

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

*Registry's translation,
the French text alone
being authoritative.*

K. (No. 5)

v.

UNESCO

139th Session

Judgment No. 4925

THE ADMINISTRATIVE TRIBUNAL,

Considering the fifth complaint filed by Mr L. K. against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 26 July 2022, UNESCO's reply of 31 October 2022, the complainant's rejoinder of 16 February 2023 and UNESCO's surrejoinder of 17 May 2023;

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 implied refusal to reclassify his post.

The complainant joined UNESCO on 2 December 2002 as a grade G-3 security officer, assigned to the Security Unit within the Security and Safety Section, under a two-year fixed-term appointment that was renewed several times until 5 November 2021, when his appointment was terminated by the Organization on disciplinary grounds.

On 9 January 2020 the new post classification policy at UNESCO, described in Item 3.1 of the Human Resources Manual, entered into force following the publication of Circular AC/HR/74. Staff

Rule 102.2, entitled “Compatibility with classification standards” and granting staff members the possibility to submit requests for the reclassification of their posts to the Director-General at any time, was abolished. Pursuant to paragraph 33 of aforementioned Item 3.1, such requests had to be submitted by the supervisor and approved by the Assistant Director-General of Sector or the Director of Bureau for G posts at Headquarters, except in exceptional cases.

By a memorandum, dated 9 March 2020, security officers were informed of a reorganisation of the Security and Safety Section and, in particular, of the establishment of a new Operational Support Unit, with effect from 1 March, responsible inter alia for coordinating security training and proposing the Section’s strategy in this area.

On 1 December 2020 security officers’ generic job descriptions were updated, taking into account their actual duties. The complainant received his new job description on 3 December. It confirmed that his post was classified at grade G-3.

On 15 April 2022, that is more than five months after the termination of his appointment with the Organization, the complainant – who contends that he wanted to wait for his annual performance discussion with his supervisor before acting and asserts that the termination of his appointment, challenged in his eleventh complaint, was “totally unlawful”^{*} – sent the Deputy Director-General a request for the reclassification of his post. In the request, he referred to the provisions of paragraphs 34 and 36 of Item 3.1 of the Human Resources Manual which, in his view, made it possible to submit this request, and he appended the old and new descriptions of his post, dating from 2003 and 2020 respectively.

On 26 July 2022, referring to Article VII, paragraph 3, of the Statute of the Tribunal, the complainant filed the present complaint against the implied decision to reject his request of 15 April 2022 resulting from the Administration’s failure to take a decision on that request within a 60-day period. He asks the Tribunal to order the Administration to review the classification of the post of security officer

^{*} Registry’s translation.

with the assistance of a classification expert from outside the Organization. He also seeks compensation for the moral injury he considers he has suffered, which he assesses at 10,000 euros.

UNESCO finds that the complaint is irreceivable for lack of a cause of action and that it was correct to reject the complainant's reclassification request. It refers in particular to the change in the rules brought about by the publication of Circular AC/HR/74, which resulted in the repeal of former Staff Rule 102.2. It therefore asks the Tribunal to dismiss the complaint as irreceivable or, subsidiarily, as unfounded.

CONSIDERATIONS

1. The complainant impugns before the Tribunal the implied decision of rejection that arose pursuant to Article VII, paragraph 3, of its Statute from the failure to reply – or to take any other action – within the 60-day period prescribed by that paragraph to a post reclassification request that he had submitted to the Deputy Director-General of UNESCO on 15 April 2022.

It should be pointed out at the outset that the request, which related to the grade G-3 post of security officer held by the complainant in the Security and Safety Section since his recruitment in 2002, was submitted after he had left the Organization, on 5 November 2021, on account of the termination of his appointment on disciplinary grounds. The challenge to that termination is the subject of the complainant's eleventh complaint, on which the Tribunal ruled in Judgment 4924, also delivered in public this day.

2. UNESCO submits in particular that the request in question was irreceivable pursuant to the provisions of Item 3.1 of the Human Resources Manual and Circular AC/HR/74, concerning post classification in the Organization, so that the request was therefore rightly implicitly rejected.

The Organization argues that, pursuant to these provisions, which established a new post classification policy that entered into force on 9 January 2020, staff members are no longer normally permitted to

request a review of the classification of their post of their own initiative and that the complainant does not meet any of the criteria set out in these provisions under which it is nevertheless possible, in certain cases, to submit such a request.

3. It is true that, in accordance with the new policy, the Organization repealed former Staff Rule 102.2, which provided that, under certain conditions, any staff member who considered that their post classification had become inappropriate “m[ight], at any time, submit to the Director-General a request for the reclassification of the post”. Based on a completely different rationale, paragraph 33 of Item 3.1 of the Human Resources Manual now provides that “[r]equests for the reclassification of a post are submitted by the supervisor”. This new rule is also confirmed, in almost identical wording, by paragraphs 9 and 11 of Circular AC/HR/74. As a general rule, a staff member is therefore no longer entitled to request a review of the classification of her or his own job.

4. However, an exception to this rule is contained in paragraph 34 of aforementioned Item 3.1 (whose content is reproduced, once again in almost identical wording, in paragraph 15 of the abovementioned circular).

Paragraph 34 provides as follows:

“Requests for the reclassification of a post may be initiated by a staff member, on an exceptional basis, in the context of the annual performance discussion with their supervisor [...], when he/she considers that the nature of the duties or the level of responsibilities assigned to him/her would require a classification review, and provided that:

(a) A substantial modification in the structure and responsibilities of the unit to which the post of the staff member belongs resulted in a substantial change in his/her ongoing responsibilities; and

(b) The staff member has performed the responsibilities for at least one year.”

It was on the basis of these provisions that the complainant, on his own initiative, submitted his post reclassification request of 15 April 2022.

5. The Tribunal notes incidentally that the complainant, referring to paragraph 36 of Item 3.1, was wrong to believe that he had to submit the request – via the Director of the Bureau of Human Resources Management – to the Deputy Director-General. Although paragraph 36 does provide that “[i]n the case of [...] staff [of the Sector for Administration and Management (to which the Security and Safety Section belongs)], reclassification requests are addressed” in that form to the Deputy Director-General, it is clear from the paragraph as a whole that the requests referred to are those which the supervisor of the staff member concerned refuses to pursue and which the staff member wishes to maintain despite the failure of a mediation procedure provided for in paragraph 35. As that was not the situation in the present case, the provisions in question were not applicable.

6. However, the complainant’s reclassification request was in any event irreceivable because, more fundamentally, it did not meet the conditions set out in aforementioned paragraph 34.

It is apparent from the wording of that paragraph that a post reclassification request can only be made by a staff member during a discussion with her or his supervisor regarding her or his annual performance appraisal. The Tribunal cannot fail to note that the complainant’s request was not, in this case, made during a discussion of this type. Moreover, UNESCO is correct in observing, more generally, that the procedure laid down in paragraph 34 cannot apply to former staff members because, by definition, they do not have appraisal discussions after they leave the Organization. This logical conclusion is further strengthened by a literal analysis of the paragraph, since it provides that a reclassification request may be submitted by a “staff member”, which, in the context in which that phrase is used here, excludes former staff members.

7. On this point, the complainant submits that he lost his status as a staff member because of the termination of his appointment on disciplinary grounds, which he alleges was “totally unlawful”*, and

* Registry’s translation.

that, since that termination is bound to be set aside by the Tribunal, his employment relationship should be regarded as having continued. He also alleges that he intended to request that his post be reclassified during his next annual appraisal discussion, which would have taken place in principle – had his appointment not been terminated in the interim – in early 2022. He explains his failure to request a reclassification during his previous appraisal discussion by the fact that, in his view, such a request could only be made, pursuant to aforementioned paragraph 34(b), one year after the entry into force, on 1 December 2020, of his new job description, which had been recently drawn up. He submits that the unlawful termination of his appointment thus unduly deprived him of the opportunity to submit the request that he intended to make during the following discussion.

However, on the one hand, the Tribunal considers – without there being any need to rule on the accuracy of the complainant’s analysis concerning the calculation in this case of the period specified by aforementioned subparagraph (b) – that there is nothing to establish that the complainant would have in fact made a request for reclassification during the appraisal discussion that should have normally taken place in 2022. This circumstance appears all the more hypothetical given that, according to the Organization’s uncontested submission, the complainant did not lodge an appeal against the new job description of 2020 referred to above, even though it stated that his post was at grade G-3. Besides, the Tribunal notes that the complainant indicates, in his submissions, that he wishes to be granted the contested post reclassification in order to obtain full compensation for the injury resulting from the termination of his appointment – which, as has been stated, is challenged in his eleventh complaint – which may suggest that he would not necessarily have made this request in the absence of this termination.

On the other hand and above all, although it is true that in Judgment 4924, deciding upon his eleventh complaint, the Tribunal set aside the termination of the complainant’s appointment, which it did indeed find unlawful, it nevertheless did not order the complainant’s reinstatement at UNESCO. Thus, he cannot be regarded as still having been in service after 5 November 2021 and it cannot therefore be

considered that the appraisal discussion scheduled for early 2022 should have taken place. It follows that, in any event, the complainant would not have been able to submit a request for the reclassification of his post in accordance with the conditions set out by aforementioned paragraph 34.

8. Furthermore, it should be emphasised that according to paragraph 34, the possibility for a staff member to submit a reclassification request on her or his own initiative under the specified conditions is open only “on an exceptional basis”.

However, the complainant does not demonstrate any circumstances that would give grounds to consider that his situation constituted such an exceptional basis as to entitle him to use this special procedure. Although he submits that, as regards the classification of the post of security officer, the Organization stubbornly refuses to take into account the changes in the duties involved, the evidence that he produces is not, in the Tribunal’s view, such as to establish that this assertion is well founded. Moreover, it should be noted that, as the complainant himself points out in his submissions, the job in question corresponds to a generic post with similar job descriptions and with the same classification for all security officers. Similarly, the complainant does not demonstrate how his situation differed from that of any other holder of a post of this kind. In this respect, it should be observed that, although the complainant previously carried out particular training duties in addition to his ordinary responsibilities (see, on this point, Judgment 4880, delivered in public on 8 July 2024, by which the Tribunal ruled on his third complaint), these duties were abolished during the reorganisation of the Security and Safety Section implemented on 1 March 2020 and cannot therefore, in any event, justify a specific classification of his post from that date.

9. These various considerations lead to the conclusion, without there being any need to ascertain whether the complainant’s reclassification request satisfied the other conditions set out by aforementioned paragraph 34, that the request was irreceivable and that UNESCO was therefore correct to reject it implicitly.

10. Moreover, the Tribunal notes that, even supposing that the request in question could have been found receivable, the reclassification that it sought would not, in any event, have had any practical effect. As a matter of fact, as the complainant himself explains in his submissions, this request sought a reclassification from the date of its submission, that is 15 April 2022. However, since the complainant could not still be regarded, for the reasons already stated, as a staff member of UNESCO at that time, such a reclassification would not have had any real consequences.

11. It follows from the foregoing that the complaint must be dismissed in its entirety, without there being any need for the Tribunal to rule on the parties' other pleas or objections.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 14 November 2024, Mr Patrick Frydman, President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Mirka Dreger, Registrar.

Delivered on 6 February 2025 by video recording posted on the Tribunal's Internet page.

(Signed)

PATRICK FRYDMAN JACQUES JAUMOTTE CLEMENT GASCON

MIRKA DREGER