

## **NINETY-FIRST SESSION**

***In re Trambelland***

**Judgment No. 2076**

The Administrative Tribunal,

Considering the complaint filed by Mr François Trambelland against the World Health Organization (WHO) on 9 November 2000, the WHO's reply of 9 February 2001, the complainant's rejoinder of 8 March and the Organization's surrejoinder of 19 April 2001;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, which neither party has applied for;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant, who was born in 1953 and holds French and Swiss nationality, entered the service of the WHO on 1 March 1984. He was promoted to grade G.4 as from 1 February 1989 as a clerk in the Records Management Section (hereinafter the "Registry") within the Division of Conference and General Services. Up to 1996 he was mainly responsible for sorting correspondence and maintaining files.

From January 1996 the work of the Registry was reorganised. A computerised system of records management was introduced. Thereafter, the nature of his duties changed. A generic post description for several posts in the Registry was finalised in 1999. In October 1999 the complainant's post of clerk was reclassified from grade G.4 to G.5 and he was promoted to G.5 with effect from 1 October 1999.

On 18 November the complainant wrote a memorandum to the chief of the Registry asking for the effective date of his promotion to be changed to 1 January 1996. In the absence of a reply the complainant appealed to the Headquarters Board of Appeal on 17 December 1999 against the effective date for the reclassification of his post and hence of his promotion, arguing that he had assumed new duties as from 1 January 1996. In a rejoinder, submitted to the Board in March 2000, he claimed either a change of the effective date to 1 January 1996 - or compensation for undue delay of an amount equal to the difference in salary and benefits that he would have received had he held grade G.5 from that date.

In its report of 15 May 2000 the Board took note of the fact that at a unit meeting of the Communications, Records and Conference Services (CRC) on 27 June 1995 it had been decided that post descriptions for staff in the Registry would be drawn up twelve months after the new systems were put in place, but that had not happened in the expected timescale. The Board found that the earliest date at which the Administration could have drawn up a new post description was January 1997 and, consequently, an outcome from the reclassification process could have been expected by September 1997. Moreover, the delay had occurred through no fault of the complainant and compensation was therefore due to him. It recommended: paying him a sum equivalent to the difference between his actual earnings for the period from 1 September 1997 to 30 September 1999 and the amount he would have received had he been promoted to grade G.5 on 1 September 1997; placing him forthwith on the salary step he would have reached had his promotion occurred at that date; and reimbursing his legal costs for the internal appeal procedure, up to a limit of 2,500 Swiss francs, on submission of bills.

In a letter of 15 August 2000, the impugned decision, the Director-General partially endorsed the Board's recommendations. She agreed with the Board's recommendation regarding compensation, but did not concur with the Board's proposal regarding his step. She agreed to the reimbursement of legal costs up to an amount of

2,500 francs provided that the complainant produced bills and had no insurance coverage for legal fees.

The complainant was paid compensation in the sum of 14,230 francs. In a letter of 3 April 2001 the complainant was informed that the Director-General had decided to bring forward the effective date of the reclassification of his post to 1 September 1997 and that consequently his promotion would take effect from that date.

B. The complainant has two pleas. First, his promotion should have taken effect from the date he was assigned new duties: that is on 1 January 1996. He draws special attention to a document listing his duties which he appended to each of his performance appraisals for 1996-98 and 1998-99: both documents were headed "New duties performed since 1<sup>st</sup> January 1996" and at no stage did his supervisors contest their accuracy.

There was unreasonable delay on the part of the Organization in processing the new post description despite his requests. In fact, his initial requests to the Administration went unanswered. He seeks redress because the classification review of his post was unduly delayed. As was pointed out by the Board of Appeal, the delay in finalising a revised post description was not of his making. Citing the case law he contends that when reclassification has been delayed and the staff member cannot be held responsible, it should be put into effect from the date on which the official took up his duties.

Second, the Organization failed to respect substantive principles regarding the grading of posts. It did not adhere to Manual paragraph II.1.210 which indicates that if a staff member is assigned new duties not included in his post description, for a period of more than ninety days, a "new post description should be established and a classification review undertaken ... to determine the grade of the post ...". It was known at the outset that the change in his functions was to be permanent and his supervisors should have paid heed to the terms of that paragraph; but action was only taken some three and a half years later. He argues that he was one of a group of staff members performing identical duties but holding different grades, ranging from grade G.4 to G.6. In allowing that situation the Organization failed to comply with the principle of "equal pay for work of equal value", as provided for in Manual paragraph II.1.30.1.

He sees inconsistency in the impugned decision, in that the Director-General allowed compensation but refused to grant him the step adjustment. In the amount of compensation paid to him the Organization took account of the fact that he would have attained step 11 in grade G.5 on 1 September 1998. But because he was denied the step, his salary was set at step 10 in G.5 on 1 October 1999. Besides which, no reasons were given for refusing the increment. He deems it improper for the WHO to refuse to reimburse his legal fees on the grounds that they may be covered by an insurance policy. The Organization is seeking to benefit from a policy to which it has not contributed.

The complainant seeks the quashing of the impugned decision. He wants the effective date of his promotion changed to 1 January 1996 and accordingly requests payment of all entitlements due since that date (less the sum that he has already been paid). He claims interest on all arrears. In addition, he claims 6,000 Swiss francs in costs to cover the proceedings before the Board of Appeal and the Tribunal.

C. The Organization replies that payment of compensation afforded the complainant adequate redress, and he has suffered no loss. No deductions were made for health insurance and pension fund contributions and so he in fact received more in monetary terms than he would have obtained if he had been promoted from 1 September 1997. In his internal appeal the complainant sought a change in the date of the reclassification of his post - or compensation; he had therefore in principle accepted that he could be paid compensation. The outstanding issue is to determine from what date.

The complainant misinterprets Manual paragraph II.1.210. The latter simply requires that if the period of assignment of new duties exceeds ninety days a new post description should be established and a reclassification process undertaken; it does not define a time limit. It would not have been possible on 1 January 1996 to determine what functions staff in the Registry were going to be performing. The complainant's duties were not fixed at that date - they were expected to evolve. Besides, he ignores the amount of time needed for undertaking a classification review. No rule requires that such a review should take place on the date when the duties start changing. His case cannot be seen in isolation. Efforts had to be made to finalise the reclassification process for all staff members affected by the reorganisation of the section and it took longer than initially anticipated. Only part of the automated system was in operation at 1 January 1996. It was only in early 1997 that the system was fully operational.

The WHO sees no justification for paying the complainant interest. The award he received represented compensation - it did not constitute overdue monthly payments. As for his claim to legal fees in the context of his internal appeal, he merely had to confirm that he would not be reimbursed twice for the same costs. Otherwise it would lead to unjust enrichment on his part. The Organization has not yet received such confirmation from the complainant.

D. In his rejoinder the complainant states that if staff suffer loss when the Organization is instituting wide-scale changes it is the Organization that should bear the consequences. Although it is true that he proposed compensation as a means of redress in his submissions to the Board of Appeal, its recommendation fell short of what he had requested and the Organization sought to "whittle" the amount down further. That is why he reasserts his initial claim to promotion from 1 January 1996.

He maintains his claims for redress including his claim to interest. Certain colleagues were performing the same tasks as him from 1 January 1996 and were already on grade G.5, but he had to "wait years" before his right to equal treatment was recognised and so the redress paid to him should include interest to compensate for the delay. As regards legal fees for the internal appeal procedure, he says a letter was sent to the defendant Organization on 16 February 2001 confirming that he had not received any payment from an insurer.

E. In its surrejoinder the Organization states that after the filing of its reply the Director-General had exceptionally decided to make the complainant's promotion retroactive to 1 September 1997. That decision was notified to the complainant in a letter of 3 April 2001. The complainant's claim that the payment of compensation did not form adequate relief is therefore no longer of relevance and the only remaining issue is the date at which his promotion should take effect. It holds that 1 September 1997 was the proper date because it was the earliest possible date by which the classification review could have been completed. The complainant's staff reports do not provide evidence that the duties of his post were settled as from 1 January 1996; his claims on that score have no legal basis. Furthermore, there was no breach of equal treatment because the complainant was treated in the same way as colleagues in the Registry who were in the same position in law and in fact.

The Organization points out that the issues regarding legal fees are no longer relevant since the complainant received reimbursement for costs up to 2,500 francs in accordance with the Director-General's decision of 15 August 2000.

## CONSIDERATIONS

1. The complainant has served the WHO since 1 March 1984. In 1989 he was assigned to the Records Management Section (the "Registry") in the Division of Conference and General Services. Following far-reaching structural changes in that Division, including computerisation as from 1 January 1996, the complainant's duties at grade G.4 were modified. He asked the WHO several times to change his job description and upgrade his post to G.5, but not until 20 October 1999 did he receive a copy of a memorandum, dated 12 October, notifying the reclassification of his post to G.5 as from 1 October 1999. In response the complainant asked the chief of the Registry in a memorandum of 18 November 1999 to change the effective date of his reclassification to 1 January 1996. Having got no reply he appealed to the Headquarters Board of Appeal.

2. The Board met on 19 April and 5 May 2000 to hear his appeal. It noted that the reclassification process had been slow, particularly between January 1997 and July 1998, and concluded that a new post description should have been prepared and submitted for classification as from January 1997, and that September 1997 would have been a reasonable deadline for a decision. It found that the complainant had done "all that could be reasonably expected of him to comply with the WHO's rules on annual performance reports and the description and regrading of his post" and that, in view of serious breaches of the rules for which the Organization alone was to blame, he was entitled to compensation in an amount equal to the difference between his earnings for the period from 1 September 1997 to 30 September 1999 and the amount he would have received had he been promoted to G.5 as from 1 September 1997. The Board also recommended giving him forthwith the within-grade step he would have reached had he been promoted to G.5 on 1 September 1997, and repaying his lawyer's fees up to an amount of 2,500 Swiss francs on submission of the bills.

3. The Director-General took her decision on 15 August 2000: "in the light of all the evidence and particularly the

delay in processing the request for post reclassification", she endorsed the Board's recommendation to pay the complainant compensation and reimburse his legal fees. She refused, however, to grant him the within-grade step he would have reached had he been upgraded as from 1 September 1997 - in other words to rebuild his career with retroactive effect.

4. Dissatisfied with that decision, the complainant has come to the Tribunal pleading inadequate redress. In his submission he is entitled to promotion with retroactive effect and not simply compensation equal to the difference between the amount he ought to have been paid at grade G.5 and what he was actually paid up to 1 October 1999; furthermore, the promotion should have taken effect as from 1 January 1996. He seeks interest on the amounts due from the Organization and challenges the conditions set by the WHO for cover of his legal fees relating to the internal appeal procedure.

5. Since the complaint was filed, the WHO has reconsidered its denial of promotion with retroactive effect. A letter of 3 April 2001 informed the complainant of the Director-General's decision to make 1 September 1997 the effective date of the reclassification of his post and hence of his promotion to grade G.5. The requisite administrative steps were to be taken as soon as possible to make the necessary retroactive adjustments, in particular to his contributions to the pension fund and sickness insurance scheme.

6. That decision has partly devoided the complainant's main claims of any purpose. However, they still show a cause of action insofar as the decision grants him promotion as from 1 September 1997 whereas in his submission, his reclassification should have taken effect as from 1 January 1996 and so too should his promotion to G.5.

7. In support of his plea that the Organization is wrong to persist in denying him promotion with retroactive effect, the complainant seeks to show that the duties he has actually performed since 1 January 1996 are those of a grade G.5 official. He cites a document appended to each of his performance appraisals for 1996-98 and 1998-99 listing, inter alia, the additional duties he says he performed during those reporting periods. He points out that his supervisors did not dispute the accuracy of those documents and gave him excellent performance appraisals. Furthermore, although both parties recognised the need to revise his post description, the Organization bore sole responsibility for the delay in processing his request which, he says, constituted a breach of Manual paragraph II.1.30 setting rules for post classification, and Manual paragraph II.1.210 which says:

"A staff member may be assigned new duties not included in the post description on a full-time basis for a temporary period not exceeding 90 days. If the period exceeds 90 days, a new post description should be established and a classification review undertaken ... to determine the grade of the post."

8. The Headquarters Board of Appeal found that there was an inordinate delay in processing the complainant's request for upgrading, but that the Organization was right, before drawing up new job descriptions, to wait for the situation to settle down following the structural changes and the resulting difficulties: the installation of a new computer system, a changing situation and the evolving nature of staff duties. The Tribunal endorses that opinion and, in the light of all the material circumstances, sees no reason to question the Board's conclusion that the Administration should have been in a position to prepare a new job description as from January 1997 and to take the necessary decisions by September 1997 at the latest. The complainant was entitled to claim reclassification under Manual paragraph II.1.210, more than ninety days having elapsed since his duties changed on 1 January 1996. However, that rule on its own lays no obligation on the Administration to prepare a new post description immediately, as the WHO observes. It must, nonetheless, do so within a reasonable period. Although it did not, the measures it eventually took on the basis of the Board's recommendation afforded the complainant redress for the injustice done.

9. In the light of the most recent decision, which benefited him, the complainant has failed to prove that the WHO treated him differently from his colleagues or showed any animosity towards him.

10. The complainant claims interest on the amounts the Organization owes him. The WHO agreed to promote him to G.5 with retroactive effect to 1 September 1997, and even if it qualified that decision as exceptional in its surrejoinder, it should have paid him each month from that date the salary and entitlements corresponding to grade G.5. He is therefore entitled to interest, which the Tribunal sets at 8 per cent a year on those monthly earnings from each due date as from 1 September 1997.

11. Lastly, the complainant asked the Appeals Board to award him 2,500 Swiss francs to cover his legal fees during

the internal procedure. The WHO states that it has paid him that amount. That being so, his claim no longer shows a cause of action.

12. The complainant is entitled to costs, which the Tribunal sets at 5,000 francs.

## DECISION

For the above reasons,

1. There is no need to rule on the complainant's claim to the quashing of the Director-General's decision insofar as it did not grant him promotion with retroactive effect, or on his claim to payment of the costs incurred in the internal procedure.
2. The impugned decision is set aside insofar as it refuses to pay the complainant interest on the amounts due to him.
3. The amounts that the WHO shall pay the complainant in implementing the Director-General's decision of 3 April 2001 promoting him to grade G.5 as from 1 September 1997 shall bear interest at 8 per cent a year as from their monthly due dates.
4. The WHO shall pay the complainant 5,000 Swiss francs in costs.
5. His other claims are dismissed.

In witness of this judgment, adopted on 9 May 2001, Mr Michel Gentot, President of the Tribunal, Mr Seydou Ba, Judge, and Mrs Hildegard Rondón de Sansó, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 12 July 2001.

*(Signed)*

Michel Gentot

Seydou Ba

Hildegard Rondón de Sansó

Catherine Comtet