



Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Abena Kwakye-Berko

CONLON

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 Finance Clerk at the United Nations Environment Programme's (UNEP) Secretariat of the Convention on Biological Diversity (SCBD).

2. In her Application dated 26 November 2012, 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. 145 (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 based on the Parties' written pleadings and submissions.

6. The Applicant joined the SCBD on 23 March 2009 as a Finance Assistant at the G6 step 5 level.

7. 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.

8. 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.

9. 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.

10. 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.

11. On 22 May 2012, the Applicant requested a management evaluation of the decision to renumber her post from GS-6 to GS-5.

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

13. On 17 January 2013, the Tribunal issued Order No. 018 (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 2013 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. The requests were granted by the Tribunal.

14. The Parties' efforts at arriving at a settlement through mediation have been unsuccessful.

The Applicant's case

15. The Applicant made several general submissions regarding the effects of the renumbering exercise. The specific submissions with respect to her own case are summarized below.

16. Due process was denied to the GS staff of the SCBD prior to the application of a new salary scale effective 1 April 2012.

17. The change of the GS salary scale at the Montreal duty station effective 1 April 2012 was the result of the consultative process followed by the lead agency at the Montreal duty station, ICAO.

18. The SCBD and UNON ignored the advance consultative process set out by ICAO yet unilaterally implemented the new salary scale effective 1 April 2012 by renumbering all GS staff down one level in both post and personal level.

19. The renumbering exercise resulted in a *de facto* re-classification which is supported by the individual Personnel Action form she received in May 2012 confirming the lower job grade in breach of ST/AI/1998/9 (System for the classification of posts).

20. The classification exercise is still pending due to delays and significant administrative errors in procedure.

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

- a. Reinstatement of her personal grade to G6 step 8 level;
- b. Her salary adjustment to reflect the correct remuneration of G6 step 8 for the period 1 April 2012 to date;
- c. Compensation for non-pecuniary damages due to the renumbering exercise and other ongoing unresolved contractual issues; and
- d. Her job title to be returned to that of Finance Assistant.

The Respondent's case

22. 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.

23. 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.

24. 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.

25. 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”).

26. 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.

27. 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.

28. 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.

29. 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.

30. The result of the renumbering exercise on the Applicant was that her position was renumbered from GS-6 to GS-5. This did not in any way affect her salary or benefits.

31. 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 (Classification) 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.

32. 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-6", she is called a "G-5" level staff member.

33. 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.

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

35. The Applicant was locally recruited and was therefore graded in accordance with the applicable standard at the duty station in which she resided and was employed.

36. 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-5 under the GCS.

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

38. 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-5 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.

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

Legal Issues

40. The legal issues arising for determination in this case are as follows:

- 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?

41. 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.

42. 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.

43. 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.

44. 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.

45. 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

¹ *Andati Amwayi*, 2010-UNAT-058.

service of staff in the United Nations common system, while promoting and maintaining high standards in the international civil service.

46. 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.

47. 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.

48. 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”.

49. 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.

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

51. 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 mobility and a career advancement but she did not place any evidence before the

²*Obino*, 2014-UNAT-405.

Tribunal to show that the contested decision was taken in a discriminatory manner or that there are legal consequences arising from the decision which affect the terms of her employment. At best her concerns are speculative.

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

52. It is the view of the Tribunal 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 and appears to confuse a renumbering exercise with a classification exercise. It has not been shown or established that any rights of the Applicant were violated as a result of the renumbering exercise.

Conclusion

53. For the reasons already stated above, this Application is not receivable, has no merit 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