UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2022/115
Judgment No.: UNDT/2023/014
Date: 2 March 2023
Original: English

Before: Judge Francesco Buffa.

Registry: Nairobi

Registrar: Abena Kwakye-Berko

BERNARD

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:
Self represented

Counsel for the Respondent:
Camila Fuomene Nkwenti, UNEP

Introduction

1. The Applicant, a Computer Information Systems Assistant at the G-6 level in the Governance Affairs Office ("GAO") of the United Nations Environment Programme ("UNEP"), holding a permanent appointment and based in Nairobi, challenges the Organization's decision in respect of the reclassification of his post.

Procedural History

2. On 17 November 2022, the Applicant filed the application in para. 1 with the United Nations Dispute Tribunal sitting in Nairobi.

3. The Respondent filed his reply on 19 December 2022. The Respondent moves the Tribunal to dismiss the application because the Applicant has not exhausted the internal remedy set out in ST/AI/1998/9 (System of Classification of Posts).

Considerations

4. The Tribunal has carefully reviewed the parties' submissions and determined that it must first consider the question of whether this application is receivable.

5. ST/AI/1998/9 provides as follows:

> 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
>
> 6.1 Appeals shall be submitted in writing to: …
>
> (b) The respective head of office in the case of posts in the General Service and related categories administered by ECA, ECLAC, ESCAP, ESCWA, the United Nations Office at Geneva, the United Nations Office at Nairobi and the United Nations Office at Vienna, up to and

> including posts at the G-7 level, except where the appeal involves a request for reclassification of such a post to the Professional category.
>
> 6.2 Appeals must be accompanied by the job description on the basis of which the post was classified.
>
> 6.3 *Appeals must be submitted within 60 days from the date on which the classification decision is received.*
>
> 6.4 The appeal shall be referred for review to: (b) In the case of appeals submitted to the head of office, the local human resources service or section, which will submit a report with its findings and recommendation for decision by, or on behalf of, the head of office.
>
> 6.5 If the review results in an upgrading of the classification to the level sought by the appellant, the appellant shall be notified in writing of the decision.
>
> 6.6 If it is decided to maintain the original classification or to classify the post at a lower level than that claimed by the appellant, the appeal, together with the report of the reviewing service or section, shall be referred to the appropriate Classification Appeals Committee established in accordance with the provisions of section 7 below.
>
> 6.7 The Secretary of the Appeals Committee shall transmit a copy of the report of the reviewing service or section to the appellant for comments, which must be submitted within a period of three weeks. The appellant's comments will be provided to the Office of Human Resources Management or the human resources service or section concerned, as appropriate, for their observations, which must be submitted within a period of two weeks.

6. It results from the record that on 26 May 2010, the United Nations Office at Nairobi ("UNON") finalized the reclassification process for the G-4 and G-6 positions in line with the procedure in ST/AI/1998/9 and that the Applicant was notified of the negative outcome of the reclassification process only on 8 September 2022.

7. The Applicant has not filed an appeal for the reclassification outcome.

8. Although section 5 uses the word "may," the Respondent argues it is an internal remedy that is available to the Applicant, and one that must be exhausted before the jurisdiction of this Tribunal is triggered.

9. The Tribunal agrees. Where statutory provisions exist to provide internal remedies, it is proper that staff members should exhaust those remedies before resorting to litigation before the Tribunal.

10. The Tribunal is aware that, on 28 September 2022, the Applicant requested a management evaluation ("ME") of the decision, but it notes that ME is not a remedy equivalent to that one provided in section 5 of ST/AI/1998/9, which is specific for the reclassification of the posts and involves different levels and offices of the Organization. As the Management Evaluation Unit ("MEU") already wrote to the Applicant, appeals of classification decisions are governed by ST/AI/1998/9 and for such matters there is a separate internal process, while the MEU lacks the authority to review the matter.

11. In conclusion, the application is not receivable as premature, as the staff member has not exhausted the remedy provided under section 5 cited above by submitting an appeal to the reclassification decision.

Judgment

12. The application is not receivable as premature.

(Signed)
Judge Francesco Buffa
Dated this 2nd day of March 2023

Entered in the Register on this 2nd day of March 2023

(Signed)
Eric Muli, Legal Officer, for
Abena Kwakye-Berko, Registrar, Nairobi