



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

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Judgment No. 2019-UNAT-949

**Sheffer  
(Appellant)**

**v.**

**Secretary-General of the  
International Maritime Organization  
(Respondent)**

**JUDGMENT**

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**Before:** Judge Sabine Knierim, Presiding  
Judge Graeme Colgan  
Judge Jean-François Neven

**Case No.:** 2019-1246

**Date:** 25 October 2019

**Registrar:** Weicheng Lin

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**Counsel for Mr. Sheffer:** Alex Philippe Haines

**Counsel for Secretary-General of IMO:** Dorota Lost-Sieminska

**JUDGE SABINE KNIERIM, PRESIDING.**

1. This matter arose out of Mr. Robert Sheffer's request for an up-grade of his post within the International Maritime Organization (IMO). The Secretary-General of the IMO rejected his request on 31 January 2019 upon advice from the IMO's Classification Committee (CC) and the IMO's internal appeals process, the Staff Appeals Board (SAB), both of which had recommended that the post remain at its current grade. The United Nations Appeals Tribunal (Appeals Tribunal) is seized of Mr. Sheffer's appeal against this rejection. For reasons set forth below, we remand the matter to the SAB.

**Facts and Procedure**

2. Mr. Sheffer has been employed by the IMO since 1 February 1999. Currently, he serves as a Senior Information Systems Assistant on Post No. 5003031, which had been classified in the General Service category. In 2008 it was reclassified from the G-6 level to the G-7 level.

3. In June 2016, Mr. Sheffer filed a reclassification request at the encouragement of the Senior Director/Head of the section. On 9 November 2016, by way of internal memorandum Mr. Sheffer was informed by Head of Human Resources Service (H/HRS) that his request for reclassification to a Professional category had been denied. The memorandum stated that the CC had reviewed the duties of his post in accordance with the procedures laid down in IMO's Staff Rule 102.1, and that the present grade of G-7 had been confirmed.

4. Mr. Sheffer filed another request for reclassification of his post to the Professional category on 1 June 2017. The CC, which had met from 16 to 20 October 2017, again recommended that the post remain at its current grade. The CC's recommendation was approved by the Secretary-General of the IMO on 31 January 2018 and communicated to Mr. Sheffer by memorandum, dated 7 February 2018, which he received on 13 February 2018.

5. The 7 February 2018 memorandum stated that the CC had reviewed the duties of his post in accordance with the procedures laid down in IMO's Staff Rule 102.1, and that the present grade of G-7 had been confirmed. It further stated that the CC had "analyze[d] the level of duties and responsibilities described in the job description questionnaire". It also stated: "Please find attached for your perusal a copy of the evaluation form as well as the comments and recommendation of the Committee". Attached was a document entitled "Job Classification System", which stated:

The job description for this post was presented to the job evaluation committee which was convened in June 2016 for reclassification to the Professional and higher category. The Committee stated then, that the information before it was insufficient to properly assess the duties of the position against the Professional job evaluation standard. It therefore recommended that the description be updated and resubmitted.

The duties of the post were considered by the present Committee against the definition for inclusion in the Professional and General Service Categories as set out in the Common Classification of Occupational Groups (CCOG) and benchmarks in the ICSC classification standards. It concluded that the post was appropriately classified in the General Service [c]ategory.

RECOMMENDATIONS OF THE JOB EVALUATION COMMITTEE

Based on the above and since the post was already classified at the highest level of that category the Committee recommended that the post should retain its G-7 grade.

6. On 15 February 2018, Mr. Sheffer requested reconsideration of the decision and, ultimately On 9 May 2018, filed an application to the SAB. In his statement of appeal, he mentioned two grounds for contesting the administrative decision, namely “(a) Recognized failure by IMO to conduct an impartial & objective reclassification exercise, seemingly based on tactical bureaucratic inertia and moral distress caused to the Applicant and; (b) No clarity regarding the availability of an internal judicial review mechanism to appeal post reclassification outcome.”

7. On 29 January 2019, the SAB sent a memorandum to the Secretary-General of the IMO, setting forth its conclusion that the decision to keep Mr. Sheffer’s post at the G-7 level had been made in accordance with the IMO’s established procedures on classification of posts, namely the procedures established in Staff Regulations Article II, Regulation 2.1 and Staff Rule 102.1, which the SAB noted had been suspended by the Secretary-General of the IMO, by memorandum dated 17 September 2018 and were at the time of recommendation under review by the Administration. The SAB noted that in light of Mr. Sheffer’s claim that the process was not impartial and objective, the SAB had sought further information from the Director of the Administrative Division and provided the response to Mr. Sheffer for his comment and to give him an opportunity to provide evidence to support his contention that the process was not impartial and objective. On 9 October 2018, Mr. Sheffer replied by way of memorandum. The SAB considered his response and determined that it contained no evidence to support that the process was not impartial or objective.

8. On 31 January 2019, the Secretary-General of the IMO wrote to Mr. Sheffer informing him that “following due process and completion of the relevant investigation into all the facets of your appeal” the SAB had unanimously concluded that the decision taken in response to the recommendation of the CC was consistent with the Organization’s established procedures, and that he had accepted the SAB’s recommendation and decided to keep the post at the G-7 level.

9. Mr. Sheffer requested the IMO to provide him with the ratings and explanations referred to in the 2016 and 2018 classification recommendations noted above. By memorandum dated 14 March 2019, the IMO stated that:

The Classification Committee prepares a summary of recommendations for each individual case submitted for its consideration [...]. One of the first steps in the classification process, for those submissions for GS to P posts, is through the use of ICSC standard tool, to measure the post against the set standards, for a P post. During the process, the post is also reviewed against the structure of the team, previous classification/s if any and any additional information deemed necessary [...]. Ratings are only attributable when the criteria for a P post is met. The comments and final recommendations were provided. There was no documentation missing from the exercise nor from the SAB’s review [...]

10. Mr. Sheffer filed an appeal on 3 April 2019, and the Secretary-General of the IMO filed his answer on 3 June 2019.

### **Submissions**

#### **Mr. Sheffer’s Appeal**

11. Mr. Sheffer requests the Appeals Tribunal to order that the IMO facilitate a reclassification decision to be re-taken by an external professional body, and that he be awarded compensation for legal costs. Mr. Sheffer asserts that the classification decision was not taken fairly and transparently and the IMO has not provided him with the information underlying the decision. Both the 2016 and 2017 classification recommendation documents stated that a copy of the evaluation form as well as the comments and recommendations of the CC (e.g. the ratings and explanations) were attached, but on both occasions, they were not attached. The IMO’s response to his request for the ratings and explanations referenced was by way of memorandum dated 14 March 2019, which is quoted above.

12. Mr. Sheffer argues that this contradicts the information provided to him previously by e-mail dated 10 April 2017 from Mr. Bregliano, the former Head/HRS, wherein Mr. Sheffer was referred to a document entitled, “Principal differences between General Service and Professional Posts” and was informed that:

There is no matrix to fill in in order to get a response to [the reclassification] question. The decision is based on the definitions and descriptions that can be found in the attached document which describes the differences between the nature of the duties and responsibilities at the General Service and the Professional level [...]. The role of the Committee is to establish whether the bulk of the duties and responsibilities are in one category or the other. In your case, it was established that most of your duties lie at the General Service level. Since you were already at the G-7 level there was no need to fill in an evaluation sheet[...].

13. Mr. Sheffer argues that the IMO erred in law and procedure as it failed to provide any empirical evidence, explanations, scores, justifications, or other analysis to explain or justify the classification decisions. Further, the decisions failed to attach the ratings and comments despite stating they were attached and despite being required by Article 2.4 of ST/AI/1998/9, the Administrative Instruction on the System for the classification of posts, which is applicable to the United Nations. The IMO committed procedural errors due to the total lack of transparency as the decisions refer to the CC as having used the ICSC standards. However, there is no evidence this is true. There is no record of the results of the alleged analysis. There is no explanation as to what the “various factors in the system established by the Secretary-General of the IMO” are or mean. There is no way to conclude that the analysis required under Rule 102 has been undertaken properly per a judicial review or if it has been taken at all.

14. The IMO does not have an equivalent appeals committee as is present in the Secretariat of the United Nations, and the lack of this internal appeals committee deprives him of his right to have classification decisions considered and reviewed by a competent and independent body.

15. The Secretary-General of the IMO and/or the SAB erred in law in breaching IMO’s Staff Rule 102.1 as follows: they did not adequately or at all evaluate the duties and responsibilities of the post; they failed to analyze the relationship between his post and other relevant posts; they failed to conduct analysis on the basis of the various factors in the system established by the Secretary-General of the IMO; they failed to evaluate how the post fits into the overall structure; they failed to make and provide notice of the classification results, including the final ratings and/or comments on the basis of which the decision was taken; they reached

conclusions affecting his terms of employment without a fair, transparent, and impartial system. The decision in the absence of supporting evidence or explanation must be considered arbitrary. Furthermore, IMO's Staff Rule 102 merely provides that the Secretary-General of the IMO will lay down procedures, and the decision has failed to both say what the procedures are and what was done in purported compliance with them.

16. For these reasons Mr. Sheffer requests the Appeals Tribunal to order the Secretary-General of the IMO to instruct an impartial CC to carry out the reclassification exercise in a procedurally correct, fair, and transparent manner, including complying with ST/AI/1998/9 and IMO Staff Rule 102. Additionally, he requests the award of reasonable legal costs, noting that the employees of IMO do not have access to the Office of Staff Legal Assistance, and he has hired outside counsel.

**The Secretary-General of the IMO's Answer**

17. The Secretary-General of the IMO requests the Appeals Tribunal to dismiss the appeal. The Secretary-General of the IMO based his initial decision on the recommendation of the CC, which adhered to the prescribed process. His final decision was based on the recommendation provided by the SAB, which conducted a full review of the process and concluded that the proper process and procedures had been followed.

18. The CC followed the methodology promulgated by the International Civil Service Commission (ICSC). The General Service category and the Professional Service category have separate online classification tools. It is not possible to classify a General Service category post with the online tool for the Professional category or vice versa because the descriptors of the levels within the factors and sub-factors in the respective tools for one category would not be relevant for the other category. The CC properly concluded that the post did not fall within the definition for professional work having utilized the general definitions of General Service work and Professional work as set out in the ICSC's Guidance for Distinguishing Professional from Non-Professional Work and the "Common Classification of Occupational Groups: (CCOG)". Once the CC concluded unanimously that the post was correctly placed in the General Service category, an evaluation using the online tool for General Service category, therefore, was not required as the post was already at the highest level (G-7). Mr. Sheffer's claim that the information (namely a classification matrix report) was withheld is erroneous. Because the online tool was not necessary and had not been utilized, no matrix was generated.

19. The IMO fully complied with IMO's Staff Rule 102.1(i), which stipulates that posts shall be classified in accordance with the methodology promulgated by the ICSC and with procedures established by the Secretary-General of the IMO. The IMO established a tri-partite CC comprising of: 1) an independent job classification expert; 2) the alternate of the Head of HRS, and 3) a trained staff representative chosen from a pool of staff nominated by the IMO Staff Committee. The CC fully complied with Rule 102.1 and applied the classification system established by the ICSC. The CC separately reviewed the post and concluded unanimously that it was correctly placed in the General Service category. Also, it is noted that the post was submitted for reclassification twice (in 2016 and 2017) and on both occasions the CC unanimously placed the post in the General Service category. It should be noted that, in 2016 and 2017, the CC had different staff representative and HRS representative on board.

20. Mr. Sheffer incorrectly argues that the SAB and/or Secretary-General of the IMO failed to appropriately consider whether the CC complied with the relevant regulations and rules and administrative issuances. When assessing the duties and responsibilities of the post, the CC followed the classification system established by the ICSC and the elements of evaluation described in Rule 102.1(i), e.g. the relationship between posts and how it fits into the overall structure of the section. It also followed the process which required: analysis of the component parts of the job; comparison with other jobs in similar disciplines; discussion with the supervisor' comparison with benchmark jobs developed by the ICSC; and assessment of the occupational field. Each member of the CC applied these methods and unanimously and independently determined the post was properly within the General Service category.

21. The Secretary-General of the IMO enclosed in his answer to the appeal *inter alia* an Affidavit, dated 3 June 2019, by Ms. Lakeita Henriques, which stated *inter alia* that: (i) she chaired the job evaluation committee which reviewed Mr. Sheffer's post; (ii) the committee first determined the category of either Professional or General based on definitions in the Common Classification of Occupational Groups (CCOG) of the ICSC job classification standards; (iii) the post was also examined against the Benchmark Grade Profile position: Senior Information Technology Support Assistant in the GS standard and found to be comparable; and (iv) it was agreed that the post should remain in General Service category.

22. There was no breach of Article 2.4 of ST/AI/1998/9, the Administrative Instruction on the System for the classification of posts, as this instruction did not apply to the IMO. There is no equivalent rule in IMO's rules and regulations that require the notice of the classification results to the incumbent of the post including the final ratings and/or comments on the basis of which the decision was taken. HRS nevertheless provided Mr. Sheffer with a notice of the reclassification results which set forth that the post was not evaluated using the online tool for either category but instead was analyzed using the standard ICSC definitions as to whether it belonged in the General or Professional category. There were, as a result, no ratings but only comments and a recommendation. No information was withheld from Mr. Sheffer.

23. Mr. Sheffer was afforded judicial review. Mr. Sheffer argues that the IMO does not have a Classification Appeals Committee as envisaged in the ST/AI/1998/9, which deprived him of his right to have the classification decision reviewed by a competent independent body. This administrative instruction does not apply to the IMO. The IMO's CC is comparable in terms of independence and expertise, to the Appeals Committee referred to in that administrative instruction. His post was assessed by an independent and competent tripartite mechanism. His right to judicial review is guaranteed by the SAB, which scrutinized the recommendation of the CC to assess whether the recommendation was reached in compliance with the relevant procedures and practices. The SAB considered the Administrative Division's written reply to Mr. Sheffer's appeal dated 29 June 2019 which contained an overview of their Procedures for classification of post and the CC. The SAB's competence was to review whether the recommendation and the ensuing decision followed the procedure and they were arrived at in accordance with the rules and regulations. The SAB concluded that all relevant procedures had been followed.

### **Considerations**

24. There are fundamental problems with the manner in which the IMO has dealt with Mr. Sheffer's claim for reclassification. We are concerned that the "decision" appealed from does not appear to conform to the Respondent's jurisdictional requirements under Article XI of the IMO Staff Regulations and Rules. Rule 111.1(a) ("Consideration of an Appeal by the Staff Appeal Board") provides that the SAB, as the "first instance neutral process", must provide a "written record" and a "written decision" setting forth reasons, fact and law. Rule 111.1(b) provides that in cases such as this where the appeal is against an "administrative decision" taken in response to



advice received from a technical body such as the CC, the appeal is to be “limited to the decision taken in response to the advice”.

25. Article XI of the IMO’s Staff Regulations and Rules is based on the terms of the Agreement between the United Nations and the IMO which took effect on 1 July 2009 extending the jurisdiction of the Appeals Tribunal to the IMO and, in turn, to Article 2(10) of the Statute of the Appeals Tribunal which governs our jurisdiction and powers.

26. As we understand it, the Secretary-General of the IMO says (and the Staff Regulations and Rules specify) that the SAB is the neutral element in that first instance process. However, even if what was issued by the SAB was a “decision”, it was nevertheless only advisory or recommendatory. It gave advice to the Secretary-General of the IMO who cannot himself be regarded as a neutral part of the process. That is because he is both the employer’s representative and the original decision-maker at whom Mr. Sheffer’s appeal is directed.

27. We are not satisfied that the essential elements are present to have constituted a decision by the SAB and therefore to allow us to consider and decide Mr. Sheffer’s appeal. Although in Mr. Sheffer’s case, the SAB seems to have dealt with all aspects of his appeal and provided a written record with reasons, facts and law, it remains that the SAB did not issue a written decision but only a recommendation to the Secretary-General of the IMO, and that it was the Secretary-General of the IMO, who is not a neutral instance, who took the final decision on 31 January 2019.

28. Therefore, to ensure compliance with the jurisdictional requirements of the IMO’s Regulations and Rules, the case has to be remanded to the SAB under Article 2(10) of this Tribunal’s Statute in order to issue a decision on Mr. Sheffer’s appeal against the original administrative decision issued by the Secretary-General of the IMO on 7 February 2018.

**Judgment**

29. The case is remanded to the SAB.

Original and Authoritative Version: English

Dated this 25<sup>th</sup> day of October 2019 in New York, United States.

*(Signed)*

Judge Knierim, Presiding

*(Signed)*

Judge Colgan

*(Signed)*

Judge Neven

Entered in the Register on this 20<sup>th</sup> day of December 2019 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar