

**d. P.**  
**v.**  
**UNESCO**

**131st Session**

**Judgment No. 4336**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr L. d. P. against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 16 April 2018 and corrected on 18 August, UNESCO's reply of 21 December 2018, the complainant's rejoinder of 12 February 2019, corrected on 18 February, and UNESCO's surrejoinder of 29 May 2019;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

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

The complainant challenges the decision not to reclassify his post from grade level G-4 to grade level G-5.

At the material time, the complainant worked in the Procurement and Contracts Unit of the International Centre for Theoretical Physics (ICTP) in Trieste, Italy, which is administered by UNESCO since 1996. He joined UNESCO as a Procurement Clerk at the G-4 grade level under a job description drawn up in 1995.

On 30 March 2004 the complainant's supervisor sent a request for reclassification of the complainant's post based on a new job description dated February 2004. A Consultative Board found that while his Unit at ICTP had become larger, the complainant's responsibilities had not increased and that there were insufficient grounds to recommend the reclassification of his post. He was so informed by a memorandum of

1 September 2005 which stated that while the Director of ICTP would not submit his request for reclassification to UNESCO, the complainant could still submit his request to UNESCO's Director-General in accordance with Staff Rule 102.2.

On 23 September 2005 the complainant sent his request for reclassification based on the job description of February 2004, alleging that he had taken on additional duties and responsibilities since 1996. On 20 June 2006 he was informed that, based on a review of his 2004 job description, the appropriate grade level for his post remained at G-4. A desk audit was nevertheless carried out by a Classification Officer in September 2006, who found that the complainant was not performing all the duties detailed in his 2004 job description and not at the same level of complexity. Her annotations were incorporated in a revised job description (the 2006 job description) confirming the post at grade level G-4.

By a memorandum of 6 February 2007 the complainant was informed of the outcome of the desk audit of his post and he was provided with his new 2006 job description that was signed by his supervisors in 2007, as well as the desk audit report. He filed a protest with the Director-General against the result of the desk audit on 4 April 2007.

On 7 June the complainant filed a notice of appeal before the Appeals Board against the Director-General's implied rejection of his protest.

On 27 June 2007 he was informed of the Director-General's decision to reject his protest as unfounded.

The complainant was transferred in 2009 to a post at the same grade in another unit.

On 4 August 2015 the complainant submitted his detailed appeal to the Appeals Board against the decision to maintain his post at the same grade. In his appeal he also referred to other "related facts" concerning his alleged underperformance in 2006-2007 reflected in his 2008 performance report and his subsequent transfer to another unit initiated in May 2008 and confirmed in 2009. A hearing was held and, in its opinion of 15 September 2017, the Appeals Board found that there was evidence that the complainant had been performing higher duties from 2002, that the notion of career development had been overlooked in his case, and that there had been an inordinate delay in finalizing the process. It recommended that the Director-General pay the complainant the equivalent of two months' salary in material and moral damages, 3,000 euros in costs and

that he be reimbursed for the accommodation and travel expenses he had incurred to attend the oral hearing in Paris, France.

By a decision of 22 January 2018 the Director-General dismissed the complainant's appeal as unfounded, on the grounds that the applicable rules and procedures on post classification and desk audits had been respected and that neither the complainant, nor the Appeals Board had identified any specific procedural flaw to justify an award of damages. The Director-General also disagreed with the Appeals Board's recommendation to award costs, as this prerogative was not provided in the Appeals Board's Statutes or any other rule or practice in force. However, she decided to follow the recommendation to reimburse the complainant's accommodation and travel expenses. That is the impugned decision.

The complainant asks the Tribunal to "recognize" the reclassification of his post since January 1997 and to award him material damages for any financial loss due to his transfer from May 2008 to date, with interest. He claims moral damages, as well as costs for the internal appeal proceedings and the proceedings before the Tribunal.

UNESCO submits that the complaint is entirely unfounded and irreceivable in part.

## CONSIDERATIONS

1. Paragraph 7(a) of the Statutes of the Appeals Board requires a staff member of UNESCO, as a first step to contesting an administrative decision, to lodge a protest in writing to the Director-General within two months of receiving the contested decision for a staff member stationed away from headquarters, as the complainant was. In his protest to the Director-General, dated 4 April 2007, the complainant contested the decision of 6 February 2007 to maintain the post which he then held at grade G-4. He stated as follows:

"1. I hereby wish to contest before you the decision referred to above [...] which was taken following the recommendations of a desk audit [...] based on my 2004 job description [...] and carried out in September 2006, after two requests made in March 2004 [...] and September 2005 [...] in accordance with Staff Rule 102.2. As [a] result, this decision confirms the revised job description [...] established following the audit report and maintains my post at the same G-4 grade."

2. The complainant stated the grounds on which he contested the decision in the following terms:

“Several serious flaws warrant setting aside that decision; not only does it overlook essential facts and draws mistaken conclusions, but it also fails to comply properly and fairly with the rules, standards and established criteria on post classification. Moreover, neither before, after, nor at the time was I notified of the ‘factors’ or ‘point level/ranges’ to which the audit report makes no reference [...], nor how on which ratings the decision was reached to maintain my post at G-4. To this date I am still unaware of them.”

3. On 7 June 2007, the complainant filed a notice of appeal against the implied rejection of his protest, but the actual decision rejecting the protest was issued on 27 June 2007. After the complainant’s many requests to extend the time limit, he submitted his detailed appeal to the Appeals Board on 4 August 2015, six years after he was transferred to another post. In these pleadings, the complainant challenged the decision to maintain his post at grade G-4 essentially in the terms and on the grounds contained in his protest. Therein, he mainly challenged the conduct and the findings of the desk audit and the job description on which it was based. However, in his detailed appeal, he also raised issues and decisions which arose or were made subsequently to the rejection of his protest on 27 June 2007.

4. Those subsequent issues and decisions included the complainant’s apparent contest of his 2008 job performance report; matters related to his direct supervisor’s 2008 proposal that he be transferred to another position and his transfer on 19 May 2008 to the Operations and Travel Unit. However, he had actually objected to this proposal on 26 May 2008 before he was permanently transferred to that Unit on 16 June 2009. The complainant also alleged retaliation and prejudicial treatment related to his transfer. He had also alleged wrongdoing by his direct supervisor regarding a note concerning his transfer which she allegedly placed on his personal file. He had however submitted a formal complaint concerning that note to the Ethics Office on 2 December 2011. These issues or decisions had no bearing on the decision to maintain his post at the G-4 level. To the extent that the complainant seeks to raise any of them again in his present complaint, they are irreceivable either because they are the subject of other proceedings or because they are beyond the scope of this complaint (see, for example, Judgment 4064, consideration 3).

5. The complainant challenges the decision to maintain the subject post at the G-4 level on two central grounds. The first ground raises the question whether the decision of 6 February 2007, confirmed in the impugned decision of 22 January 2018, maintaining the complainant's post at the G-4 level was tainted with procedural flaws and overlooked essential facts as the complainant contends. In the second ground, the complainant contends that the decision to maintain his post at the G-4 level was the result of ulterior motives and retaliation. This ground is unfounded as the complainant provides no evidence to substantiate those allegations.

6. Regarding the first ground, it is convenient to recall the general principles concerning the Tribunal's purview when a classification decision is challenged. They were relevantly stated as follows in Judgment 4000, considerations 7, 8 and 9:

"7. In Judgment 3589, in which the reclassification of a post was also challenged, the Tribunal stated the following, in consideration 4:

'It is well established that the grounds for reviewing the classification of a post are limited and ordinarily a classification decision would only be set aside if it was taken without authority, had been made in breach of the rules of form or procedure, was based on an error of fact or law, was made having overlooked an essential fact, was tainted with abuse of authority or if a truly mistaken conclusion had been drawn from the facts (see, for example, Judgments 1647, consideration 7, and 1067, consideration 2). This is because the classification of posts involves the exercise of value judgements as to the nature and extent of the duties and responsibilities of the posts and it is not the Tribunal's role to undertake this process of evaluation (see, for example, Judgment 3294, consideration 8). The grading of posts is a matter within the discretion of the executive head of the organisation (or the person acting on her or his behalf) (see, for example, Judgment 3082, consideration 20).'

8. As to the main factors that are to be taken into account in a reclassification process, the Tribunal has relevantly stated as follows, in Judgment 3764, consideration 6:

'It is for the competent body and, ultimately, the Director-General to determine each staff member's grade. [...]

9. The classification of a post involves an evaluation of the nature and extent of the duties and responsibilities of the post based upon the job description. It is not concerned with the merits of the performance of the incumbent (see, for example, Judgment 591, under 2).

[...]"

7. That the classification of posts is to be based essentially on the nature of the duties and the level of the responsibilities that attach thereto is emphasized in UNESCO's regulatory regime. For example, Staff Regulation 2.1 required the Director-General to make provision for the classification of posts and staff according to the nature of the duties and responsibilities required, in accordance with the decisions of the General Conference. The rules which have been made pursuant to that Staff Regulation require that the nature of the duties and responsibilities which attach to a post be given primary consideration in their classification. This is reflected in Staff Rules 102.1 and 102.2 and in UNESCO Manual, Item 2205, section F, which was in force at the material time. The latter relevantly requires the following basic principles to be observed, among other things, in applying classification standards and criteria to individual posts:

- “1. The category and functional group to which a post is assigned are determined by the nature of its duties.
2. The grade of a post is determined by its duties, the scope and level of responsibility, and the qualifications required. The qualifications of the incumbent of the post are not taken into consideration in fixing the grade of the post [...]
3. Reclassification of a post to a higher grade is based on a substantial increase in the level of duties, responsibilities or qualification required.”

8. In the first ground, the complainant primarily attacks the underlying desk audit which was the basis of the contested classification decision. He argues that the desk audit was done without the presence of a staff representative and submits that this is evidence of an abuse of authority. UNESCO states that the presence of a staff representative is not mandated by the Rules. The Tribunal however accepts the statement in the desk audit report that a staff representative accompanied the complainant at his interview with the Classification Officer. The Tribunal will not hold that the desk audit report was tainted because it was not signed by the Classification Officer, as the complainant argues. This is because, as UNESCO points out, the rules then in force did not require that the desk audit report be so signed. Neither does the Tribunal find any evidence to ground the complainant's submission that the desk audit was tainted because it was done in collusion with his supervisor rather than on an objective basis. His submission that it was in error that UNESCO did not take into account the note his supervisor placed in his personal file on 23 May 2008 is also rejected. It was determined in consideration 4

of this judgment that matters related to the complainant's transfer and his performance are irreceivable. Moreover, there is no evidence that that note had any bearing on the desk audit or the decision to maintain his post at the G-4 level.

9. The complainant submits, in effect, that the decision to maintain his post at the G-4 level was tainted because the 2006 job description upon which the decision was based downgraded his responsibilities from those contained in the 2004 revised version. UNESCO counters that the 2006 job description was drawn up for the desk audit because it more accurately reflected the duties attached to the subject post at the material time. The Tribunal notes the statement in the desk audit report that "the purpose of the audit was to clarify the description of duties and responsibilities set out in the post description, so that they reflected fully the functions that were actually being carried out, and the actual responsibility and delegation held by the post-holder". The Tribunal observes that the Classification Officer who conducted the desk audit carried out that mandate upon interviewing the complainant and his supervisors and sees no basis for holding that the 2006 revised version of the job description was inaccurate or tainted by vitiating error. By extension, the Tribunal determines that the Director-General correctly concluded in the impugned decision that the applicable rules and regulations, and the procedures governing classification and desk audit of posts, were respected. Ground one is therefore unfounded.

10. In the foregoing premises the complaint will be dismissed in its entirety.

#### DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 27 October 2020, Mr Patrick Frydman, President of the Tribunal, Ms Dolores M. Hansen, Vice-President of the Tribunal, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 7 December 2020 by video recording posted on the Tribunal's Internet page.

PATRICK FRYDMAN

DOLORES M. HANSEN

HUGH A. RAWLINS

DRAŽEN PETROVIĆ