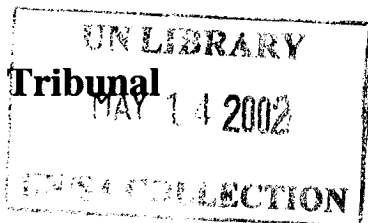




Administrative Tribunal



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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 1035

Case No. 1126: IGWEBE

Against: The Secretary-General
of the United Nations

THE UNITED NATIONS ADMINISTRATIVE TRIBUNAL,

Composed of: Mr. Mayer Gabay, President; Mr. Kevin Haugh, Vice-President;

Ms. Marsha A. Echols;

Whereas, on 1 March 2000, Clementine Comfort Igwebe, a staff member of the United Nations Economic Commission for Africa (hereinafter referred to as ECA), filed an Application containing pleas which read as follows:

"II. Pleas

...

- I respectfully request that I be given the P-5 position of [Chief, Human Resources Management Section, ECA] effective July 1996

(c) In June 1997 I was [a] candidate for 2 P-4 posts at the [Human Resources and Systems Management Division, ECA, (HRSMD)]. My candidature was not even submitted with the others in spite of ST/AI/413 and ST/AI/412. My subsequent appeals ... were never even investigated simply because [the] Executive Secretary, [ECA.] had sent a memo ... defaming me ...

- I request that [the Executive Secretary, ECA,] be made to explain the statement and withdraw the same with apologies ...

- I request adequate compensation for all I have been put through, at any rate not less than 2 years net salary and the [one] month salary [recommended by the Joint Appeals Board (JAB)] in accordance with Staff Rule 112.3.

- (e) ... In view of all the damages done to the Commission, to the staff, ... *I am requesting that outside independent investigators audit ... ECA for the period since [the Executive Secretary] came on board in July 1995 ...*"

Whereas, at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent's answer until 31 August 2000 and periodically thereafter until 31 March 2001;

Whereas the Respondent filed his Answer on 9 March 2001;

Whereas, on 30 October 2001, the Tribunal put a question to the Applicant and questions to the Respondent;

Whereas, on 1 November 2001, the Applicant provided an answer to the question put by the Tribunal;

Whereas, on 5 November 2001, the Respondent provided answers to the questions put by the Tribunal;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 13 September 1971, on a fixed-term appointment as a Clerk-Stenographer at the G-3 level in the Department of Economic and Social Affairs. On 1 March 1975, she was granted a permanent appointment. On 1 April 1978, the Applicant was transferred to ECA as an Assistant Staff Training Officer at the G-4 level. On 1 April 1979, she was promoted to the P-1 level. At the material time, the Applicant held the P-3 level position of Programme Management Officer, ECA.

In 1996, ECA commenced a restructuring exercise. On 10 July 1996, the Officer-in-Charge, HRSMD, informed the Applicant that she had been assigned "at [her] present level" to Conference and General Services Division (CGSD). On 31 December 1996, the Applicant met with the Officer-in-Charge, CGSD, to discuss her new functions and duties. The Applicant wrote to the Officer-in-Charge, CGSD, on 3 January 1997, confirming her understanding of her functions. On 20 January 1997, the Applicant wrote to the Executive Secretary, ECA, stating that her new assignment "constitute[d] an underutilization of skill" in violation of administrative

instruction ST/AI/397 of 7 September 1994. On 23 May 1997, she again wrote to the Executive Secretary, ECA, requesting review of her assignment and claiming, *inter alia*, that these functions had previously been performed by a G-5 level staff member.

On 26 June 1997, the Officer-in-Charge, CGSD, informed the Applicant that she was being reassigned to the position of Administrative Officer, General Service Section (GSS), effective 1 July.

On 26 June and 11 July 1997, the Applicant requested administrative review of the decision to reassign her.

On 29 July 1997, the Applicant advised the Chief, HRSMD, that she would move to GSS once she received a written job description and was assigned an office.

On 31 July 1997, the Applicant again requested a revision of the contested decision.

On 16 September 1997, the Applicant was provided with an "initial" written job description. On 10 October 1997, she wrote to the Chief, HRSMD, acknowledging receipt of her job description and office assignment, and stating her objections to both.

The Applicant lodged an appeal with the JAB on 13 October 1997, and 12 November 1997.

On 3 May 1999, the Compensation and Classification Policy Unit classified the post of Administrative Officer, GSS, at the P-3 level.

The JAB submitted its report on 7 October 1999. Its considerations and recommendations read as follows:

"Considerations

...

25. ... The Panel was struck by the fact that not only ECA failed, but so did Respondent, to justify the Administration contention that 'the post of Administrative Officer, General Services Section, CGSD, requires a high degree of professional competence and initiative'...

27. As for Respondent's statement, based on her reading of UNAT Judgements [No. 396, *Waldegrave* (1987) and No. 617, *De Brandt-Dioso* (1993)], that 'the Tribunal has consistently held that it cannot substitute its judgement for that of the Administration in job classification matters,' and by extension, neither can a JAB Panel, it would appear that Respondent has not carefully read the Judgments in question. In *Waldegrave*, the Secretary-General's decision was based on the recommendation of a properly constituted

classification committee, and the Tribunal still retained its right to determine if the Secretary-General remained within the reasonable limits of his discretionary authority.

28. In this case, the Administration has failed to define - much less, defend - how the job description was elaborated and the procedure used to determine that the job was at the professional level. Having failed to establish that it followed proper procedures, it became incumbent upon the Administration, in the Panel's view, to justify the correctness of the classification. Here again it has failed: to Appellant's precise, point by point analysis, it has simply responded with bald assertions. The Panel concluded that the post to which Appellant was assigned in the General Services Section would have been classified as General Service, had it been reviewed by a properly constituted classification review body.

29. Appellant's assignment to the GSS post in question constituted, in the view of the Panel, a *de facto* demotion. It denied her the opportunity to display her skills, and, thereby the opportunity for consideration for promotion. She was in the terms of the UNAT Judgement quoted above [Judgement No. 312, *Roberts* (1983)], adversely affected and can therefore legitimately claim remedy.

30. ... the Panel agreed that [the Appellant] had established that there had been - and there may continue to be - a pattern of discrimination against her ...

Recommendations

33. The Panel recommends to the Secretary-General-that:

- (a) Appellant be assigned to a function commensurate with her grade level, seniority and qualifications, and
- (b) in view of the pattern of mistreatment to which she has been subjected, Appellant be given one month's net base salary, with application of Staff Rule 112.3.2

On 14 February 2000, the Under-Secretary-General for Management transmitted a copy of the JAB report to the Applicant and informed her as follows:

"...

The Secretary-General has been advised that the functions of the post to which you were assigned in the Conference and General Services Division were classified at the P-3 level. Accordingly, he considers that the Board's conclusion is not supported by the evidence and its recommendation to place you on a post at your grade level has become moot. The Secretary-General further considers that the Board's finding concerning the alleged mistreatment to which you claim you have been subjected is similarly not supported by evidence and he cannot therefore accept the recommendation to compensate you therefor.

..."

On 1 March 2000, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The Applicant was entitled to be promoted to the P-5 level in July 1996. That failing, the Applicant was entitled to be promoted to the P-4 level in June 1997.
2. The Respondent's actions were improperly motivated, abusive and discriminatory.
3. The Respondent violated the Applicant's contractual rights under Article II of the Staff Regulations and the International Civil Service Commission standards when he assigned the Applicant meaningless assignments.
4. The Applicant suffered career and health problems as a result of the Respondent's actions.

Whereas the Respondent's principal contentions are:

1. The Organization has wide discretion in reassignment to posts in connection with a reorganization. The Applicant did not contest the classification of her post through established classification recourse procedures and neither the Applicant nor the JAB can substitute their judgement in the classification process for that of the duly authorized classification body.
2. Since the Applicant was properly placed on a post at her own level, there can be no improper motivation assigned for such action. The Applicant has failed to discharge the burden of proving her allegation of discrimination.
3. Pursuant to staff regulation 1.2, the assignment of the Applicant to a duly classified P-3 post was a valid exercise of administrative discretion which did not violate her terms of appointment.
4. The temporary absence of a final job description in the wake of a reorganization is not unusual, and the Applicant's discussions of her duties and responsibilities with her supervisors fully compensated for the absence of a written job description.

5. The issue of the Applicant's promotion is not properly before the Tribunal. The Applicant has no right to promotion and the Tribunal cannot substitute its judgement for that of the appropriate appointment and promotion bodies.

6. The Applicant has used the appeals process for the purpose of seeking promotion from the P-3 to the P-5 level, rather than seeking placement in a post at her level. This is not the appropriate use of the appellate machinery.

The Tribunal, having deliberated from 29 October to 27 November 2001, now pronounces the following Judgement:

I. The focal point of the Applicant's appeal to the JAB was her assertion that her reassignment from her post as Programme Management Officer, initially to an unspecified post in the Conference and General Services Division of ECA, and later to the post of Administrative Officer, GSS, were actual and *de facto* demotions and were part of an ongoing campaign or pattern of discriminatory and vindictive conduct which was being waged against her within ECA and orchestrated by named persons within the said organization. She claims that she was being subjected to a pattern of discrimination because of a stand taken by her against what she alleged were corrupt and improper practices within ECA and because of her work on behalf of staff as a staff representative. She made some specific allegations of some other matters which she alleged constituted acts of discrimination against her and which she argued established the existence of such a campaign or pattern.

II. In the course of her submission to the JAB, the Applicant set out in considerable detail a number of matters which she argued established that her assignment to the Conference and General Services Division on the reorganization within ECA was in effect an assignment to menial and routine clerical duties which neither required nor permitted her to exercise any skills or initiative or to demonstrate her talents or abilities and which accordingly consigned her to a dead end job which would have diminished her career prospects and deprived her of any prospect of further promotion.

III. In reply to the Applicant's appeal, the Respondent had contended that the functions and duties assigned to the Applicant in her new post required a high degree of professional competence and initiative. He, however, failed to proffer any concrete or specific information or factual material to back up such assertions and failed to establish that the post had been assessed and measured and classified by an appropriate, competent, classification unit or to establish, to the satisfaction of the JAB any grounds to support the assertion that the job assigned to the Applicant should be considered to be at the Professional rather than the General Service level. As stated by the JAB in its report:

"... the Administration has failed to define - much less, defend - how the job description was elaborated and the procedure used to determine that the job was at the professional level. Having failed to establish that it followed proper procedures, it became incumbent upon the Administration, in the Panel's view, to justify the correctness of the classification. Here again it has failed: to Appellant's precise, point by point analysis, it has simply responded with bald assertions. The Panel concluded that the post to which Appellant was assigned in the General Services Section would have been classified as General Service, had it been reviewed by a properly constituted classification review body."

IV. It is clear from the above that the JAB was left under the impression that the posts to which the Applicant had been assigned had never been "reviewed by a properly constituted classification review body" and in the circumstances the JAB did not feel constrained by Judgements No. 396, *Waldegrave* (1987) and No. 617, *De Brandt-Dioso* (1993) from seeking to make its own assessment of it. It therefore embarked upon its own examination and consideration of the Applicant's and Respondent's contentions as to the nature of the functions of her new post. The Tribunal considers that it was appropriate and open to the JAB to embark upon this process as the jurisprudence of the Tribunal establishes that neither a JAB (nor the Tribunal itself) can substitute its judgement in the classification process for the duly authorized classification body. It follows that where a post has not been so assessed or classified that the same constraints do not apply and there may be circumstances where it is appropriate for a JAB or the Tribunal to seek to form its own view as to the nature of the tasks involved.

The Tribunal further considers that on the evidence and the materials which were before the JAB it was reasonable for it to conclude, as it did, that the post assigned to the

Applicant in the Conference and General Services Division constituted an actual demotion to a post which allowed the Applicant no opportunity of displaying her skills and thereby the opportunity of being considered for promotion. Had the Tribunal been asked to review the findings on the information and the submissions which were before the JAB, it considers that it would probably have reached a similar conclusion to that which was reached by the JAB.

V. Having considered the report and recommendations of the JAB, the Under-Secretary-General for Management wrote to the Applicant on 14 February 2000 informing her that the Respondent was not accepting the findings of the JAB. Having noted the JAB's conclusions "that the post would have been classified at the General Service level had it been reviewed by a properly constituted classification review body and that your assignment constituted a *de facto* demotion" and having recited the relief and the compensation recommended by the JAB he went on to say:

"The Secretary-General has been advised that the functions of the post to which you were assigned in the Conference and General Services Division were classified at the P-3 level. Accordingly, he considers that the Board's conclusion is not supported by the evidence and its recommendation to place you on a post at your grade level has become moot. The Secretary-General further considers that the Board's finding concerning the alleged mistreatment to which you claim you have been subjected is similarly not supported by evidence and he cannot therefore accept the recommendation to compensate you therefor."

VI. The Tribunal considers this to be a most curious letter. A claim that the JAB's conclusion "*is not supported by the evidence*" seems to the Tribunal to say the least to be disingenuous as it implies that there had been evidence before the JAB which the JAB had failed to take into account. This was not the case. It is clear that the Respondent had failed and neglected to inform the JAB that the subject post (Administrative Officer, GSS,) had been formally classified by the Compensation and Classification Policy Unit at Headquarters as of 3 May 1999, even though this classification had taken place some sixteen days before the commencement of the JAB's deliberations which had taken place on 19 May 1999 or to inform the JAB of this classification prior to 7 October 1999 when it submitted its report to the Secretary-General. In essence the Respondent had left the JAB in ignorance of the fact that the

Applicant's post had in fact been classified by a properly constituted classification review body and had done so in circumstances where it was perfectly reasonable and foreseeable for the said JAB to have concluded in the light of the materials put before it and in the light of the Respondent's submissions that no such evaluation or classification had ever taken place. In effect the Under-Secretary-General for Management had dealt a card from the bottom of the deck and played it to deny the Applicant the fruits of her victory or success in her appeal to the JAB.

VII. The Tribunal considers that the JAB's findings that the Applicant had been discriminated against by having been *de facto* demoted most probably had a significant influence on its finding that the Applicant had been subject to a pattern of discrimination, for the evidence which she offered in support of her other claims of discriminatory conduct was relatively weak without the support of the finding of discrimination arising from the belief that she had been demoted. The Tribunal considers that had the JAB been informed that a classification of the Applicant's post by the Compensation and Classification Policy Unit at Headquarters had actually taken place and that the post had been classified as a P-3 post, the JAB would not have gone on to make its own assessment or to find that the Applicant had been *de facto* demoted. Had the JAB been informed of the said classification by the Compensation and Classification Policy Unit, the Tribunal believes that the JAB would have followed the judgements of the Tribunal in the cases already referred to and would not have found that there had been an actual demotion and accordingly that she had been discriminated against in that manner.

VIII. The Tribunal is, however, satisfied that since the JAB was left in error as to the true facts by virtue of the Respondent's failure to have informed it of the fact that the post had been so classified, and is satisfied that the JAB's findings were sustainable in the light of the information which had been placed before it, the Tribunal considers that it would be unjust and inequitable to deny the Applicant the compensation which the JAB recommended be paid to her, by reliance on the part of the Respondent on a fact which had not been brought to the attention of the said JAB. Whilst the existence of the classification of 3 May 1999 disentitles the Applicant to the first recommendation of the JAB (that she be appointed to a post commensurate with her abilities

etc.) the Tribunal considers that the compensation in the sum of one month's net base salary is still appropriate and it should be paid to the Applicant in all of the circumstances.

In the proceedings before the Tribunal the Applicant seeks to enlarge her claim to seek relief or compensation in relation to matters not covered by her proceedings taken before the JAB. She further wishes to revive claims in relation to matters which the JAB correctly considered to be inadmissible. She additionally seeks relief such as an order from the Tribunal requiring a named person to apologise to her and makes a claim that she should have been promoted to a particular post and makes other claims which the Tribunal considers to be inadmissible or not receivable under the terms of the Statute. Accordingly all other claims are dismissed.

IX. For the foregoing reasons, the Tribunal:

- (a) Orders the Respondent to pay the Applicant one month net base salary; and,
- (b) Rejects all other pleas.

(Signatures)

Mayer GABAY
President

Kevin HAUGH
Vice-President

Marsha A. ECHOLS
Member

New York, 27 November 2001

Maritza STRUYVENBERG
Executive Secretary