31. We find that Ms. Pedicelli has failed to point to any error, in law or in fact, which would entitle us to reverse the UNDT Judgment.

32. The appeal fails.

¹⁹ *Ibid.*, para. 42.

²⁰ *Ibid.*, para. 41.

Judgment

33. The appeal is dismissed and Judgment No. UNDT/2016/188 is affirmed.

Original and Authoritative Version: English

Dated this 14th day of July 2017 in Vienna, Austria.

(Signed)

Judge Lussick, Presiding

(Signed)

Judge Raikos

(Signed)

Judge Halfeld

Entered in the Register on this 5th day of September 2017 in New York, United States.

(Signed)

Weicheng Lin, Registrar