
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2012/065/R1

Judgment
No.: UNDT/2016/188

Date: 17

6. On 4 August 2016, the parties were informed that this matter had been transferred to the docket of Judge Goolam Meeran.

7. By Order No. 410 (NBI/2016) the p

UN Common System matters in Montreal, announced that in April 2012 it would commence the conversion from the nine-level salary scale then applied to GS staff at the Montreal duty station to the seven-level salary scale promulgated by the ICSC.

7. In late March 2012, UNON's Human Resources Management Service informed the SCBD staff that, pursuant to the ICAO's lead, it would renumber SCBD posts in order to align them with all the other United Nations organizations at the seven-level structure. As a result of the realignment, G-7 level posts, including Ms. Pedicelli's post, would henceforth be renumbered as G-6 level posts.

8. In early May 2012, a number of staff members, including the Appellant, received Personnel Action forms confirming their new grade. Ms. Pedicelli's Personnel Action form indicated that effective from 1 April 2012 she was appointed at the G-6 level, Step 10.

9. On 20 May 2012, Ms. Pedicelli requested management evaluation of the decision to "reclassify and/or downgrade [her] salary scal

challenge an “appealable administrative decision” in that the contested decision was made by the ICSC and not the Secretary-General, and the latter had no discretionary authority in proceeding with implementing the ICSC’s decision. The UNDT further found that the contested decision was not taken solely with respect to Mss1 9.96 Tf1 0 0 2fi331((isi)-4

ICAO led renumbering process “applied checks and balances and transition

21. In Articles 10 and 12 of the ICSC Statute, the ICSC is given functions and powers related to the establishment of salaries for staff members in the General Service and related categories. Pursuant to Article 10(a), the “Commission shall make recommendations to the General Assembly on [...] [t]he broad principles for the determination of the conditions of service of the staff”. Pursuant to Article 12(1), “the Commission shall establish the relevant facts for, and make recommendations as to, the salary scales of staff in the General Service and other locally recruited categories” at the “headquarters duty stations and such other duty stations as may from time to time be added”.

22. By resolution 67/241 (Administration of Justice at the United Nations), the General Assembly reaffirmed that “the decisions of the International Civil Service Commission are binding on the Secretary-General and on the Organization”.⁵

23. Ms. Pedicelli contested the Secretary-General’s implementation of the ICSC’s decision to harmonize the numbering of posts at the GS level across the United Nations Common System.

24. The Dispute Tribunal dismissed the application on the basis that Ms. Pedicelli had failed to challenge an “appealable administrative decision” in that the contested decision was made by the ICSC and not the Secretary-General, and the latter had no discretionary authority in proceeding with implementing the ICSC’s decision. The Dispute Tribunal further found that the not establish that the renumbering exercise gave rise to legal consequences that adversely affected her given that her functions, salary and emoluments remained the same even after her post was renumbered at the G-6 level. Consequently, it found that Ms. Pedicelli had no standing to contest the decision.

25. Article 2(1)(a) of the Dispute Tribunal Statute provides that the Dispute Tribunal is competent to review an application contesting an administrative decision that is alleged to be in non-compliance

... In other instances, administrative decisions might be of general application seeking to promote the efficient implementation of administrative objectives, policies and goals. Although the implementation of the decision might impose some requirements in order for a staff member to exercise his or her rights, the decision does not necessarily affect his or her terms of appointment or contract of employment.

... What constitutes an administrative decision will depend on the nature of the decision, the legal framework under which the decision was made, and the consequences of the decision.

26. In *Lee*, this Tribunal held: [...]

... [T]he key characteristic of ` ministra S

30. The substantive argument put forward by Ms. Pedicelli was that the renumbering exercise, resulting in the downgrading of her personal grade from the G-7 level to the G-6 level, adversely affected her contractual rights under her permanent appointment. She contends that the finding by the Dispute Tribunal that the decision had no adverse effect on her is not based on fact.

31. The Secretary-General submits that the UNDT correctly dismissed the application as non-receivable, finding that the Appellant failed to establish any direct and adverse legal consequence arising from the renumbering exercise, as required by the definition of an “administrative decision”.

32. Contrary to the Secretary-General’s submission, the Appeals Tribunal finds that Ms. Pedicelli has demonstrated that the renumbering exercise had an adverse and direct impact on her. Annexed to her UNDT application as well as her appeal brief were Ms. Pedicelli’s Personnel Action Forms, the first approved on 23 February 2011, before the renumbering exercise, and the second approved on 4 May 2012, after implementation of the renumbering exercise. Her Personnel Action Forms reflected her respective salary scale and level for the periods under contest and evidence, as Ms. Pedicelli claims, that after implementation of the renumbering exercise her salary was reduced.

33. The UNDT failed to give any consideration to them and thus erred on a question of fact leading to a manifestly unreasonable decision, and erred in law in concluding that Ms. Pedicelli’s application was not receivable.

34. This error alone warrants remand of the matter to the UNDT for *de novo* consideration.

25. A question has arisen as to the proper meaning and effect of paragraphs 32 to 34 of the Judgment of the Appeals Tribunal in that the first sentence of paragraph 32 may be read as a finding of fact that Ms. Pedicelli suffered an adverse and direct impact in that there was a reduction in her salary. However, the Respondent contends that such a reading would appear to be inconsistent with paragraph 34 which refers to a remand of the case for *de novo* consideration. This issue was discussed at the CMD on 17 August 2016 and by Order No. 423 (NBI/2016), the Tribunal gave the parties the opportunity of addressing the

adverse impact on an individual staff member. Such a claim has to be determined on its merits.

29. Whether or not the Applicant actually suffered a detriment goes to the

- a. This was not a classification or re-classification exercise but a renumbering exercise which was carried out in a mathematical fashion with the aim of aligning the Montreal nine-grade scale with the rest of the UNCS.
- b. The Applicant suffered no loss in standing, functions, benefits or any other detriment.
- c. The change in the Applicant's personal grade from G-7 to G-6 was a change in name only and carried no loss of any kind and there was no loss or injury to compensate.
- d. The renumbering exercise was not at the initiative of the Secretary-General but as the result of a promulgation of the ICSC. The Respondent had no option but to implement it. Whilst conceding that there were procedural flaws in the process of implementation, these were remedied by the subsequent classification exercise. The Applicant was graded at the G-6 level. It was open to her to challenge this decision which she did but it was out of time.
- e. The Applicant is mistaken in submitting that she had a personal grade of GCS G-7 and is entitled to a promotion to that grade. In fact her personal grade was "Montreal G-7" which is the same as "GCS-G-6"

Did the Applicant suffer a loss in status, standing, salary, promotion

wrongly taken away from her by a classification of post exercise in breach of ST/AI/1998/9.

35. The issue for the Tribunal to determine is whether this was a classification exercise and, if it was, whether the Respondent followed proper procedures and what loss or damage, if any, has the Applicant in fact suffered.

36. Both sides were given ample opportunity during the course of these lengthy proceedings to put forward all facts, arguments and submissions which included comments on the proper interpretation of the Appeals Tribunal's Judgment No. 2015-UNAT-555.

37. The Tribunal notes the Applicant's explanation that appended to her original appeal were a list of annexes which contained documents submitted in error with her initial application to the UNDT. These documents were not submitted to the Appeals Tribunal to prove that she underwent an absolute reduction in salary and that it was never her contention. This explanation is helpful and properly advanced. The parties are agreed that it is a matter for the Tribunal, on a *de novo* remand, to examine the evidence and adjudicate upon the merits of the parties' respective contentions.

38. It was conceded by the Respondent, at the stage of management evaluation, that the implementation of the renumbering exercise, was procedurally flawed. However, it was remedied by the fact that staff members affected, including the Applicant, were given the opportunity of undergoing a properly conducted classification exercise. The Applicant was graded at "GCS-G6". There is no complaint by the Applicant regarding this decision and the only issue seems to relate to what the Applicant regards as a downgrading of her personal grade.

40. Second is the fact that when the Applicant submitted her post to a proper classification it was graded at GCS-level G-6 which is equivalent to her previous grade. The Applicant has failed to demonstrate that the alignment of her post to conform with the GCS had a detrimental impact on her salary or pension benefits.

41. The Tribunal is slow to accept, without proper scrutiny, any submission that a breach of procedure was remedied by a subsequent event. However, in this case there is no suggestion that the classification exercise was an attempt by the Respondent simply to insulate himself from liability for any wrongful act. The outcome of the classification was no different to the alignment/renumbering exercise. The Applicant remained at GCS level 6. It is clear from the evidence that even if a formal classification exercise had taken place prior to the realignment of her post to conform with the GCS she would not have retained the G-7 grade which was an anomaly within the system.

42. The figures and calculations used by the Applicant to prove any pecuniary loss were based on the assumption that she was wrongly placed at the GCS-Level-6 instead of GCS-level-7. Since this assumption is flawed her calculations of loss cannot be accepted. The Tribunal finds on the evidence that the Applicant's submissions that she suffered pecuniary loss are without merit. The Applicant also sought reinstatement of her personal grade level to G-7 step X and moral damages of USD60,000 for loss of opportunity and damage to her professional reputation. The Tribunal finds no basis to support such claims and accordingly rejects them.

JUDGMENT

43. The Application is dismissed.

(Signed)

Judge Goolam Meeran

Dated this 17th day of October 2016

Entered in the Register on this 17th day of October 2016

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi