



Before: Judge Sun Xiangzhuang

Registry: Geneva

Registrar: René M. Vargas M.

ARGYROU

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Fatuma Mninde-Silungwe, AS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant, a former Procurement Assistant at the GS-6 level with the United Nations Peacekeeping Force in Cyprus (“UNFICYP” or “the Mission”), contests:
 - a. The failure of the Administration to provide him with a copy of the notice of the 2020 classification results of the post he encumbered; and
 - b. The advertisement of the job opening of his upgraded position only after he separated from service.
2. He further requests the right to payment at the proper rate for the job he was performing and that was upgraded to the GS-7 level.
3. For the reasons set forth below, the Tribunal finds the application not receivable.

Facts and procedural background

4. In October 2017, the then-Chief Procurement Officer (“CPO”), UNFICYP, upon request from the Chief of Mission Support (“CMS”), UNFICYP, initiated the process to review and reclassify from GS-6 to GS-7 the post that the Applicant encumbered.
5. On 27 May 2020, the Mission received notice from the Office of Human Resources (“OHR”), Department of Management Strategy, Policy and Compliance (“DMSPC”), that the post the Applicant encumbered was classifiable as a Senior Procurement Assistant at the GS-7 level (“the reclassified post”).
6. By email dated 4 June 2020, the then CPO, UNFICYP, informed the Applicant that the post he encumbered had been reclassified to “Senior Procurement Assistant” at the GS-7 level, and that she would keep him posted on the way forward.

7. Between 24 May 2021 and 22 June 2021, the reclassified post was advertised in Inspira under Job Opening 137081 (“JO 137081”).
8. On 23 November 2022, the Applicant separated from service on medical grounds.
9. On 29 June 2023, the reclassified post was again advertised in Inspira under Job Opening No. 209051 (“JO 209051”).
10. On 3 August 2023, the Applicant requested management evaluation of the decisions referred to in para. 1 above.
11. The Management Evaluation Unit (“MEU”) determined on 5 September 2023 that the request was not receivable.
12. On 27 October 2023, the Applicant filed an application contesting the decisions referred to in para. 1 above.
13. On 31 October 2023, the application was served on the Respondent, who, in turn, filed a motion for summary judgment on 17 November 2023.
14. By Order No. 161 (GVA/2023) of 22 November 2023, the Tribunal instructed the Applicant to file his comments on the Respondent’s motion for summary judgment, which he did on 30 November 2023.

Consideration

Legal Framework for Summary Judgments

15. Art. 9 of the Tribunal’s Rules of Procedure provides:

A party may move for summary judgement when there is no dispute as to the material facts of the case and a party is entitled to judgement as a matter of law. The Dispute Tribunal may determine, on its own initiative, that summary judgement is appropriate.

16. Pursuant to the provision above and to established jurisprudence, the Dispute Tribunal can choose to issue a summary judgment without taking any argument or evidence from the parties as the Tribunal's Statute prevents it from receiving a case that is not receivable (see *Faust* 2016-UNAT-695, para. 23).

17. Likewise, art. 19 of the Tribunal's Rules of Procedure provides that it may issue any order or direction that is appropriate for the fair and expeditious disposal of the case. In addition, as established in *Ngoma-Mabiala* 2013-UNAT-361, such provision allows the Tribunal to deal with issues of receivability as a preliminary matter in the interest of judicial economy.

18. Therefore, the Tribunal can examine and rule upon the matter of receivability as a preliminary matter through a summary judgment in the interest of fairness and judicial economy.

Whether the application is receivable

19. The Respondent claims that the application is not receivable on two grounds:

- a. The Applicant did not appeal the classification outcome within 60 days, as required by sec. 6.3 of ST/AI/1998/9 (System for the classification of posts); and
- b. The Applicant filed his application more than three years after he received the reclassification decision of the post he encumbered.

20. The Tribunal disagrees with the Respondent's argument that the application is not receivable *ratione materiae* because the Applicant failed to appeal the classification outcome within 60 days from the date on which he received the classification decision.

21. ST/AI/1998/9 provides the following in its relevant parts:

- 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

Appeals 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 appellant, the appeal, together with the report of the classification of the post at the wrong level.

...

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

22. From its consideration of the record, the Tribunal finds that the Applicant is not seeking to challenge, or ever sought to challenge, the outcome of the reclassification exercise.

23. The Applicant's issue is with the alleged Administration's non-compliance with the latter part of sec. 2.4 of ST/AI/1998/9, by which he should have received a copy of the classification results.

24. Considering the foregoing, the Tribunal does not see any lawful reason to entertain the idea that the Applicant should have sought recourse at the Classification Appeals Committee, pursuant to secs. 5 and 6 of ST/AI/1998/9, as the Respondent alleges.

25. However, the Tribunal finds that the application is not receivable *ratione materiae* but under a different ground.

26. In his application, the Applicant indicated the date of the contested decision as "unknown", and identified it as the failure of the Administration to provide him with a copy of the notice of the classification results pursuant to sec. 2.4 of ST/AI/1998/9.

27. He also argued that the above failure prevented him from exercising “the rights that would flow from a formal, official, written notification”, and “the right to request payment at the proper rate for the job [he] was performing” in light of the reclassification of the post to the GS-7 level.

28. Furthermore, the Applicant complained that the advertisement of the reclassified post only happened after he separated from service.

29. The Tribunal notes that subject of the Applicant’s challenges/complaints does not derive from one clear administrative decision. The first challenge is addressed to an alleged failure by the Administration to fully comply with sec. 2.4 ST/AI/1998/9. The second one is based on the Applicant’s apparent assumption that he should have been upgraded/promoted to GS-7 level after the upward reclassification of the post he was encumbering.

30. In light of the foregoing, the Tribunal will interpret the application as a whole to exactly determine the starting point of the Applicant’s deadlines to seek judicial recourse, and to address his challenges.

31. As stated above, the Applicant alleges that, in accordance with sec. 2.4 of ST/AI/1998/9, he should have been provided with a copy of the notice of the classification results, including the final ratings and/or comments on the basis of which the decision was taken.

32. From the evidence on record, it appears that, indeed, the Applicant was not provided with a copy of the classification results. However, he was informed of its outcome by email on 4 June 2020.

33. Under the jurisprudence of implied administrative decisions, it is well established that the date of a contested implied administrative decision must be determined as that on which a staff member knew or reasonably should have known about it (see *Awan* 2015-UNAT-588, para. 19; *Bernadel* 2011-UNAT-180, para. 24; *Chahrouf* 2014-UNAT-406, para. 31).

34. In this case, it is reasonable to conclude that, at the earliest, the Applicant knew that the Administration had failed to fully comply with sec. 2.4 of ST/AI/1998/9 when he first found out about the classification results on 4 June 2020.

35. If the Tribunal were to be more benevolent by accepting that the date at which the Applicant knew of the “implied contested decision” was the date that the post he encumbered was announced at the GS-7 level, that would have been on 24 May 2021, when the reclassified post was advertised in Inspira, as per the Applicant’s own admission below (emphasis added):¹

9. [...] Why the job opening of my reclassified post wasn’t advertised at the same time, as it was done with the other reclassified Procurement post, as explained above? **What was the reason of the inordinate delay (one year) to advertise the job opening of my reclassified post?** What was the reason of the difference in treatment with the above case?

10. Additionally, **the job opening of my reclassified post was advertised on Inspira**, without the issuance of a Mission’s circular, as per the standard practice, as explained in paragraph 8. Why the Mission’s Management didn’t follow its own standard practice to issue a Mission’s circular, regarding the job opening advertisement of my reclassified post? Please note that, I used to check my incoming emails daily therefore, had the Mission’s Management issued a circular, regarding the said job opening advertisement, as per the standard practice, I would have seen it and would have applied for it. I was waiting for a number of years (since 16 October 2017) for my post to be reclassified upwards and then to be advertised through a Mission’s circular, as per the standard practice, so that I could apply for it and compete for promotion. The Mission’s Management, on top of its failure to provide me with a copy of the notice of the classification results and of my supervisor’s failure to fulfil her commitment to keep me posted on the way forward, it also failed to issue a circular for the said job opening advertisement, as per the standard practice. Following the sequence of the Mission’s Management procedural errors, which are inter-related, it is clear that, the Mission’s Management acted in a malicious manner in its effort to ensure that I would not see the advertisement of the job opening of my reclassified post.

¹ See annex to the application titled “Section VII – Document A – Summary of the facts of the case or facts relied upon”.

[...]

12. As outlined in the MEU's response dated 5 September 2023, the referenced job opening number of my reclassified post was [JO 137081] and it was advertised on Inspira from 24 May 2021 to 22 June 2021. [...]

36. Pursuant to staff rule 11.2(a) and (c), in order to seek judicial recourse against the Administration's alleged failure to provide him with a copy of the classification results, the Applicant should have sought management evaluation within 60 calendar days counted from either 4 June 2020 or 24 May 2021, namely by either 3 August 2020 or 23 July 2021. He did so only on 3 August 2023, evidently much later after the deadline to seek management evaluation expired in either case.

37. Therefore, the Applicant fails to meet one of the mandatory requirements under arts. 8.1(c) and 8.1(d)(i) of the Dispute Tribunal's Statute to access its jurisdiction, which is the submission of a timely request for management evaluation.

38. In the interest of clarity, the Tribunal highlights that even if the application were found receivable, it would also fail in its merits.

39. First, the Tribunal is not persuaded by the Applicant's argument that by not receiving a copy of the classification results, he was prevented from exercising rights "that would flow from a formal, official, written notification". The Applicant does not specify such "rights". If he refers to judicial review rights, the Tribunal's above finding with respect to the deadline to request management evaluation shows that the Applicant was able to exercise them but failed to do so within the statutory deadlines.

40. Second, the Applicant did not demonstrate any interest in appealing the outcome of the reclassification exercise. On the contrary, his interest clearly lies in the results being upheld and in him being promoted following the upward reclassification of the post. Therefore, even if the Tribunal were to accept that not receiving a copy of the classification results prevented the Applicant from appealing

its outcome, that bears no impact in the actual issue under challenge, which is seeking full compliance with sec. 2.4 of ST/AI/1998/9.

41. Third, it is worth noting that once a reclassification exercise is complete and a post is upgraded, the staff member encumbering said post does not have a right to be automatically promoted.

42. As per sec. 4 of ST/AI/1998/9:

4.3 Staff members whose posts are classified at a level above their current personal grade level in the same category may be considered for promotion in accordance with established procedures, including issuance of a vacancy announcement, where applicable.

43. Following the advertisement of an upgraded post all interested candidates, including the incumbent of the post at stake, are given full and fair consideration. The record leads to conclude that the Applicant did not apply for the position when it was advertised in 2021. Indeed, the 5 September 2023 response to the Applicant's request for management evaluation informed him that "[i]t appears that you did not apply for [JO 137081]". The Applicant did not challenge this statement.

44. Accordingly, the Applicant's request for "payment at the proper rate" is baseless.

Conclusion

45. In view of the foregoing, the Tribunal DECIDES to dismiss the application as not receivable *ratione materiae*.

(Signed)

Judge Sun Xiangzhuang

Dated this 7th day of August 2024

Entered in the Register on this 7th day of August 2024

(Signed)

René M. Vargas M., Registrar, Geneva