

NINETY-SECOND SESSION

In re Fons Fleming

Judgment No. 2085

The Administrative Tribunal,

Considering the complaint filed by Mr Joseph John Fons Fleming against the Organisation for the Prevention of Chemical Weapons (OPCW) on 22 May 2001 and corrected on 5 June, the OPCW's reply of 11 July, the complainant's rejoinder of 10 August, and the Organisation's surrejoinder of 5 September 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, a Spanish and American national born in 1970, joined the OPCW on 29 June 1997. He was engaged as a communications clerk on a fixed-term appointment at grade GS-4 in the Operations and Planning Branch of the Inspectorate Division. On 14 December 1999 the Head of Staff Administration informed him of a correction to the entry level grade of his post to GS-5, retroactive from his entry on duty with the Organisation.

Shortly after joining the Operations and Planning Branch in 1997, the complainant was asked to perform different duties from those of a communications clerk. These duties were to come under the supervision of the Mission Planning Coordinators (MPC) and included designing, developing and maintaining several operational databases, as well as producing reports and statistical information for the Organisation.

An organisation-wide classification review of posts began towards the end of 1997. This review was the subject matter of Judgment 1987 (*in re* Dunseth and Mattmann) delivered on 12 July 2000, in which the complainant was an intervenor. A job description with the complainant's revised duties, which was different from the job description of a communications clerk, was completed for that review; it was signed by the complainant, certified by the Head of the Branch, and approved by the Director of the Inspectorate Division. The classification review results were announced by the Director-General on 6 August 1998; the complainant's post was graded GS-5. However, it was not until the results of the review were implemented in mid-2000, following the Tribunal's decision in Judgment 1987, that appeals against the results could be made to the Classification Review Committee. The complainant appealed to the Committee on 25 October, asserting, *inter alia*, that the wrong job description had been used to classify his post.

On 4 December 2000 the Director-General informed the complainant through the Director of the Inspectorate Division that, on the basis of the findings and recommendations of the Classification Review Committee, he was maintaining the complainant's post at grade GS-5. The Committee's report to the Director-General on the complainant's case was dated 31 January 2001. On 1 February the complainant asked the Director-General to review the decision not to upgrade his post, and after having received a copy of the Committee's report on 2 February, the complainant reiterated his request on 6 February. On 1 March the Director-General informed the complainant that he was maintaining his decision. The Director-General confirmed to the complainant on 23 March 2001 that all internal means of redress had been exhausted and the complainant now impugns the Director-General's decision of 1 March.

B. The complainant contests the Director-General's decision to maintain his post at grade GS-5; he submits that this decision is based on a mistake of fact. He also contests his job title, arguing that the title has a direct relationship with the job classification review and job grade.

Interim Staff Regulation 2.1, in force during the 1998 classification review, stated that the Director-General "shall make appropriate provision for the classification of posts according to the nature of the duties and responsibilities

required". The complainant's post was classified according to the duties and responsibilities of those of a communications clerk. However, he says, at the time of the review his duties and responsibilities had changed and he had submitted a different job description from that of a communications clerk. The classifier failed to notice the differences between the complainant's duties and those of the other communications clerks, which resulted in an incorrect classification of his post.

He appealed against the classification to the Classification Review Committee, on the grounds "that the job description [he] submitted had not been used" to classify his post; he also stated that his supervisors felt that the duties he performed were of a P-2 level. However, the Committee gave no rationale for its recommendation to maintain his post at grade GS-5 in the report submitted to the Director-General on 31 January 2001. It did not produce a rating sheet either, which, according to the complainant, is a necessary element in the classification of a post. Therefore, the Committee merely reviewed the classification done by the original classifier and thus committed an error. The complainant requested access to the job descriptions and rating sheets used in the original classification review, but this was denied by the Human Resources Branch. He explains these documents were to prove that the classification of his post was based on the wrong information.

He asserts that the classification rating sheet did not correctly reflect the duties and responsibilities of his post and he provides his own analysis of what should have been the rating of certain factors. Since his post was not classified on the basis of the correct job description, he submits that his salary and career were damaged.

He requests the Tribunal to order that his post be upgraded to GS-7 retroactive to 1 January 1999, or, if it finds that his duties reflect a "professional level" then he asks that his post be upgraded to P-2. He also requests that his job title be changed "to properly reflect the database administration duties he is tasked to perform".

C. In its reply the OPCW submits that the Director-General's decision was consistent with the complainant's terms of employment and all applicable regulations, rules and directives. Citing the Tribunal's case law establishing the grounds for judicial review of a discretionary decision, it contends that none of those grounds exists here.

There was no mistake of fact in classifying the complainant's post together with those of other communications clerks who were under the same rubric ("Communications, Logistics and Movement Clerk"). Classification is carried out with reference to an established post: the fact that the complainant and his supervisors agreed that he would undertake new duties does not mean that a new post had been created. Indeed, the request for a new post had been denied and therefore the complainant has always occupied the same post for which he was hired. In any event, had the request for a post at the P-2 level been approved, the complainant would not have had an automatic right to it. A new vacancy notice for all staff members would have been necessary.

The OPCW concedes that changes have been made to the complainant's original job description, but asserts that this represents "a perfectly normal administrative process that is applicable to all posts, and that continues to this day". It is standard recruitment practice that a vacancy notice contain only a summary of the functions of a post followed by a detailed job description when a candidate is appointed. Furthermore, that job description is subject to change in the light of the Organisation's needs. The important question is not whether there were changes made to the complainant's job description, but "whether the changes entailed such a transformation of the functions of the post as to have resulted in a totally different job assignment". This was not the case. The duties assigned to the complainant were an elaboration of the functions contained in the vacancy notice for a communications clerk.

The complainant has not carried his burden of proof. He has alleged that the Classification Review Committee did not support its recommendation, but he has not shown any irregularity in the classification process itself. The Committee's report to the Director-General was submitted in accordance with the provisions of Administrative Directive AD/ADM/2. His "self-classification" is inadmissible: staff members are not entitled to conduct their own job classifications. The complainant has not demonstrated any flaw on which the Tribunal could base a judicial review of a discretionary decision.

D. In his rejoinder the complainant seeks to refute the defendant's pleas. He points out that not all posts under the rubric "Communications, Logistics and Movement Clerk" were classified together. The posts of movement clerk were classified at the GS-4 level because a different job description had been submitted for those posts, just as different ones had been submitted for the posts of communications clerk and those of logistics clerk. The complainant had likewise submitted a job description for his post, but it was not evaluated by the classifier.

His supervisor stated in the job description submitted for the 1998 classification review that "the duties [the complainant] is [now] tasked to perform ... bear no relationship to the duties he was hired to perform". Not only are his duties different, but so is his supervisor: the communications clerks are under the supervision of the Communications Officer in the Communications unit, whereas he is under the supervision of the Senior Mission Planning Coordinator in the Mission Planning unit.

The Classification Review Committee only provided an argument as to why the post was not at the "professional level". It did not provide an explanation in its report as to why the complainant's post was maintained at GS-5, nor did it justify the classification rating.

E. In its surrejoinder the Organisation contends that the staff regulations and rules do not provide for the classification of job descriptions without reference to posts. The "new post" that the complainant claims to occupy does not exist, but nevertheless his current post was correctly classified based upon the job description reflecting his duties and responsibilities. As for the complainant's criticisms of the Committee's report, the Organisation considers that the report speaks for itself. The Committee gave an account of the various issues examined in reviewing the complainant's job description, and found no grounds to recommend a change in the original classification of the post. The only post at issue in the classification appeal was the one for which the complainant was originally appointed.

CONSIDERATIONS

1. The complainant was first employed by the Organisation as a communications clerk at grade GS-4 on a fixed-term appointment for three years from 29 June 1997. This was later extended for a further three years from 29 June 2000.
2. A classification review for the whole Organisation began towards the end of 1997. The results of the job classification review were announced on 6 August 1998. The posts of communications clerk were graded GS-5.
3. Following Judgment 1987 (*in re* Dunseth and Mattmann) delivered on 12 July 2000, confirming the authority of the Director-General to reclassify posts, the staff were informed that appeals against the decision of 6 August 1998 could be submitted by the incumbent of the post in writing to the Director-General, who would submit them to the Classification Review Committee. On the basis of the findings and recommendations of that Committee, the Director-General would then take a final decision.
4. On 25 October 2000 the complainant appealed the classification decision of 6 August 1998; he stated that "two highly skilled professionals" had expressed their view to him that the tasks he performed were at least of the P-2 level. The Committee did not recommend a change. On 4 December the Director-General decided not to change the grade of the post. The reasons for the Committee's recommendation were provided in a report sent to the Director-General on 31 January 2001, a copy of which was furnished to the complainant on 2 February. The complainant requested, on 1 and 6 February 2001, an administrative review of the decision not to upgrade his post. The Director-General decided on 1 March 2001 not to upgrade his post and this is the decision impugned.
5. The complainant requests the Tribunal to order that his post be graded at GS-7 retroactively from 1 January 1999, or alternatively, at the P-2 level. He also claims a change of job title to reflect the database administration duties he is called on to perform.
6. In the course of the classification review the complainant's supervisor recommended the creation of a new post for the complainant, which was refused on 21 October 1998. A request for a change in job title was also refused on 9 August 1999.
7. The complainant argues that during the classification review his post was not classified according to the nature of his duties and responsibilities, using the job description submitted by him, but rather according to the job description submitted by the other five communications clerks. His duties have changed and he no longer performs the tasks assigned to a communications clerk.
8. He acknowledges that the grading of posts is within the discretion of the Director-General and that such a decision can only be reviewed on limited grounds, one of which is a mistake of fact. However, he contends that the

Director-General made a mistake of fact because the wrong job description was used in his case.

9. He also contests his job title which, he says, is directly related to the job classification and the job grade. The classifier for the classification review recommended the job title for the posts classified with the same rationale sheet be changed to Operations Assistant (Communications). The complainant's job description had no indication he performed communications-related tasks. The rating awarded to several factors relevant to classification did not relate to his job description. The original classifier failed to note that the duties in his job description were completely different from the duties described in the job description of the other communications clerks. The complainant requested the Committee to review his classification on the grounds that the job description he submitted had not been used to review his post and that his supervisors took the view that he performed tasks at the P-2 level. He submits that the Committee gave no reasons for its recommendation to keep his post at GS-5 level. The Committee found it justifiable that the classifier used the same worksheet to classify several posts if those posts were found to be at the same level. The complainant does not accept that this should happen where posts with different duties and responsibilities are concerned; they could only be found to be at the same grade once different rating sheets were used to classify them.

10. The Committee's report stated that the Committee applied the Common General Service Job Classification Standard for Geneva to the job description submitted by the complainant and found no grounds to support a change from the GS-5 grade recommended by the original classifier. But the complainant says it gave no explanation how it reached this conclusion. It did not produce a rating sheet itself as it should have. It applied the Job Classification Standard against a worksheet which was not based on the job description submitted by the complainant but on the job description submitted by the other five communications clerks. He complains that he was denied access to the job description and rating sheet used for their posts. His request was rejected on the basis that the job descriptions or rating sheets of other posts were not relevant to his case. He was also informed that the Committee reviewed the classification of posts by the original classifier by, inter alia, reapplying the applicable standards to determine whether they found sufficient grounds to support a change of grade. This did not require the Committee to produce a rating sheet.

11. The OPCW states that the post of communications clerk was placed under the rubric "Communications, Logistics and Movement Clerk". The job description for the posts under that rubric were not identical but reflected a certain degree of specialisation by each incumbent.

12. The OPCW maintains that the changes made in the complainant's original job description did not entail a transformation of the functions of the post so as to result in a totally different job assignment, but rather were an elaboration of the principle functions in the vacancy notice and to modify them was within the discretion of the Organisation. It also points out that if a new post had been established at the P-2 level, as requested by the complainant's supervisor, the complainant would not have been automatically entitled to it: it would have had to be advertised and open to application by other staff members.

13. As the Tribunal has consistently held, a grading decision is within the discretionary authority of the Director-General and is reviewable only on limited grounds, one of which is mistake of fact. It is clear that the complainant drew the Committee's attention to his allegation that his post was assessed without reference to the post description submitted by him. It is equally clear that the Committee considered this job description as well as all other documentation submitted by the complainant. The Committee said in its report that it had independently reviewed classification of the post. This included distinguishing Professional from General Service functions and also applying the Common General Service Job Classification Standard for Geneva to the post. It found no grounds sufficient to support a change from the GS-5 grade recommended by the 1998 review.

14. In the impugned decision, dated 1 March 2001, the Director-General states that having reviewed all the information on the matter, including the memoranda from the complainant dated 1 and 6 February 2001, he has decided to maintain his decision not to upgrade the post. Insofar as the complainant alleges that the Director-General did not consider the job description submitted by him, he is clearly wrong. Both the Director-General and the Committee considered it.

Insofar as the complainant appears to argue that the decision should have been based only on the job description submitted by him, he is also

wrong. Taking everything into consideration, the Committee made a reasoned recommendation, which was

endorsed by the Director-General, why the post should not be upgraded. The Tribunal accepts the arguments of the Organisation in this regard.

The claim to upgrade his post fails.

15. This claim having failed, his claim to a new title also fails.

16. All other claims are dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 12 November 2001, Mr Michel Gentot, President of the Tribunal, Miss Mella Carroll, Vice-President, and Mr James K. Hugessen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 30 January 2002.

Michel Gentot

Mella Carroll

James K. Hugessen

Catherine Comtet