

C.
v.
IAEA

141st Session

Judgment No. 5108

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr A. C. against the International Atomic Energy Agency (IAEA) on 12 March 2021, the IAEA's reply of 21 June 2021, the complainant's rejoinder of 2 August 2021 and the IAEA's surrejoinder of 2 November 2021;

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.

The complainant joined the IAEA on 1 May 1999 as Nuclear Safeguards Inspector, at grade P-3, under a fixed-term appointment that was renewed several times. In April 2005, he was promoted to grade P-4 and, in January 2012, he was appointed as Safeguards Training Officer in the Safeguards Training Section (CTR), Division of Concepts and Planning (SGCP) in the Department of Safeguards (SG), at the same grade.

By a memorandum dated 6 September 2018, the complainant's supervisor submitted a request for an evaluation of the post encumbered by the complainant "with a view to reclassify it from a P4 to a P5 level". A desk audit was subsequently conducted and the resulting report was

finalised on 27 March 2019. A copy of this report was provided to both the complainant and the Director of SGCP (DIR-SGCP) for their comments and acceptance. The complainant and the DIR-SGCP each accepted the report's content on 27 March 2019 and 1 April 2019, respectively.

By a memorandum dated 30 August 2019, the Director of the Division of Human Resources (DIR-MTHR) indicated to the DIR-SGCP that the desk audit of the post encumbered by the complainant “resulted in a change to the classified grade, from P-4 to P-5”, and presented her with two options based on this result. On the one hand, in the event “the reclassified grade [was] not accepted” due to programmatic and operational needs or budget constraints, the DIR-MTHR advised that the post's incumbent should stop performing “those higher-level functions as revealed from the audit review” and that he “should only be expected to perform the functions outlined in the existing post description classified at the P-4 level”. The DIR-MTHR also stated that the complainant could be considered for a Special Post Allowance (SPA) if he had satisfactorily performed the “higher-level functions” for at least three months and up to one year prior to the assessment at issue. The DIR-MTHR requested, in this regard, confirmation of the period during which the complainant carried out these higher-level duties. Alternatively, in the event “the reclassified grade [was] accepted”, the post would be upgraded upon receipt of funding approval and its incumbent would be promoted if it was proven that he had satisfactorily performed the role and had the required competencies and profile for the post.

By a memorandum dated 27 September 2019, the DIR-SGCP informed the DIR-MTHR, that, although the SGCP understood that “according to the completed assessment, [the complainant] ha[d] been undertaking duties at the P5 level”, the programmatic objectives in the post's area did not require that its incumbent continued to perform these higher-level duties. The DIR-SGCP added that “the Programme and Budget for the [CTR] [did] not reflect an additional P5 position in the Section”. Therefore, the SGCP would inform the complainant to perform the functions outlined in his existing job description.

Nonetheless, the DIR-SGCP requested that the complainant receive the “maximum possible retroactive [SPA] of one year effective [as of] 2018-09-06”.

On 11 October 2019, the complainant was verbally informed that his post would not be reclassified. He was awarded a SPA for the period of 6 September 2018 to 5 September 2019. On 21 November 2019, the complainant was also verbally informed that his professional activities were to be limited to those outlined in his current job description.

By a memorandum dated 29 November 2019 addressed to the DIR-MTHR, the complainant requested to receive “the result of the [desk audit] evaluation”. In her response dated 5 December 2019, the DIR-MTHR informed the complainant that, pursuant to the applicable provisions, MTHR had communicated to the SGCP management “the outcome of the desk audit review” and that the DIR-SGCP had, in turn, duly informed him about “the result of the evaluation” as well as the SGCP’s decision in this regard.

By a memorandum dated 16 January 2020, the complainant submitted to the DIR-MTHR a request for review against the decision not to reclassify his post. In her reply dated 4 February 2020, the DIR-MTHR indicated that the final decision regarding the reclassification of the post encumbered by the complainant “rest[ed] with SG management in accordance with the programmatic and operational requirements foreseen and approved by [the Director General]”.

On 11 March 2020, the complainant submitted a request for review challenging the decision “taken by the management of the [SG] to reject the update of [his] job description and to not reclassify [his] post”. Additionally, he reiterated that he had not yet received “the result of the desk audit evaluation”. On 20 July 2020, the Director General dismissed the complainant’s request for review on the merits. Additionally, the Director General noted that the desk audit report had been shared with the complainant on 27 March 2019 and had been accepted by him on that same day. The complainant lodged an appeal with the Joint Appeals Board (JAB) against this decision on 7 August 2020.

On 27 November 2020, the JAB issued its report. The JAB recommended to dismiss the appeal, considering that the desk audit review of the post encumbered by the complainant “appeared to have been conducted in a proper manner” and that the decision not to reclassify the post at issue “was correctly at the discretion of [the SG] management”.

By a letter dated 23 December 2020, the Director General informed the complainant of his decision to endorse the JAB’s conclusions and therefore to dismiss his appeal. This is the impugned decision.

The complainant requests the Tribunal to order the reclassification of his post from grade P-4 to grade P-5. He seeks the retroactive payment of the difference in salary resulting from this reclassification, including all benefits and the IAEA’s contributions to the Pension Fund, with interest calculated “from due dates”. The complainant also seeks the payment of a SPA “since January 2012”. Lastly, he claims moral damages and costs. In his rejoinder, the complainant requests the Tribunal to acknowledge the result of the desk audit and to confirm that he performed a job at a higher level for more than eight years, and that he should be awarded compensation under this head.

The IAEA asks the Tribunal to dismiss the complaint as unfounded.

CONSIDERATIONS

1. In challenging the impugned decision, in which the Director General accepted the JAB’s recommendation to dismiss his internal appeal against the decision not to reclassify his P-4 post to the P-5 level, the complainant asks the Tribunal to reclassify the post to grade P-5 as the desk audit had recommended, with retroactive effect. This claim is irreceivable as it is not within the Tribunal’s competence to make orders of this kind against organizations, and, moreover, the classification of posts and gradings are within the discretionary authority of the Director-General (see, for example, Judgment 4974, consideration 3). In effect, however, the complainant seeks orders to set aside the impugned decision and to grant him retroactive payment of the

difference in salary resulting from this reclassification, with interest. He also seeks a SPA, with retroactive effect from January 2012, rather than from 6 September 2018. This claim is irreceivable as the complainant did not challenge the decision to grant him a SPA, as the IAEA Staff Rules require. Thereby, he did not exhaust the internal means of redress that were open to him, pursuant to paragraph 1 of Article VII of the Tribunal's Statute. In any event, the claim is unfounded because, as the Director General had stated, the SPA the IAEA had paid the complainant for the period 6 September 2018 to 5 September 2019 was the maximum period for such a payment under paragraph 47(g), Part II, Section 3, of the IAEA Administrative Manual (AM.II/3). This does not however preclude the complainant from relying on matters touching the SPA in support of other claims advanced in his submissions. The complainant also seeks moral damages and costs.

2. The Tribunal recalls its explanation of the IAEA's process of reclassification of posts in the General Service category, provided in paragraphs 48 to 57 of AM.II/3, in consideration 4 of Judgment 4026, which are relevant to the case at hand as they are also applicable to the posts in the Professional category and, although they have been amended since the adoption of the aforementioned judgment, the wording of the paragraphs at issue have remained, in essence, unchanged. The Tribunal stated that:

“The IAEA's process for the reclassification of posts in the General Service category (grades G-1 to G-7) is set out in paragraphs 48 to 57 of AM.II/3. They relevantly provide that a decision to reclassify a post may arise from a request to MTHR by a supervisor, as in the present case. The subject post is to be evaluated 'by the classification officer(s) designated by MTHR' who should evaluate it in accordance with the International Civil Service Commission's (ICSC) job classification system. The evaluation of an encumbered post 'should include a desk audit' consisting of an interview of the incumbent and her or his supervisor and a review of any information which might be relevant to supplement and verify the documents provided with the reclassification request. The result of the evaluation is to be submitted to DIR-MTHR for approval and the decision thereon is to be communicated to the incumbent and to specified officials. Reasons must be given for a decision not to reclassify a post and the incumbent may request DIR-MTHR to review that decision. In respect of technical issues DIR-MTHR may request the advice of an independent classification specialist.

The latter is to submit the findings to DIR-MTHR who shall take them into consideration in making the final decision. The final decision is to be communicated to the incumbent and specified officials. Reasons must be given for a decision which upholds a prior decision. [...]"

In the context of the present case, the Tribunal highlights, in particular, paragraph 57 of AM.II/3 which stated as follows under the caption "Promotion after reclassification of an encumbered post":

"57. Where an encumbered post has been reclassified at a higher grade, the following procedure must be followed:

- (a) The proposal for promotion of the incumbent staff member to the higher grade shall be submitted by the Division Director through the Departmental Head to DIR-MTHR. The proposal will include a statement from the Division Director that confirms that the incumbent: fully meets the required qualifications and years of working experience, including any applicable testing criteria; and has demonstrated the competence to perform the functions associated with the higher grade.
- (b) DIR-MTHR shall review the proposal and submit it together with any relevant details to the Director General for approval.
- (c) If the promotion is approved, the effective date of promotion of the incumbent staff member shall be the date of reclassification of the post as set out in paragraph 53 above."

3. In his internal appeal, the complainant challenged the Director General's decision of 20 July 2020 to uphold the initial decision not to reclassify the subject post. Explaining the reasons for that decision, the Director General recalled that in accordance with Staff Rule 2.01.2(D), he retained the discretionary authority to classify or reclassify posts. He further noted that the request for a desk audit of the post had been submitted by the complainant's supervisor directly to the DIR-MTHR by a memorandum dated 6 September 2018, who initiated the desk audit. The resulting evaluation report was finalized on 27 March 2019. The complainant accepted its contents on the same date, as did the DIR-SGCP on 1 April 2019. The Director General also recalled that, after that audit, "which concluded that the duties [the complainant was] performing were classified at the P5 level, MTHR engaged with SGCP regarding the possible outcomes". This was at a time when planning was already underway to refine the structure and remit of the

complainant's Section. The SGCP reviewed the duties that the complainant performed to determine whether the programmatic and operational needs of the Section required the position to be reclassified at the P-5 level, or whether those functions could be allocated elsewhere in the restructuring process. After a careful review and in consultation with the Deputy Director General of the SG (DDG-SG), the DIR-SGCP informed the DIR-MTHR, by a memorandum dated 27 September 2019, that while the SGCP was grateful for the additional work the complainant undertook, the "programmatic objectives" in this area did not require that the incumbent continues to perform these higher-level duties. Furthermore, the "Programme and Budget" for the Section did not reflect an additional P-5 position in the Section. Accordingly, it was decided not to reclassify the post to the P-5 level.

4. The Director General further recalled that the complainant was informed by the DIR-SGCP, in a meeting on 11 October 2019, of the conclusion of the desk audit and that he was therefore awarded a SPA for the period 6 September 2018 to 5 September 2019, the maximum period allowed under paragraph 47(g) of AM.II/3. The Director General noted that the complainant was also informed that his post would not be reclassified and had been directed to limit his activities to those outlined in his current job description, which directive was again confirmed to him by his supervisor in November 2019 and also in the latest Performance Development Review (PDR) completed in 2020.

5. Having referred to the arguments the complainant proffered in his application for review, the Director General stated that, given the current distribution of tasks as communicated by the complainant's supervisor, taken together with the programmatic objectives and the "Programme and Budget" for the Section, "[he was] satisfied that the evaluation process was comprehensive and that the conclusion that the duties [attached to the post] were at the P5 level was proper". He was satisfied that "the discretionary decision" not to reclassify the post was properly made based on programmatic and operational requirements.

6. In the impugned decision, the Director General noted the complainant's disagreement with the explanation that the decision not to reclassify his post was based on the programmatic needs of the IAEA. He concurred with the JAB's conclusion that the decision was correctly based on an assessment of the programmatic needs of the Section, adding that a decision whether the programmatic needs of the SG required a P-5 position in the SGCP fell under his discretionary authority. The Director General noted the JAB's acknowledgment that the complainant was "understandably disappointed" at the outcome of the review, having taken on higher-level duties and having performed them to the full satisfaction of his supervisors. He stated that the complainant had justifiably received a SPA. He however disagreed with the JAB's statement that it was "sympathetic" to the complainant's view that it was inconsistent for his supervisors to tell him to stop performing duties to a higher level while at the same time receiving gratitude from his Director for the work and activities he performed at the higher level. He also stated, correctly, in the Tribunal's view, that past performance at a higher level, as was correctly recognized through the payment of the maximum duration of a SPA, is a separate matter. The Director General further noted the JAB's observation that the statement of the complainant's Director in the complainant's 2017 PDR that, "the [complainant's] job description should be reviewed to reflect the level of responsibilities of the post" did not "amount to supporting the reclassification" of the subject post in 2019. Instead, the JAB reasoned that the complainant's Director was "entitled to use the results of the desk audit in rationalising the work of the Section" and he agreed with that assessment. The Tribunal finds that the foregoing statements, which are consistent with the evidence and the applicable rules and principles, bear out that the circumstances in which the decision not to reclassify the complainant's post did not breach the IAEA's duty of care towards the complainant, as he submits.

7. The complainant submits, in effect, that the impugned decision should be set aside because the decision not to reclassify his post was not based on legitimate reasons. He argues that he had performed duties beyond his job description since 2012; that the IAEA had implicitly

accepted his position as a team leader with supervisory functions since then and he was involved in performance assessment processes as a supervisor. Additionally, the DIR-SGCP had praised his role as a team leader in his performance reviews.

The submission is unfounded. It misapprehends that posts are not reclassified on the basis of the work, performance or the merit of the incumbent, but upon the level of the duties and responsibilities attached to the post itself (see, for example, Judgments 4502, consideration 6, 4336, consideration 6, 4307, consideration 8, 4238, consideration 7, 4221, consideration 11, and 4000, consideration 9). This misapprehension is also reflected in the complainant's further submissions that he was subsequently offered a position of Team Leader at the P-4 level with a modified job description of his post; that these modifications reflected P-5 duties he was performing and show that the programmatic needs of the Section did not change and that he was expected to fulfil higher functions while staying at the same grade. However, as the IAEA points out, the new P-4 role was offered to the complainant based on the new structure of his Section and the job description for this post had been reviewed and classified at the P-4 level. Accordingly, the complainant's further argument that even at the time he filed his rejoinder he was still performing higher-level duties, except for the evaluation of his team members, in breach of the principles of good faith, fairness and of equal pay for equal work is irrelevant to the issue whether the decision not to reclassify the subject post was unlawful. The Tribunal sees no evidence that leads it to conclude that the decision not to reclassify the subject post was made in breach of these principles.

8. The complainant submits that the organization failed to provide sufficiently detailed reasons to justify the decision not to reclassify his post. It is worth noting, in this regard, that, in his decision to reject the complainant's internal appeal, the Director General recalled, concerning the complainant's argument in his internal appeal that the reasons for the decision not to reclassify his post were not shared with him, in alleged breach of paragraph 52 of AM.II/3, that such provision stipulated that "[t]he result of the evaluation will be submitted to [the] DIR-MTHR for approval. The decision will be

communicated [...] [to] the incumbent. If the decision is not to reclassify the post, the reasons shall be given.” The Director General concluded that as the requirement is that reasons be communicated to the complainant, he agreed with the JAB that this requirement was met in the meetings held between the complainant and his Divisional management, during which these reasons were conveyed to him personally and the discussions provided a sufficient basis for him to take an informed decision as to further actions, which he took.

The evidence shows that the meetings in which the complainant was informed of the reasons for the decision not to reclassify his post were held on 11 October 2019 and in November 2019 (referred to in consideration 4 of this judgment). It is notable that in his rejoinder, the complainant states that “[...] in October 2019 the DIR-SGCP informed me that my post would not have been reclassified mainly because the functions of team leader for training SG inspectors (with supervisory functions) that I was performing were not assigned in accordance with the rules set out in the Administrative Manual and that I never held a position with a job description of team leader for training SG inspectors in CTR”. It follows that the complainant was sufficiently informed of the reasons for the decision not to reclassify his post.

9. The complainant’s submission that, in breach of paragraph 52 of AM.II/3, the reasons for the decision not to reclassify his post were not formally communicated in writing to him at the time when it was made is misconceived. This provision did not oblige the IAEA to communicate the reasons to him in writing. Moreover, the complainant’s submission to the effect that the contested decision was unlawful because he was not informed about the restructuring of the Section and the modification of his role in it is not borne out by the evidence. These submissions are therefore unfounded.

10. The complainant’s further submission that the impugned decision is unlawful, in effect, because the Director General failed to find that he had a legitimate expectation to have his post reclassified, is also unfounded. According to the complainant, this legitimate expectation arose because, on 9 March 2018, the DIR-SGCP recognized in his PDR

that his job description should be reviewed to reflect the level of responsibilities of his post. Following this his former supervisor requested MTHR to evaluate his job with a view to reclassify his post to the P-5 level. This was because he was performing increased duties and responsibilities compared to those in his original job description. Upon MTHR's positive reply, his supervisor requested the desk audit, which is evidence that his Director actually supported the post reclassification.

The complainant cites a statement from consideration 83 of Judgment UNDT/2015/043 of the United Nations Administrative Tribunal that “[t]he doctrine of legitimate expectation applies to administrative decisions. A person may have a legitimate expectation of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment. **The expectation may arise from a representation or promise made by the authority including an implied representation** or from consistent past practice.” (Complainant’s emphasis.)

11. In the first place, the Tribunal does not necessarily follow the judgments of other judicial bodies. Second, the provisions related to reclassification do not dictate that a recommendation to reclassify be automatically implemented. Having regard to paragraphs 48 to 57 of AM.II/3, it is not an automatic process (see, for example, Judgment 4026, consideration 4).

12. The complainant contends that the restructuring of his Section was just an excuse not to reclassify his post. According to him, in October 2019 the DIR-SGCP informed him that his post would not have been reclassified mainly because the functions of team leader for training SG inspectors (with supervisory functions) that he was performing were not assigned in accordance with the rules set out in the Administrative Manual and he never held a position with a job description of team leader for training SG inspectors in CTR. However, “[c]oincidentally, a timely restructuring came into the picture as a way to keep me in the section without reclassifying the post”, but the restructuring occurred much later than the time he was notified of the

contested decision. He asked MTHR for the date when the restructuring process was requested. MTHR confirmed, in an email of 22 July 2021, that the request was submitted in February 2020, which was after he was informed his post would not have been reclassified. The complainant accordingly argues that “programmatic needs” was just an excuse because the objectives of his Section did not change and the budget was almost the same as it was before. However, as the IAEA states, the February 2020 request was only a formal step. The reasons for the decision at issue were conveyed to the complainant in October 2019 and November 2019 and subsequently in sufficient detail, contrary to his submission that they were not.

13. The contention detailed in the foregoing consideration is unfounded. The evidence shows that the programmatic needs of the Section were being considered prior to the date on which the complainant was informed of the decision not to reclassify his post. This is borne out by the following statement in a memorandum, dated 27 September 2019, that the DIR-SGCP sent to the DIR-MTHR through the DDG-SG:

“[The complainant] has been undertaking duties at the P5 level. SGCP is grateful for the additional work undertaken by [him] and appreciates his contribution. However, the programmatic objectives in this area do not require that [he] continues to perform these higher level duties as delineated in the referenced [memorandum]. Furthermore, the Programme and Budget for the Safeguards Training Section (CTR) do not reflect an additional P5 position in the Section.”

14. In light of the foregoing, the complainant’s submissions that the decision not to reclassify the post was unjustified in that the “alleged impossibility” to fund his post at the P-5 level due to programmatic reasons is unfounded. So too are his further submissions that the “Programme and Budget” could have been upgraded for the next biennium to take into account the funding of the reclassification of his post; that the programmatic needs of the Section did not change after the decision not to reclassify his post as he was still proposed for the P-4 Team Leader’s post with a modified job description and that he was still performing duties at a higher level than P-4 up until the time when

he filed his rejoinder. These submissions do not align with the rules and principles regarding the reclassification of posts, in particular, that decisions to reclassify a post and whether the programmatic needs of a department require a P-5 position are within the discretionary authority of the Director General, whose plans for the Section may not have coincided with a staff member's personal views. The complainant's submission that the reasons given to justify that decision not to reclassify his post were inconsistent does not change this conclusion.

15. In the foregoing premises, the complaint is unfounded and will be dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 22 October 2025, Mr Michael F. Moore, President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, René M. Vargas M., Registrar.

Delivered on 10 February 2026 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

HONGYU SHEN

RENÉ M. VARGAS M.