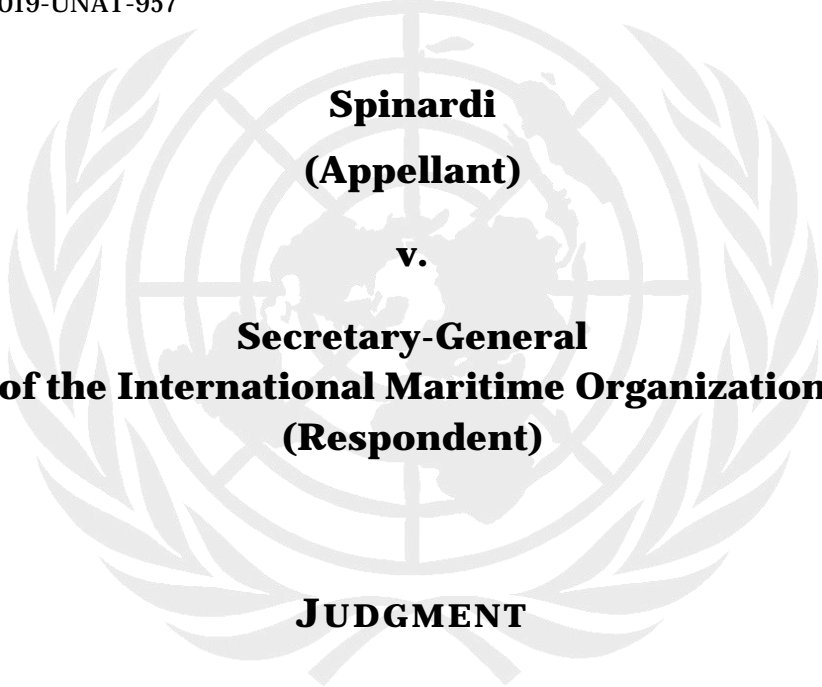




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2019-UNAT-957



**Spinardi
(Appellant)**
v.
**Secretary-General
of the International Maritime Organization
(Respondent)**

JUDGMENT

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

Case No.: 2019-1255

Date: 25 October 2019

Registrar: Weicheng Lin

Counsel for Ms. Spinardi: Self-represented

Counsel for Secretary-General of the IMO : Frederick Kenney

JUDGE GRAEME COLGAN, PRESIDING.

1. Monia Spinardi has appealed against the decision of the Secretary-General of the International Maritime Organization (IMO) not to reclassify her post, which decision was taken upon the recommendation of the Classification Committee and the subsequent recommendation from the Staff Appeals Board (SAB). For the reasons set forth in this Judgment, this Tribunal remands the matter to the SAB.

Facts and Procedure

2. On 28 September 2017, following the restructuring of the Legal Affairs Office, IMO, Ms. Spinardi applied for reclassification of her post HRS/18/3356 at the G-6 level with the title of Senior Administrative Assistant (Depositary). She expected her post to be reclassified to the G-7 or P-2 level as her role had absorbed most of the duties and responsibilities from the former Depositary Administrative Officer whose post was in the Professional category. Her request was referred to a Classification Committee for consideration and recommendation to the IMO Secretary-General. The Classification Committee considered her request when it met from 16-20 October 2017.

3. On 15 January 2018, the Secretary-General of the IMO received the Classification Committee's recommendation through the Director of the Administrative Division, which recommended the post remain at its current grade.

4. On 31 January 2018, the Secretary-General of the IMO accepted the Classification Committee's recommendation.

5. On 7 February 2018, by way of internal memorandum, the Head of Human Resources Services (H/HRS) informed Ms. Spinardi that the Classification Committee had reviewed the duties of her post in accordance with the procedures laid down in IMO Staff Rule 102.1 and confirmed the present grade of G-6. The memorandum further indicated that the "Classification Committee analyze[d] the level of duties and responsibilities described in the job description questionnaire" and invited her to "[...] find attached for [her] perusal a copy of the evaluation form as well as the comments and recommendation of the Committee".

6. On 20 April 2018, Ms. Spinardi requested reconsideration of the decision.
7. On 21 May 2018, she submitted a statement of appeal to the IMO's SAB. At the SAB's request she resubmitted her appeal on the proper form on 31 August 2018. The SAB considered exceptional circumstances had warranted accepting her appeal out of time since Staff Rule 111.1, which required the publication of guidelines to staff on *inter alia* the format of the appeal, had not been made available to IMO staff.
8. On 29 June 2018, the Administrative Division replied to the SAB
9. On 17 September 2018, the IMO Secretary-General suspended the reclassification process, set forth in Staff Regulations 1 and 2.1 and Staff Rule 102.1. The instrument recording this suspension is not before us and we are unaware why it was done and of the implications of doing so. In any event, the suspension does not appear to have procedurally affected Ms. Spinardi's appeal.
10. On 29 January 2019 the SAB, by way of internal memorandum, submitted its report to the Secretary-General of the IMO. The SAB indicated that it provided on 13 November 2018 its "initial findings on these appeals (referring to appeals by Ms. Spinardi and three other staff members who are not addressed in this Judgment) and requests the Secretary-General to confirm his previous decision with respect to this case". The 13 November 2018 memorandum has not been provided to this Tribunal.
11. The SAB further noted that it was not empowered to assess the validity of the conclusion reached by the Classification Committee but said it had reviewed the information that had been provided by the Director of the Administrative Division and concluded that "the actions taken by the Secretary-General in response to the advice of the Classification Committee were consistent with the established procedures". The SAB recommended the post remain at its current grade.
12. Ms. Spinardi filed an appeal on 30 April 2019, and the Secretary-General of the IMO filed his answer on 1 July 2019.

Submissions

Ms. Spinardi's Appeal

13. Ms. Spinardi requests the Appeals Tribunal to rescind the decision to keep her post at the current grade and remand the case to the Classification Committee with the recommendation that it give due consideration to the substantial change of the post and notion of equal pay for equal work. She requests the reclassification of her post with immediate effect to the G-7 or P-2 level with a new appropriate title such as Administrative Depository Officer with retroactive payment from the day she submitted her reclassification request. She also requests monetary compensation for moral damages "at the discretion of the judges".

14. Ms. Spinardi avers that following the retirement of the Senior Depository and Administrative Officer (P-5), who was not a lawyer, the administration of the depository functions was re-structured. It was decided that the Depository Officer (P-3) would be a qualified lawyer and would perform purely a legal role related to the depository function. As a consequence, all other administrative tasks previously performed at the P level were progressively transferred to the post of Senior Administrative Assistant, which is her current title and post. A clear distinction between the Depository *legal* duties and the Depository *administrative* duties had been introduced and new IMO policies were introduced that increased the role of the Depository Administrative Assistant.

15. Ms. Spinardi argues on appeal that she was denied access to justice as the SAB did not review her appeal on the merits when it limited its review to procedural compliance only. Ms. Spinardi asks, rhetorically, that if the SAB was not empowered or competent to consider the case then how did it reach a conclusion that the post remain at the same grade.

16. In addition, her due process rights were violated as she did not have a chance to comment on the Administrative Division's reply to the SAB. The fact that the same post in the United Nations in New York is graded higher shows a violation of her human rights to equal pay for equal work.

The IMO Secretary-General's Answer

17. The Secretary-General of the IMO requests the Appeals Tribunal to dismiss the appeal. The Classification Committee adhered to all rules and regulations and relevant administrative issuances and did not breach any procedural rules. In compliance with Staff Rule 102.1(d), the Administration established a tripartite committee comprising of an independent job classification expert (chosen by the Staff Committee), the Head, Human Resources Services (HRS), and a trained staff representative, chosen from a pool of staff nominated by the Staff Committee. The Classification Committee fully complied with Staff Rule 102.1 and applied the International Civil Service Commission (ICSC) methodology and used the ICSC online classification tool to evaluate the duties and responsibilities of Ms. Spinardi's post. The scores assigned in the ICSC online classification tool resulted in Grade G-6 at the 9th percentile. The Classification Committee followed the evaluation system set forth in Staff Rule 102.1, including that it analyzed: the component parts of the job; the scope of the post in relation to the team structure; and its place within the Organization. It also interviewed the supervisor and compared the post with benchmark jobs developed by the ICSC. Also, the Secretary-General of the IMO provided, as annexes to his Answer, affidavit evidence from the Chairperson of the Classification Committee dated in June 2019, which stated that they had used the ISCS tool, reviewed the organizational chart, interviewed the supervisor, and considered the structure of the unit.

18. Despite Ms. Spinardi's claims that the Classification Committee did not consider the restructuring around the depositary functions or the substantial increase in the level of responsibility or complexity of the role, there are no actual procedural errors. The procedures and considerations enumerated in Staff Rule 102.1 were all followed.

19. The Classification Committee had considered that the same role in New York was graded higher at G-7 but did not request the job description to make a comparison as the purpose of a comparison is to measure relative value of jobs within an organization, and not to compare with an outside organization. The principle of "equal work for equal pay" forbids discrimination but does not prohibit every form of different treatment to staff members. There is lawful reason for the IMO staff to be treated differently than staff at other organizations.

20. The evaluation form, comments, and the recommendations of the Classification Committee were given to Ms. Spinardi and therefore fulfilled transparency requirements. Ms. Spinardi argues that she was not afforded due process because she had not been given the opportunity to comment on the Administrative Division's written reply to the SAB. The SAB concedes it did omit to forward the Administrative Division's reply and invite her comments as is required by Staff Rule 111.2(t). However, the Secretary-General says this was a minor procedural error having no bearing on the recommendation, and there is no difference as this Tribunal has recognized in its *Michaud* case.¹

21. The Secretary-General "acknowledges that the report of the SAB could have been more detailed in providing information on its deliberation as to how it reached its recommendation to the Secretary-General. However, from the information provided in the report it is reasonable to assume that the SAB did indeed review the relevant aspects of the classification procedure and found them to be in order."

22. Ms. Spinardi has not provided any evidence to substantiate her claim for moral damages, and therefore her claim should be denied.

Considerations

24. There are fundamental problems with the manner in which the IMO has dealt with Ms. Spinardi's claim for reclassification of her role and with the form of the decision made by the Secretary-General of the IMO. We are concerned that the "decision" appealed from does not appear to conform to the Respondent's jurisdictional requirements under Article XI of its Staff Regulations and Rules. Rule 111.1(a) (Consideration of an Appeal by the Staff Appeals Board) provides that the SAB, as the "first instance neutral process", must provide a "written record" and a "written decision" providing 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 Classification Committee, the appeal is to be "limited to the decision taken in response to the advice".

¹ *Michaud v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-761, para. 60.

25. Article XI of 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 IMO² and in turn, to Article 2(10) of the Statute of this 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 appealed against by Ms. Spinardi. Even if the Respondent's decision is understood to incorporate the SAB's conclusions, or the SAB's recommendation is to be regarded as the decision appealed against, that is also problematic. That is because although the SAB's recommendation may be said, arguably, to include a "written record", it does not provide "reasons, fact and law" as to why Ms. Spinardi was unsuccessful in her claim to have her position regraded.

27. We are not satisfied that these essential elements are present to have constituted a decision by the Respondent and therefore to allow us to consider and decide Ms. Spinardi's appeal.

28. Because of the way in which this appeal is dealt with by us, we do not need to consider the admissibility of the affidavit evidence or its content, which the Secretary-General of the IMO has provided on appeal.

² Article 2(1)(a) of this Agreement provides that an appeal such as in this case shall be one against a decision alleged to be non-compliant with the terms of the staff member's appointment which terms are defined as including "all pertinent regulations and rules and all relevant administrative issuances in force at the time of the alleged non-compliance".

Judgment

29. Therefore, to ensure compliance with the jurisdictional requirements of the IMO's Regulations and Rules, we remand the matter of the appeal to the IMO SAB under Article 2(10) of this Tribunal's Statute. Ms. Spinardi's appeal to the SAB must be reconsidered and decided by a neutral process that produces a written record of the decision-maker's decision, which record includes reasons for that decision, a statement of the relevant facts (about the classification questions) and of the relevant law (affecting those classification questions).

30. It should go without saying that the Respondent must also comply with its due process obligations including, but not limited to, the requirement that it acknowledges it breached previously, that is to offer Ms. Spinardi the opportunity to respond to the Administration's reply to her appeal to the SAB.

Original and Authoritative Version: English

Dated this 25th day of October 2019 in New York, United States.

(Signed)

Judge Colgan, Presiding

(Signed)

Judge Knierim

(Signed)

Judge Neven

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

(Signed)

Weicheng Lin, Registrar