



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D 'APPEL DES NATIONS UNIES

Judgment No. 2019-UNAT-957

Spinardi
(Appellant)

v.

Secretary-General
of the International Maritime Organization
(Respondent)

JUDGMENT

Before:	Judge Graeme Colgan, Presiding Judge Sabine Knierim Judge Jean-François Neven
Case No.:	2019-1255
Date:	25 October 2019
Registrar:	Weicheng Lin

Counsel for Ms. Spinardi:	Self-represented
Counsel for Secretary-General of the IMO :	Frederick Kenney

JUDGE GRAEME COLGAN , PRESIDING .

1. Monia Spinardi has appealed against the decision of the Secretary-General of the

6. On 20 April 2018, Ms. Spinardi requested reconsideration of the decision.

7. On 21 May 2018, she submitted a statement of appeal to the IMO's SAB. At the SAB's request she resubmitted her appeal on the proper form on 31 August 2018. The SAB considered exceptional circumstances had warranted accepting her appeal out of time since Staff Rule 111.1, which required the publication of guidelines to staff on *inter alia* the format of the appeal, had not been made available to IMO staff.

8. On 29 June 2018, the Administrative Division replied to the SAB

9. On 17 September 2018, the IMO Secretary-General suspended the reclassification process, set forth in Staff Regulations 1 and 2.1 and Staff Rule 102.1. The instrument recording this suspension is not before us and we are unaware why it was done and of the implications of doing so. In any event, the suspension does not appear to have procedurally affected Ms. Spinardi's appeal.

10. On 29 January 2019 the SAB, by way of internal memorandum, submitted its report to the Secretary-General of the IMO. The SAB indicated that it provided on 13 November 2018 its "initial findings on these appeals (referring to appeals by Ms. Spinardi and three other staff members who are not addressed in this Judgment) and requests the Secretary-General to confirm his previous decision with 016s report 1.7322 TD -frrep(r22.3716 -1.7322 4 Tc .281cp0 TD -.01"dp8775(

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The IMO Secretary-General's Answer

17. The Secretary-General of the IMO requests the Appeals Tribunal to dismiss the appeal. The Classification Committee adhered to all rules and regulations and relevant administrative issuances and did not breach any procedural rules. In compliance with Staff Rule 102.1(d), the Administration established a tripartite committee comprising of an independent job classification expert (chosen by the Staff Committee), the Head, Human Resources Services (HRS), and a trained staff representative, chosen from a pool of staff nominated by the Staff Committee. The Classification Committee fully complied with Staff Rule 102.1 and applied the International Civil Service Commission (ICSC) methodology and used the ICSC online classification tool to evaluate the duties and responsibilities of Ms. Spinardi's post. The scores assigned in the ICSC online classification tool resulted in Grade G-6 at the 9th percentile. The Classification Committee followed the evaluation system set forth in Staff Rule 102.1, including that it analyzed: the component parts of the job; the scope of the post in relation to the team structure; and its place within the Organization. It also interviewed the supervisor and compared the post with benchmark jobs developed by the ICSC. Also, the Secretary-General of the IMO provided, as annexes to his Answer, affidavit evidence from the Chairperson of the Classification Committee dated in June 2019, which stated that they had used the ICSC tool, reviewed the organizational chart, interviewed the supervisor, and considered the structure of the unit.

18. Despite Ms. Spinardi's claims that the Classification Committee did not consider the restructuring around the depositary functions or the substantial increase in the level of responsibility or complexity of the role, there are no actual procedural errors. The procedures and considerations enumerated in Staff Rule 102.1 were all followed.

19. The Classification Committee had considered that the same role in New York was graded higher at G-7 but did not request the job description to make a comparison as the purpose of a comparison is to measure relative value of jobs within an organization, and not to compare with an outside organization. The principle of "equal work for equal pay" forbids discrimination but does not prohibit every form of different treatment to staff members. There is lawful reason for the IMO staff to be treated differently than staff at other organizations.

20. The evaluation form, comments, and the recommendations of the Classification Committee were given to Ms. Spinardi and therefore fulfilled transparency requirements. Ms. Spinardi argues that she was not afforded due process because she had not been given the opportunity to comment on the Administrative Division's written reply to the SAB. The SAB concedes it did omit to forward the Administrative Division's reply and invite her comments as is required by Staff Rule 111.2(t). However, the Secretary-General says this was a minor procedural error having no bearing on the recommendation, and there is no difference as this Tribunal has recognized in its *Michaud* case!

21. The Secretary-General "acknowledges that the report of the SAB could have been more detailed in providing information on its deliberation as to how it reached its recommendation to the Secretary-General. However, from the informat

25. Article XI of IMO's Staff Regulations and Rules is based on the terms of the Agreement between the United Nations and the IMO, which took effect on 1 July 2009 extending the jurisdiction of the Appeals Tribunal to the IMO² and in turn, to Article 2(10) of the Statute of this Tribunal, which governs our jurisdiction and powers.

26. As we understand it, the Secretary-General of the IMO says (and the Staff Regulations and Rules specify) that the SAB is the neutral element in that first instance process. However, even if what was issued by the SAB was a "decision", it was nevertheless only advisory or recommendatory. It gave advice to the Secretary-General of the IMO, who cannot himself be regarded as a neutral part of the process. That is because he is both the employer's representative and the original decision-maker appealed against by Ms. Spinardi. Even if the Respondent's decision is understood to incorporate the SAB's conclusions, or the SAB's recommendation is to be regarded as the decision appealed against, that is also problematic. That is because although the SAB's recommendation may be said, arguably, to include a "written record", it does not provide "reasons, fact and law" as to why Ms. Spinardi was unsuccessful in her claim to have her position regraded.

27. We are not satisfied that these essential elements are present to have constituted a decision by the Respondent and therefore to allow us to consider and decide Ms. Spinardi's appeal.

28. Because of the way in which this appeal is dealt with by us, we do not need to consider the admissibility of the affidavit evidence or its content, which the Secretary-General of the IMO has provided on appeal.

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Judgment

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