



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2010/031/
UNAT/1669
Judgment No.: UNDT/2011/102
Date: 17 June 2011
Original: English

Before: Judge Marilyn J. Kaman

Registry: New York

Registrar: Santiago Villalpando

ZHOUK

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Alan Gutman, ALS/OHRM, UN Secretariat

Introduction

1. The Applicant contests the decision not to reclassify his post OKA-41-832-T-P-3001 (“the SCU Post”) in the Systems Control Unit (“SCU”), Programme, Planning Budget Division (“PPBD”), Office of Programme Planning, Budget and Accounts (“OPPBA”), from the P-3 to the P-4 level.

2. In 2000, the reclassification of the SCU Post was requested under ST/AI/1998/9 (System for the classification of posts), sec. 1.1, on the basis that it would allow the grade of the SCU Post to meet the demands and responsibilities of the relevant functions. The Administration on three separate occasions in 2000 determined that the SCU Post would remain classifiable at the P-3 level. In 2006, the Applicant made another request to have the SCU Post reclassified, an audit of the post (“desk audit”) was performed under ST/AI/1998/9, sec. 1.1(d), and the post remained classifiable at the P-3 level.

3. The specific steps which comprised each review are set out in more detail below.

Issues

4. The issues to be addressed by the Tribunal in this Judgment are defined as follows:

- a. Whether the appeal with respect to the 2000 decision is receivable;
- b. Whether the discovery of new evidence in 2007, including the point rating worksheet for the 2000 decision, renders the 2000 classification decision receivable as constituting an exceptional circumstances;
- c. Whether the appeal is receivable with respect to the 2006 decision;

d. Whether the Respondent properly observed the Applicant's procedural rights when he performed the 2006 desk audit and made the determination not to reclassify the SCU Post on the basis of the out-dated job description; and

e. Whether compensation is warranted, in the event that a breach of the Applicant's procedural rights occurred.

Procedural background

5. On 12 February 2007, the Applicant filed his Statement of Appeal with the Joint Appeals Board ("JAB").

6. On 27 June 2008, the JAB issued its Report No. 1997.

7. On 26 January 2009, the Applicant filed his appeal with the former United Nations Administrative Tribunal. The Respondent's Reply was filed in due course.

8. On 1 January 2010, the case was transferred to the United Nations Dispute Tribunal, New York Registry.

9. On 1 June 2010, in response to Order No. 103 (NY/2011), the parties filed a joint statement ("the Joint Statement").

10. On 29 March 2011, both parties participated in a directions hearing. The Respondent offered to call an expert witness who could explain the rules and procedures relating to classification matters. During the directions hearing, the Applicant informed that Tribunal that he believed the matter could be decided on the papers, that there was no need for a further hearing, that he did not wish to call any witnesses and that he waived his right to submit a closing submission. In light of the Applicant's comments, Counsel for the Respondent then also agreed that all issues were sufficiently covered in the papers already before the Tribunal.

11. On 29 March 2011, by Order No. 101 (NY/2011), the Tribunal determined that "a further hearing would not be in the interests of the just and expeditious

disposal of the matter” and that the matter would be decided on the papers already before it.

Facts

12. At the directions hearing, the Respondent informed the Tribunal that he would agree to the facts contained in the Joint Statement, if all of the quotes were read within the context of the document in which they appeared. The Tribunal has taken this request into consideration when setting forth the facts herein.

13. On 12 August 1989, the Applicant began his service with the Organization as an Associate Programmer/Analyst at the P-2 level under a 100-series three-year fixed-term appointment. As of 1 October 1991, the Applicant’s fixed-term appointment was converted to a permanent appointment. The Applicant successfully applied for the SCU Post, to which he was promoted on 24 February 1997.

14. On 1 February 2000, Mr. James Brooks, the Chief of SCU, requested the reclassification of the SCU Post on the basis that the demands and responsibilities of functions had “steadily grown in scope and complexity in proportion to the demands placed on budgetary systems support for meeting the requirements of both Member States and offices within the Secretariat”.

15. On 23 February 2000, Ms. Marianne Brzak-Metzler, the Chief of the Compensation and Classification Policy Unit (“CCPU”), in the Office of Human Resources Management (“OHRM”), responded that “the post remains classifiable under the title of Systems Analyst at P-3 level”.

16. On 30 March 2000, Mr. Brooks updated the job description for the SCU Post and submitted another request for reclassification.

17. On 26 April 2000, Ms. Brzak-Metzler informed Mr. Brooks that her office had again reviewed the revised job description and that “the post remain[ed] classifiable under the title of Systems Analyst at P-3 level”.

18. On 19 May 2000, at the request of Mr. Brooks, a desk audit of the SCU Post was performed under ST/AI/1998/9, sec. 1.1(d), by Mr. Bruce Shearhouse, Classification Officer, CCPU, in order to clarify whether the tasks which the incumbent performed were fairly reflected in the SCU Post's job description or whether they needed to be updated. On 25 May 2000, Ms. Brzak-Metzler reported the results of the desk audit to the Executive Office of the Department of Management.

19. On 26 May 2000, Mr. Brooks sent a modified request for the reclassification of the SCU Post to be reconsidered "in light of additional information that has been provided" (which comprised a modified request form, a sample user guide, a statement that funding was available for the SCU Post and the new post number for the SCU Post).

20. On 19 June 2000, Ms. Brzak-Metzler again responded that, after review of the functions of the SCU Post further to the submitted material, "the [SCU Post] remain[ed] classifiable at P-3 level".

21. In January 2006 (no date specified), the Applicant requested Ms. Sharon Van Buerle, Director, PPBD/OPPBA, to review the Applicant's job description.

22. By memorandum dated 30 January 2006, the Applicant's supervisor at the time, Ms. Thuy Basch, Chief of the SCU, sent a memorandum entitled "Revision of Job Description" to Ms. Van Buerle. This memorandum included a recommendation that the SCU Post remain at the P-3 level and that the job description be only updated to reflect the current duties and responsibilities of the position. Attached to the memorandum was a chart which compared the Applicant's 1995 job description with a revised job description. In other words, the Applicant's supervisor effectively decided not to make a reclassification request for the SCU Post under ST/AI/1998/9, sec. 1.1.

23. On 24 July 2006, the Applicant supplied his comments to the 30 January 2006 evaluation of his role, expressing his disagreement with Ms. Basch's conclusions. In

these comments, the Applicant noted that his current job description was drafted over ten years previously, and that the scope of his responsibilities had changed significantly; the Applicant again requested that his job description be re-evaluated.

24. On 7 August 2006, Ms. Van Buerle wrote a memorandum to Ms. Brzak-Metzler (now Chief of the Conditions of Service Section (“CSS”), Human Resources Policy Service (“HRPS”), Division for Organizational Development (“DOD”), OHRM), attaching both the memorandum from the Applicant’s supervisor of 30 January 2006 and the memorandum from the Applicant of 24 July 2006, asking for advice as to whether a desk audit was required.

25. From August to September 2006, a desk audit of the SCU Post was undertaken pursuant to ST/AI/1998/9, sec. 1.1(d).

26. On 27 October 2006, Ms. Brzak-Metzler sent a memorandum to Ms. Van Buerle, where she stated that “[b]ased on our review, we have determined that the [SCU Post] remains classifiable at the P-3 level”.

27. On 15 November 2006, the Applicant sent an email to Ms. Brzak-Metzler, in which he expressed his concern regarding the actions discussed in the 27 October 2006 memorandum and asked for clarification as to whether the desk audit was performed under ST/AI/1998/9, sec. 1.1(d), and classification advice was given under ST/AI/1998/9, sec. 1.2, given, or whether the classification decision and analysis had been taken under ST/AI/1998/9, secs. 2.3 and 2.4. In the Applicant’s view, for either action, the Administration had taken either action improperly and in the absence of documents specifically required by ST/AI/1998/9 (particularly a complete and up-to-date job description). The Applicant also noted that the point rating worksheet and the notes of the interviews had not been sent to the incumbent of the SCU Post, as required by ST/AI/1998/9, sec 2.4 (emphasis in original):

a) I am not sure about the status of your memorandum [of 27 October 2006]. As outlined in ST/AI/1998/9 section 1.2, the Office of Human Resources Management shall provide classification advice for the reclassification of existing posts. I understand that such an

advice should be provided in the form P.148/B, which was not made available to me with your letter.

b) On the other hand in your memorandum you informed [the Director, PPBA, OPPBA)] that you had actually determined the level of the post in question. I am surprised to learn this because as per provisions of the ST/IA/1998/9 sec. 2.2 a request for reclassification shall include, among other things, a *complete and up-to-date* job description for the post in question. I am not aware that such a document (P.148) has been prepared and signed by me the incumbent of the post and/or that it has been provided to OHRM.

c) ST/AI/1998/9 section 2.4 outlines that the notice of the classification results including the final rating and/or comments on the basis of which the decision was taken (the Point Ratings Worksheet) shall be sent to the request office and to the incumbent of the post. Again, that was not what I received with your document.

d) I would like to request that these ratings and the notes of the interviews taken during the desk audit are provided to all involved. It came to my attention that not all interviewees have been given a chance to examine and approve their respective notes before they are made official.

In view of the above, could you please clarify whether your memorandum of 27 October 2006 to [the Director, PPBD/OPPBA] was a response on the appropriate action under section 1.1(d) of ST/AI/1998/9 or it was OHRM formal classification decision on the subject post under section 2.4 of ST/AI/1998/9?

28. On 15 November 2006, a Compensation Officer from CSS/OHRM confirmed by email that the notes of the desk audit interviews had not been provided to the staff member interviewed during the desk audit.

29. On 21 December 2006, having received no response from the Respondent, the Applicant filed a request for administrative review of the classification decision to the Secretary-General.

30. On 4 January 2007, the Administrative Law Unit (“ALU”), OHRM, acknowledged receipt of the request for review.

31. On 9 January 2007, Ms. Brzak-Metzler sent a memorandum to Ms. Adèle Grant, Chief of the Administrative Law Unit (“ALU”), OHRM, referring to the

Applicant's case. In that memorandum, she stated that a specific procedure for desk audits is not elaborated upon under ST/AI/1998/9 and that an appropriate process had been followed:

4. In light of the facts as presented and taking into consideration the difference of opinion between [the Applicant] and management concerning the classification level of the functions of the [SCU Post] he is encumbering, it was decided that it would be appropriate to conduct an audit.

5. As regards the auditing of jobs, we would recall that Administrative Instruction, ST/AI/1998/9, on the system for the classification of posts refers to audits in paragraph 1.1(d), but does not elaborate on the procedure for their conduct. Audits are technical in nature and are intended to give an opportunity to collect facts and obtain additional information to ensure a better understanding of the functions of a post as well as the parameters under which the functions of the post are being carried out.

6. In line with established practice, two Classification Officers from the Conditions of Service Section (CSS) scheduled an audit interview with the incumbent of the [SCU Post]. A second interview was conducted with the Chief of the Systems Control Unit (SCU), a third interview with the Database Administrator, and finally, interviews were also conducted with officers outside the SCU, (one in PPBD and the other in ITSD) who interact with SCU in the course of their work. In the case at hand, there were a total of five separate interviews conducted for the purpose of collecting information.

7. As indicated in my memorandum dated 27 October 2006 to [the Director, PPBD/OPPBA], we deemed that the [SCU Post] (number OKA-41-832-T-P-3001) remains classifiable at the P-3 level.

32. On 10 January 2007, ALU/OHRM sent its review of the administrative decision to the Applicant, noting that the comments provided by the Chief, CSS/OHRM, attached to the letter, "have addressed appropriately the issues you have raised in [the Applicant's] letter".

33. On 12 February 2007, the Applicant filed his application with the Joint Appeals Board ("JAB").

34. On 5 April 2007, the Respondent filed his Reply which, for the first time, contained a point rating worksheet for the earlier reclassification of the post in 2000.

35. On 27 June 2008, the JAB issued Report No. 1997 concerning the Applicant's appeal concluded (emphasis in original):

29. ... The Panel *unanimously* finds
- a. regarding the 2000 classification decision;
 - i. Appellant, in his request for review to the Secretary-General, raised only the 2006, and not the 2000, classification decision; and
 - ii. Assuming, *arguendo*, that the 2000 decision was implicit in the request, he failed to submit the grievance in accordance with the time-limits stipulated by the Staff Rules [namely, former staff rule 111.2(a)] and showed no exceptional circumstances warranting a waiver [pursuant to former staff rule 111.2(f)]; and
 - b. that the JAB lacks competence over the subject matter of the 2006 classification decision.

30. Therefore, it *unanimously concludes* that the present appeal is not receivable.

36. By letter dated 11 September 2008, the Applicant was informed that the Secretary-General agreed with the findings and conclusions of the JAB and had decided not to take any further action in this matter.

Relevant legal provisions

37. Former staff rule 111.2 provided as follows:

Appeals

(a) A staff member wishing to appeal an administrative decision pursuant to staff regulation 11.1 shall, as a first step, address a letter to the Secretary-General requesting that the administrative decision be reviewed; such letter must be sent within two months from the date the staff member received notification of the decision in writing.

...

(f) An appeal shall not be receivable unless the time limits specified in paragraph (a) above have been met or have been waived, in exceptional circumstances, by the panel constituted for the appeal.

38. The relevant provisions of ST/AI/1998/9 (System for the classification of posts) are reproduced below:

Section 1

Request for the classification or reclassification of a post

1.1 Requests for the classification or reclassification of a post shall be made by the Executive Officer, the head of administration at offices away from Headquarters, or other appropriate official in the following cases:

- (a) When a post is newly established or has not previously been classified;
- (b) When the duties and responsibilities of the post have changes substantially as a result of a restructuring within an office and/or a General Assembly resolution;
- (c) Prior to the issuance of a vacancy announcement, when a substantive change in the functions of a post has occurred since the previous classification;
- (d) When required by a classification review or audit of a post or related posts, as determined by the classification or human resources officer concerned.

1.2 The Office of Human Resources Management, or the local human resources office in those cases where authority for classification has been delegated, shall provide classification advice when departments submit, with their budget requests, job descriptions for new posts and for the reclassification of existing posts.

1.3 Incumbents who consider that the duties and responsibilities of their posts have been substantially affected by a restructuring within the office an/or a General Assembly resolution may request the Office of Human resources Management or the local human resources office to review the matter for appropriate action under section 1.1(d).

Section 2

Procedure for classification or reclassification

...

2.2 Such requests shall include:

- (a) A complete and up-to-date job description for the post in question, using standardized job descriptions, where applicable;
- (b) An up-to-date organizational chart showing the placement of the post in question and of other posts that may be affected by the classification or reclassification requested;

...

2.3 The classification analysis shall be conducted independently by two classification or human resources officers on the basis of the classification standards set in section 3 below. ...

2.4 A notice of the classification results, including the final ratings and/or comments on the basis of which the decision was taken, shall be sent to the requesting executive or administrative office, which will keep it in its records and provide a copy to the incumbent of the post.

Section 5

Appeal of classification decisions

The decision on the classification level of a post may be appealed by the head of the organizational unit in which the post is located, and/or the incumbent of the post at the time of its classification, on the ground that the classification standards were incorrectly applied, resulting in the classification of the post at the wrong level.

Section 6

Appeal procedure

...

6.3 Appeals must be submitted within 60 days from the date on which the classification decision is received.

6.8 In cases where the Administration has questioned the receivability of the appeal, the Committee shall first determine whether the appeal is receivable. The following appeals shall not be receivable:

(a) Appeals submitted after the 60-day time limit, unless exceptional circumstances warrant the waiver of the time limit;

...

Applicant's submissions

39. The Applicant, in his original appeal to the former United Nations Administrative Tribunal, advances the following principal contentions:

a. The established procedure for classification of posts is fully described in ST/AI/1998/9 and the requirements of this administrative instruction were lacking: a complete and up-to-date job description for the SCU Post (sec. 2.2(a) and 1.2) and notice of the classification results (including final

ratings and comments on the basis of which the decision was taken), that were to be sent both to the requesting office (sec. 2.4) and provided to the staff member (sec. 2.4);

b. On the issue of the classification reviews sought in 2000, in all three instances of the review of the SCU Post in 2000, the requesting department and the Applicant were not provided with the required supporting documentation (i.e., point rating worksheets) to explain and justify the decisions made by CSS/OHRM. By not providing this supporting documentation, CSS/OHRM effectively deprived the Applicant and/or his supervisors at that time from the possibility of filing a meaningful appeal against the merits of the classification decisions. The fact that the Respondent provided these documents during the course of the 2007 appeal process can, and should, be perceived as the discovery of a new fact for the purposes of filing an appeal against the 2000 classification decisions to the Classification Appeals Committee (under former staff rule 111.2(a) and (f)) or to the former UN Administrative Tribunal;

c. On the issue of the 2006 classification review, the procedure was implemented with serious violations: OHRM conducted its review without a new job description for the SCU Post; CSS/OHRM determined the classification level of the SCU Post on the basis of “incomplete and controversial” information about Applicant’s functions; the information was obtained through a questionable desk audit and through contested input from Applicant’s supervisor; the information was obtained without the Applicant having been given the opportunity to rebut or correct any misinformation or errors in facts;

d. A desk audit cannot eliminate the requirement of an up-to-date job description; classification interviews are intended only to be used as a tool for obtaining additional information for those parts of job description which may have written too generally or too technically;

e. In 2006, a classification notice was not prepared and a point rating work sheet was not provided, to explain and support the classification decision;

f. The 7 August 2006 request from the Director, PPBD/OPPBA, to CSS/OHRM only asked for advice as to whether a desk audit was required under ST/AI/1998/9, sec. 1.1, and merely constituted a request for general advice on how to proceed; the CSS/OHRM 27 October 2007 reply was “illegitimate and unwarranted”, since CSS/OHRM did not request OPPBA to prepare and submit a duly-completed request for reclassification of the SCU Post (including the revised job description of the SCU Post (signed by the incumbent, the supervisor, and the head of the office, accompanied by the organizational chart of the unit (ST/AI/1998/9, sec. 2.2)); the interviews carried out by CSS/OHRM were not sufficient, were inadequate and could not provide CSS/OHRM with all the necessary data about the SCU Post;

g. “The issue at hand is not the merits of the classification decision per se or the correct application of the existing classification standards in analyzing Applicant’s revised functions. *The issue at hand is [CSS/OHRM] failure to conduct a review in accordance with the established procedure and rules and denial of staff member’s due process rights.* Therefore, as correctly pointed out by Respondent with reference to [the former Administrative Tribunal’s] judgment [No.] 541, the [former Administrative] Tribunal is fully competent to examine this case because there was a material error in the procedure followed by [CSS/OHRM] in determining the classification level of the post and due process was denied for the Applicant” (emphasis added);

h. On the issue of whether there was an error in substance and whether CSS/OHRM duly considered all aspects relevant to the classification of the functions and duties of the post, including the knowledge required, the Applicant states (emphasis in original):

It cannot be so for a simple reason that [CSS/OHRM] did not have in its possession a revised job description in the established format and therefore did not and could not have ALL the necessary information about the post. Knowledge required to perform the functions was but just one parameter to be considered. Applicant also does not agree with Respondent's assertion that a noted change in the knowledge base did not necessarily affect the complexity of the duties and functions leading to the reclassification of a post... A job description is always the minimum required basis and the foundation for a review. Accordingly, Respondent's claim that somehow without a duly completed job description [CSS/OHRM] was able to give due consideration to all aspects of the revised functions is without merit;

- i. The Applicant requests an award of compensation in the amount of the difference in pay actually received by him and the salary and allowances he would have received had he been reclassified as requested, retroactive from 1 March 2000, and compensation for the financial and moral damages suffered by the Applicant for the harm to his career and for the loss in income through the whole career and retirement and specifying that the amount should be not less than one year's net base salary.

Respondent's case

40. The Respondent, in his Reply to the former Administrative Tribunal, advances the following principal contentions:

- a. Regarding the classification decision taken in 2000, the Applicant's appeal is not receivable, as it is time-barred; reference to the 2000 decision was not contained in the original request for review, as required, and nothing prevented the Applicant from appealing the classification decision in accordance with sections 6.1(a) and 6.2 of ST/AI/1998/9;
- b. "Exceptional circumstances", as defined by the jurisprudence of the former Administrative Tribunal do not exist to justify the Applicant's failure to meet the deadlines for appeal; the Applicant's claim of "discovery of a new

c. Regarding the 2006 decision not to seek reclassification of the SCU Post, the Applicant's appeal is not receivable; the JAB found that it lacked competence *ratione materiae* over the 2006 decision, as it concerned the classification of a post and ST/AI/1998/9, secs. 5, 6 and 7, provides for a special appeals procedure for classification;

d. Should the Tribunal decide to review the merits of the Applicant's appeal related to the 2006 decision, the Applicant's rights were not violated by the Administration's decision not to submit the post for reclassification; a "full-fledged" classification review is only required where a request for classification or reclassification of a post has been made pursuant to the provisions of section 2 of ST/AI/1998/9, which was not done in this case; CSS/OHRM only provided "classification advice" pursuant to section 1.2 of ST/AI/1998/9; ST/AI/1998/9 does not make provision for a "full-fledged classification review" where OHRM is only requested to provide advice on, or an audit of, the classification level of a post;

e. The Tribunal should not substitute its judgment for that of the Secretary-General in classification matters; the decision not to seek reclassification of the SCU Post, taken on the basis of the desk audit, was a reasonable exercise of the Respondent's discretionary authority and no justification exists for the Tribunal to substitute its judgment for that of the Respondent;

f. On the issue of compensation, the Applicant's rights have not been violated and, accordingly, he is not entitled to any compensation;

g. Even if the SCU Post had been reclassified to the P-4 level, this does not mean that the Applicant automatically would have been promoted to that level, since the Applicant would have been required to compete for this position, together with other qualified candidates.

Consideration

Is the Applicant's appeal with respect to the 2000 decision receivable?

41. Under former staff rule 111.2(a), the statutory framework for appeals which was in place at the time, a staff member needed to request review of an administrative decision within two months of the date that s/he received notification of the decision in writing.

42. The Tribunal has reviewed the Applicant's request for administrative review of 21 December 2006, and notes that the Applicant does not make reference to the 2000 decision but specifically refers to the 2006 decision. The Applicant only raises the 2000 decision in the context of his 2006 appeal. Thus, the matter of the 2000 decision was never properly put before the Secretary-General for administrative review.

43. For the foregoing reasons, the Tribunal finds that the Applicant's appeal with respect to the 2000 decision is not receivable.

Did the discovery of new evidence in 2007 during the review of the 2006 decision, including the point rating worksheet for the 2000 decision, render the 2000 classification decision receivable as constituting exceptional circumstances?

44. The Tribunal has considered whether the discovery of new evidence during the review of the 2006 decision, including the point rating worksheet for the 2000 decision, rendered the 2000 classification review receivable, as constituting exceptional circumstances in the instant case.

45. The Applicant contends that the failure to provide him with these documents deprived him of being able to make a “meaningful appeal” and that the time limits should be waived due to exceptional circumstances under former staff rule 111.2(f).

46. While the mentioned documents may have added weight to the Applicant’s argument to reclassify, the Tribunal does not accept that the Applicant was prevented from filing an appeal of the 2000 decision simply because the documents had not been provided to the Applicant or because the Applicant was unaware that these documents were in existence. Had the documents been provided and an appeal sought, the Applicant’s appeal may have had a greater chance of success, but the crucial fact remains that the Applicant failed to exercise his right to file an appeal, within the time limits imposed, of the classification decision, of which he was informed. The Respondent’s failure to provide these later-discovered documents did not prevent him from exercising that right.

47. For the foregoing reasons, the Tribunal finds that the discovery of new evidence during the review of the 2006 decision, including the point rating worksheet for the 2000 decision, did not render the 2000 classification review receivable.

Is the appeal receivable with respect to the 2006 decision?

48. ST/AI/1998/9, secs. 5 and 6, provides that reviews of classification decisions should be directed to the appropriate review body, as indicated therein. Turning to the 2006 decision, the Tribunal notes that under ST/AI/1998/9, secs. 5 and 6, the Tribunal is not the appropriate body to review classification decisions.

49. The instant case, however, is not an appeal of a classification decision or an application on the “ground that the classification standards were incorrectly applied” as provided by sec. 5 of ST/AI/1998/9, but rather is one about possible due process violations by the Respondent in the review process and the potential harm caused to the Applicant, if any.

50. For the foregoing reasons, the Tribunal finds that the appeal of the 2006 is receivable.

Did the Respondent properly observe the Applicant's procedural rights when he performed the 2006 desk audit and made the determination not to reclassify the SCU Post?

51. The Tribunal understands that classification advice may be sought from OHRM under ST/AI/1998/9, sec. 1.2. Pursuant to this provision, for classification advice to be properly given, the requesting department must submit a budget request, a job description for new posts and a job description for reclassification of existing posts.

52. The Respondent essentially submits that "classification advice" is of a general nature, with guidelines provided in sec. 1.2 of ST/AI/1998/9 and does not constitute a full classification review. The Tribunal considers the wording of ST/AI/1998/9 not to be fully comprehensive as to on *what* should be evaluated in order to give such classification advice. The Tribunal accepts that there is some discretion as to how information should be evaluated in order for OHRM to be able to give classification advice, e.g. as to which staff members might be interviewed in order to gain information regarding the post in question.

53. Nevertheless, a review of the steps that were taken in 2006 shows that what occurred cannot correctly be defined as mere "classification advice", but that an actual determination was made not to reclassify the post, under ST/AI/1998/9, sec. 2.

54. The record shows that in 2006, following a request for reclassification from the Applicant in January 2006, his supervisor submitted a memorandum with the subject "Revision of Job Description", attaching a chart which compared the 1995 job description with his then duties (see para. 22 above). This memorandum was not a reclassification request in terms of ST/AI/1998/9 as it did not attach an "up-to-date job description" as required by sec. 2.2(a) and an "organizational chart" as required by sec. 2.2(b). The wording of the memorandum further supports this. The

Applicant's supervisor specifically stated that the job description was "out-dated" and included the recommendation as follows:

A chart that listed the duties and responsibilities of the current job description as approved along with the revised duties and responsibilities is provided for ease of reference. Since the only change in the job description is the replacement of the old system PBIS [Programmed Budget Information System] with the new system [BIS], it is therefore recommended that the grade of this post remains at the same P-3 level and the reclassification of the job description at this time is only to ensure up-to-date reflection of duties and responsibilities.

55. The Applicant then, in a memorandum of 24 July 2006 to the Director, PPBD/OPPBA, strongly disagreed with his supervisor's view that there was "no change in the objectives and complexity of work assigned to the post classified as P-3".

56. On 7 August 2006, the Director, PPBD/OPPBA, then wrote a memorandum to the Chief, CSS/HRPS/DOD/OHRM, with the subject "Request for a review of classification of a post". To this memorandum, the Director, PPBD/OPPBA, attached the information as provided by the Applicant's supervisor and the memorandum from the Applicant disagreeing with her analysis and stated:

In line with the provisions of ST/AI/1998/9, I should be grateful for the assistance of your office to review the attached revised job description for the post in question. Also attached herewith is an up-to-date organizational chart of PPBD ... where the placement of the post in question is marked with an asterisk.

57. The Tribunal notes that there is no reference to under *which* specific provisions of ST/AI/1998/9 the assistance of OHRM was being sought, but, given the subject of the memorandum of 7 August 2006 and the attached information, there can be no doubt that this memorandum constituted a request for review of classification of a post under sec 2.2 of ST/AI/1998/9.

58. The Tribunal is of the view that the requirements of sec. 2.2 were not fulfilled, in that the job description had been strongly contested by the Applicant and, as such, cannot be considered to meet the requirement of being “complete and up-to-date”.

59. Accepting that this mistake was made in good faith by the Director, PPBD/OPBPA—and there is no evidence to support the contrary—and given the objections of the Applicant of which OHRM was made fully aware, at that point a revised job description should have been agreed upon. Instead, what occurred was that OHRM went through with a desk audit and determined that the post should not be upgraded.

60. As contended by the Applicant (see para. 39(c) above), the Tribunal in this case has been presented with evidence that a clear breach of procedure occurred. According to the JAB Report No. 1997 (subpara. b in the section “Merits”, at p. 4), on the date the Applicant filed his Statement of Appeal (namely, on 12 February 2007), his job description, dated 1995, had already been in existence for twelve years. While OHRM was provided with a chart comparing his 1995 job description with a new draft of a job description (see para. 22 above), the Tribunal cannot accept that this was a finalised job description. To do so would be to allow a supervisor to change the job description of his or her supervisee without consultation. The Tribunal has no evidence before it to suggest that the chart equates a “complete and up-to-date” job description. Moreover, OHRM was well-informed that the Applicant had raised strong objections to that specific chart and it had been provided with his objections.

61. The Tribunal cannot accept that the Administration then proceeded to make a classification determination when one of the most fundamental requisite documents under ST/AI/1998/9 was lacking. The Tribunal understands that this was not the only information upon which the desk audit was done. However, the Tribunal considers that, by relying on an out-dated, twelve-year old job description when it performed the 2006 desk audit and made its determination, the Administration breached the procedural rights of the Applicant.

62. The Tribunal finds that the Respondent breached the Applicant's procedural rights when he performed the 2006 desk audit and made the classification determination not to reclassify the SCU Post.

Is compensation warranted, since the Tribunal has found that a breach of the Applicant's procedural rights occurred?

63. In light of the Respondent's failure to observe the Applicant's procedural rights when the Respondent performed the 2006 desk audit and gave classification advice not to reclassify the SCU Post, the Tribunal must consider the issue of compensation. The question is whether the breach of the Applicant's procedural rights has caused any harm to the Applicant.

64. The very purpose of compensation is to place the staff member in the same position s/he would have been in, had the Organization complied with its contractual obligations (*Warren* 2010-UNAT-059, *Iannelli* 2010-UNAT-093).

65. The Applicant simply states, without more, that he has suffered harm following the classification advice not to reclassify the SCU Post. The Applicant has not provided any concrete evidence of harm with regard to his career (i.e., that he was not promoted or that he was overlooked for other positions within the Organization) or to his morale, except to state that the harm occurred. No evidence exists that, if the breach had not occurred, a reclassification to the P-4 level would have resulted or, if the reclassification had taken place, that the Applicant would have been promoted to the P-4 level.

66. The rationale and holding of *Sina* 2010-UNAT-094 apply to the Applicant's case. In *Sina*, while the staff member had the right to be informed of administrative decisions affecting him, the few-day lapse in such notification was deemed by the Appeals Tribunal to be "inconsequential" and with "no consequences whatsoever". The Appeals Tribunal further ruled that it "will not approve the award of compensation when absolutely no harm has been suffered".

67. The Tribunal finds that, although a breach of the Applicant's procedural rights under ST/AI/1998/9 occurred, the Applicant has not provided evidence of any harm that he has suffered, and an order of compensation is not warranted in this case.

68. The Tribunal notes that this Judgment is made without prejudice to the Applicant and/or the Respondent taking action to review the post for reclassification on the basis of an up-to-date job description and, if necessary, the Applicant appealing any classification decision, as necessary "on the grounds that the classification standards were incorrectly applied, resulting in the classification of the post at the wrong level" (ST/AI/1998/9, sec. 5) to the appropriate classification review body as provided for by ST/AI/1998/9.

Conclusion

69. The Tribunal finds that the Applicant's appeal with respect to the 2000 decision is not receivable.

70. The Tribunal finds that the discovery of new evidence during the review of the 2006 decision, including the point rating worksheet for the 2000 decision, did not render the 2000 classification review receivable.

71. The Tribunal finds that the appeal of the 2006 is receivable.

72. The Tribunal finds that the Respondent breached the Applicant's procedural rights when he performed the 2006 desk audit and made the determination not to reclassify the SCU Post on the basis of an out-dated job description.

73. The Tribunal finds that, although a breach of the Applicant's procedural rights under ST/AI/1998/9 occurred, the Applicant has not provided evidence of any harm that he has suffered, and an order of compensation is not warranted in this case.

74. The present Judgment is made without prejudice to the Applicant and/or the Respondent taking action to review the post for reclassification on the basis of an up-

to-date job description and, if necessary, the Applicant appealing any decision to the appropriate classification review body as provided for in ST/AI/1998/9.

(Signed)

Judge Marilyn J. Kaman

Dated this 17th day of June 2011

Entered in the Register on this 17th day of June 2011

(Signed)

Santiago Villalpando, Registrar, New York