



Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Abena Kwakye-Berko

PEDICELLI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
Katya Melliush, UNON

Introduction

1. The Applicant is a Meetings Services Assistant at the United Nations Environment Programme's (UNEP) Secretariat of the Convention on Biological Diversity (SCBD).

2. In her Application dated 26 November 2012, amended on 24 September 2013, she is contesting the decision to introduce the Global Classification Standard (GCS) for General Service (GS) positions in Montreal following a renumbering exercise at this duty station. She avers that this resulted in a *de facto* demotion by one level of both the job and the personal level of each incumbent and that there was a failure to ensure due process

3. The Respondent filed a Reply on 28 December 2012 in which it is asserted that the Applicant has misrepresented the facts and that her claims are moot and/or premature, rendering her Application without merit.

4. On 3 June 2014, by Order No. 143 (NBI/2014), the Parties were informed that the Tribunal had decided, in accordance with art. 16.1 of the Tribunal's Rules of Procedure, that an oral hearing was not required in determining this case and that it would rely on the parties' pleadings and written submissions.

Facts

5. The following facts are gleaned from the Parties' written pleadings and submissions.

6. The Applicant joined the Organization in June 1998 at the Secretariat of the Multilateral Fund for the Implementation of the Montreal Protocol at the G6 step 5 level in Montreal.

7. In August 2006, the Applicant was successful in her application for a position in the SCBD at the G-7 level. She joined the SCBD on 29 August 2006.

8. In March 2010, the International Civil Service Commission (ICSC) promulgated a new seven-level job classification standard for GS and related categories within the United Nations Common System organizations.

9. On 10 February 2011, her appointment was converted to a permanent appointment which would have retroactive effect as of 30 June 2009.

10. On 16 March 2012, Joerg Weich, then Chief, Recruitment and Planning Section, HRMS/UNON, was informed by Linda Comeau-Stuart, a Human Resources Officer at the International Civil Aviation Organization (ICAO), that ICAO was moving ahead with the implementation of a new seven-level GS classification standard and the seven-level salary structure on 1 April 2012 and that a renumbering exercise would be conducted to align to the seven-level structure. As per the classification guidelines, the Applicant's post would be renumbered from G-7 to G-6.

11. On 23 March 2012, Suleiman Elmi, then Chief, HRMS/UNON informed all SCBD staff of the introduction of the Global Classification Standard (GCS) for GS positions at the Montreal Duty station explaining that the nine-level GS scale would be renumbered to reflect seven levels and to ensure the Montreal duty station's compliance with the rest of the United Nations system.

12. On 28 March 2012, Michele Rattray-Huish, SCBD's Chief, Financial Resources Management Service, informed all staff that, effective 1 April 2012, all SCBD posts would be renumbered to bring them into harmonization with that of all other United Nations organizations at the seven-level structure.

13. On 20 May 2012, the Applicant wrote to the Secretary-General appealing the decision to renumber her post from G-7 to G-6. She asserted that the renumbering exercise would amount to a downgrade of her post.

14. The present Application was filed on 26 November 2012. The Respondent filed his Reply on 28 December 2012.

15. On 17 January 2013, the Tribunal issued Order No. 015 (NBI/2013) referring the matter for mediation by the Mediation Division in the Office of the

Ombudsman and stayed the proceedings until 28 February 2013 pending the mediation efforts. On 20 February and 30 April 2013, the Director of the Mediation Division with the consent of the parties applied for extension of time for the conduct of the mediation up to 30 April and 30 June 2013 respectively. The requests were granted by the Tribunal.

16. The Parties' attempts at arriving at a settlement through mediation have been unsuccessful.

The Applicant's case

17. The Applicant submitted that she does not challenge the decision of the ICSC to globally implement the 1-7 salary scale for GS staff but that the renumbering of post levels of GS staff members at the SCBD in Montreal lacked due process in the planning and implementation phase.

18. By contrast to the approach SCBD adopted, the ICAO-led renumbering process, applied checks and balances and transition measures to its own staff, provided training opportunities, and correctly, left it to other agencies to determine how they would implement the transition. However, the renumbering exercise with the SCBD staff was led by UNON and not by the UNEP Administration, whereby the required checks and balances were simply omitted.

19. The exercise was not clearly explained and communicated to the affected staff prior to its implementation. The concerned staff as well as the SCBD staff association could have been involved more actively in the preparation and implementation of the exercise. The express implementation of the renumbering exercise without effective communication to the affected staff members and thorough preparation of the exercise constituted a breach of Article VIII, 8.1 (a) of ST/SGB/2011/1 (Staff Rules and Regulations).

20. Prior to 1 April 2012, the GS staff classification system in place at SCBD was already operating on the basis of the global 1 to 7 salary scale. The Applicant submits that she along with other staff members at the SCBD, had already been paid in accordance with the global 1-7 salary scale and that therefore, the generic renumbering of all the affected staff members' post levels ignored the particular

contractual conditions of the individual staff members. A renumbering exercise was not required in the case of staff whose posts were already classified by UNEP/UNON and therefore already on the 1-7 classification scale from the outset. An indication of the *de facto* implemented 1-7 salary scale is the lack of promotion of any staff member at the SCBD to the former G8 levels over the past 14 years.

21. The rule of downgrading each staff member by one level in order to conduct the conversion from the 1-9 salary scale to the global 1-7 level has negative practical effects on her career. One such affect would be to deprive her of possible future entitlements that would only be granted to staff members at the higher level.

22. The generic renumbering exercise constitutes a breach of subsection 2.2 of ST/AI/1998/9. While the word “renumbering” refers to a process of calculation whereby the conventional 9 level salary structure is simply converted to the seven level salary structure, the effect of this process results in a substantial “reclassification” of posts.

23. The proposed SCBD renumbering exercise may affect salary calculations, and result in inconsistencies in job descriptions and revise supervisory reporting lines, carries the elements of a “reclassification” resulting in substantial changes to the duties and responsibilities of staff members. UNON Administration is neither clear nor consistent with its usage of terms where, for example, they talk of a “renumbering” exercise, the SCBD Secretariat uses the term “classification” in the brochure called “New Classification Standards for GS positions” This misuse of terminology has caused confusion among affected staff members and impacts on the legality of the administrative action being undertaken.

24. ST/AI/1998/9 which spells out the mandatory process for post reclassification has not been complied with.

25. This case is not a classification issue, it is about the violation of a permanent contract. A contractual obligation reflected in a letter of appointment may not be unilaterally amended. A reorganization, reclassification exercise or

change in budgetary allocation cannot be used as an excuse to alter a contractual commitment. Her permanent contract was awarded in 2009 and was issued by the United Nations headquarters in New York. There are no conditions attached to the contract. The Personnel Action (PA) form attached to the contract reflects the G7, Step 10 level.

26. Permanent appointments by their nature are not limited to any particular post or assignment. The permanent contract states that there are no exceptions to the appointment at the G7 level step 10. This reflects the fact that the Applicant had an appointment at that level throughout the United Nations system.

27. The Applicant submits that she is not disputing whether the classification process was correct or not or even disputing the classification level of her post. She is merely asking that her contractual right to a level she applied for in the United Nations system be respected. The position of permanent United Nations contract holders is unique in CBD as there are very few with that status. The contracts are not just with CBD but with the United Nations.

28. The Applicant submits that one of the conditions of the permanent appointment is that personal level cannot be changed regardless of the post held.

29. The grade levels at SCBD were already following the rest of the United Nation's seven-level scale even before the new scale was introduced. The simplistic approach of downgrading everyone to implement the new structure was admittedly misguided and had no technical justification. In the event a new classification system with a new structure is applied, all staff have the right to be treated in accordance with respect for their contractual status with appropriate transitional measures.

30. In view of the foregoing, the Applicant prays for the following reliefs:

- a. the Administration not to implement the administrative decision in her particular case by keeping her current level at UNEP/SCBD at the GS-7 step 10 level;

- b. Salary adjustment to reflect the correct remuneration of a UNEP classified G7 step 10; and
- c. Salary adjustment to reflect the correct remuneration of a UNEP classified G7.

The Respondent's case

31. The Respondent submitted that until May 2012, the Montreal duty station was known to have a nine-level GS salary scale with posts numbered from GS-1 to GS-9 as was promulgated regularly by the ICSC in the compendium of salary scales for the GS category of staff. In reality, however, SCBD GS staffs were all employed within the GS-2 to GS-8 levels under the nine-level scale.

32. Pursuant to art. 11(a) of its statute, the ICSC establishes and reviews both headquarters methodology and non-headquarters methodology for surveys of best prevailing conditions of employment of GS and other related categories.

33. In recent years, the ICSC has promulgated a new seven-level job classification standard for GS and related categories within the United Nations Common System organizations thereby providing for the first time a harmonized approach to job classification for GS jobs globally.

34. In March 2010, ICAO, the lead agency at the Montreal duty station, was requested to implement the new seven-level standard and to convert to a seven-level salary structure ("the renumbering exercise").

35. In anticipation of the renumbering exercise, ICAO decided to undergo some internal reorganization which entailed a review of the classification of posts based on the nine scale classification standard. UNON followed the established precedent for the United Nations Secretariat and therefore waited for the conversion to the GCS to be completed to conduct a classification review exercise.

36. ICAO began the renumbering exercise in 2011. In mid-March 2012, ICAO informed UNON/HRMS of 1 April 2012 as the effective date of the alignment of the Montreal duty station to the GCS and to the new job description format.

37. UNON/HRMS proceeded to implement the new GCS for GS posts in Montreal following the lead agency; staff were informed of this by email by Mr. Elmi.

38. UNON/HRMS postponed the implementation of the new numbering system until 1 May 2012 to grant some staff extra time to understand the process but as ICAO had otherwise introduced the new scale from 1 April 2012, it was not considered appropriate for the renumbering to be delayed any longer as there was need to have congruency at the duty station, that is, to avoid the United Nations system having different GS scales operational at the same location for a protracted period of time and also due to the fact that the lead of ICAO and the instructions of the ICSC had to be followed.

39. The result of the renumbering exercise on the Applicant was that her position was renumbered from GS-7 to GS-6. This did not in any way affect her salary or benefits.

40. The Applicant has failed to exhaust alternative remedies. The Applicant refused to sign her P.270-Request for Classification form and as a result, no classification review has been undertaken in respect of her post. In the circumstances, the Applicant should be estopped from pursuing the present case, since she has refused to pursue the remedies available to her prior to approaching the Tribunal. The Applicant's deliberate avoidance of the mechanism in ST/AI/1998/9 (System for classification of posts) which allows for a review of the classification of her post means that she does not, in equity, come before the Tribunal with clean hands.

41. The renumbering of a post is not an appealable administrative decision. The Applicant has not suffered any appreciable alteration in the terms and conditions of her employment such as to generate an appealable administrative decision. The contested decision has no direct legal consequence for the

Applicant. The Applicant's salary and benefits remain as they were prior to the implementation of the decision. The only change for the Applicant is that rather than being called a "G-7", she is called a "G-6" level staff member.

42. The Respondent has a right and an obligation to implement the renumbering exercise. The Respondent is required to implement the decision of the ICSC which in the present case involved the application of the GCS. ICAO has been the lead agency in respect of the salary scales in Montreal for years. It is normal and natural for UNON to follow ICAO's salary scales and there is nothing arbitrary or discriminatory in this.

43. Contrary to her assertions, the Applicant was not demoted.

44. Contrary to the Applicant's contentions that because ICAO conducted a review of the classification of posts prior to the implementation of the seven-level scale her due process rights were violated, the Respondent submits that there is no correlation between the renumbering exercise and a reclassification exercise. That ICAO chose to conduct a review at the same time as implementation of the GCS is irrelevant. The renumbering exercise was not a reclassification exercise and the Applicant's post is correctly classified as GS-6 under the GCS.

45. The Applicant has suffered no loss following the renumbering exercise and there is no injury to compensate.

46. The Applicant's claim lacks merit and is premature. The Management Evaluation Unit noted that the Applicant's complaint was moot when viewed in light of the classification review taking place. If the Applicant contends that her post was wrongly classified at the GS-6 level under the GCS, her recourse in the first instance is to the Classification review process and then to the Classification Appeals Committee under ST/AI/1998/9 not to the Tribunal.

47. The Respondent, in view of these arguments, requests the Tribunal to dismiss the Application.

Legal Issues

48. The legal issues arising for determination in this case are the following:
- a. Is this Application receivable?
 - b. Did the renumbering exercise at the SCBD result in a violation of any of the Applicant's rights?

Considerations

Is this Application receivable?

49. The current Application is challenging the Secretary-General's decision to renumber posts at the Montreal duty station which the Applicant asserts has resulted in a downgrading of her level without a proper classification exercise.

50. It is the Respondent's case that in recent years, the ICSC has promulgated a new seven-level job classification standard for GS and related categories within the United Nations Common System organizations and that the renumbering of a post is not an appealable administrative decision. The Respondent further submitted that he is required to implement the decision of the ICSC which in the present case involved the application of the GCS.

51. Article 2.1(a) of the Statute of the Tribunal (UNDT Statute) provides that the Tribunal shall be competent to hear and pass judgment on an application filed by an individual against the Secretary-General of the United Nations:

To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms "contract" and "terms of appointment" include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged non-compliance.

52. What constitutes an administrative decision depends on the nature of the decision, the legal framework under which the decision was made and the consequences of the decision¹.

53. The ICSC was established by the United Nations General Assembly as an independent expert body. Pursuant to General Assembly resolution 3357 (XXIX) of 18 December 1974, its mandate is to regulate and coordinate the conditions of service of staff in the United Nations common system, while promoting and maintaining high standards in the international civil service.

54. Article 1.1 of the Statute sets out the mandate of the ICSC as follows:

The General Assembly of the United Nations establishes, in accordance with the present statute, an International Civil Service Commission (hereinafter referred to as the Commission) for the regulation and coordination of the conditions of service of the United Nations common system.

55. Pursuant to art. 11(a) of the ICSC Statute, the ICSC shall establish the methods by which the principles for determining conditions of service should be applied.

56. In resolution 67/241 (Administration of Justice at the United Nations), the General Assembly reaffirmed that “the decisions of the International Civil Service Commission are binding on the Secretary-General and on the Organization”.

57. In *Obino*, UNDT/2013/008 (upheld on appeal²), it was held that

Though [the ICSC] may communicate its recommendations on conditions of service to the Secretary-General these will still have to be approved by the General Assembly and it is to the General Assembly that the ICSC is answerable and accountable...

Consequently, the Tribunal cannot impute the decisions of an independent entity, such as the ICSC, to the Secretary-General due to the different roles they play vis-à-vis the United Nations and its staff members.

58. The Secretary-General has not been vested with any discretionary authority with respect to the implementation of ICSC decisions. Since the

¹ *Andati Amwayi*, 2010-UNAT-058.

² *Obino*, 2014-UNAT-405.

Secretary-General has no discretionary authority in this respect, his implementation of the ICSC decision to renumber posts is not an administrative decision under art. 2 of the UNDT Statute.

59. In the present case, the Applicant contends that the implementation of the renumbering of her post will have adverse effects on her rights including her career advancement but she did not place any evidence before the Tribunal to show that the contested decision was taken solely with respect to her or that there are legal consequences arising from the renumbering exercise and adversely affecting her. The Applicant has not suffered any downgrading in her salary and emoluments or in her functions. At best her concerns are speculative. The Applicant has not shown that she has a cause of action in this Application.

Did the renumbering exercise at the SCBD result in a violation of any of the Applicant's rights?

60. Notwithstanding its findings on the issue of receivability, the Tribunal has carefully reviewed the Applicant's contentions in respect to the alleged violations of her rights during the renumbering exercise. The Applicant submitted that had she known at the time of applying for the position that a renumbering exercise would subsequently affect her promotion, that she would not have accepted the appointment and would have taken up an offer to join the United Nations Office in Bonn.

61. The Applicant submitted that at no time was she informed that her recruitment in Montreal would be subject to a transition from a nine-level salary scale to a seven-level classification system nor was she ever alerted of its implication on her career development. The Applicant argues that she has been effectively demoted. The Tribunal finds that the renumbering exercise followed a promulgation, in March 2010, by the ICSC of a new seven-level job classification standard for GS and related categories within the United Nations Common System organizations whereas the Applicant's recruitment took place on 29 August 2006.

62. The Applicant argues that one of the conditions of a permanent appointment is that personal level cannot be changed regardless of the post held but provides no evidence to support this position.

63. The Tribunal finds that the Applicant's appointment to the SCBD in 2006 was a new appointment and that the renumbering exercise is distinct and separate from a reclassification exercise and is not arbitrary. The uncontested evidence before the Tribunal is that the Applicant has refused to sign a P.270 form which is required for a classification review of her post in accordance with ST/AI/1998/9.

64. The Tribunal is of the view that it behoves the Applicant to submit to a classification review of her post in accordance with the relevant Staff Regulations and Rules. This Application is premature, speculative and appears to confuse a renumbering exercise with a classification exercise.

65. This Application does not disclose a cause of action. The reliefs sought by the Applicant which include the non-implementation of the renumbering exercise in her own case and an upward salary adjustment to a UNEP G7 in the absence of a reclassification of her post have no basis or merit.

Conclusion

66. For the reasons already stated above, this Application is not receivable and is accordingly refused.

(Signed)

Judge Nkemdilim Izuako

Dated this 26th day of June 2014

Entered in the Register on this 26th day of June 2014

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi