

A. G. (No. 5)

v.

WHO

141st Session

Judgment No. 5150

THE ADMINISTRATIVE TRIBUNAL,

Considering the fifth complaint filed by Ms C. A. A. G. against the World Health Organization (WHO) on 16 October 2020 and corrected on 3 November 2020, WHO's reply of 9 February 2021, the complainant's rejoinder of 19 April 2021 and WHO's surrejoinder of 20 July 2021;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions;

Considering that the facts of the case may be summed up as follows:

The complainant – who claims to have performed duties at a level higher than her grade – challenges the rejection of her request for acting pay.

The complainant joined UNAIDS – a joint and co-sponsored United Nations programme on HIV/AIDS administered by WHO – in July 2011 in the Gender Equality and Diversity Division. Having initially served under temporary appointments, she obtained a fixed-term appointment in August 2012. In December 2014, she was appointed as Executive Officer, at grade P-4, in the office of the UNAIDS Deputy Executive Director, Management and Governance (DXD/MER), to whom she reported. With effect from 12 July 2019, she was reassigned to the post of Fast Track Adviser, at grade P-4, in Lilongwe, Malawi, in

accordance with the UNAIDS mobility policy. As from 16 May 2019, she was placed on sick leave due to health issues.

In November 2017, the incumbent of the P-5 position of Senior Adviser to the DXD/MER, who had been the complainant's first-level supervisor, left UNAIDS following the departure of the previous Deputy Executive Director. In February 2018, Ms C. was appointed as DXD/MER and became the complainant's first-level supervisor.

By a memorandum dated 20 November 2018, the complainant – who considered that she had been assuming the functions and responsibilities of the P-5 post of Senior Adviser to the DXD/MER since mid-February 2018 – requested Ms C. to be granted acting pay under Staff Rule 320.4 as of 1 June 2018. Ms C. did not approve the request, nor did she initiate the applicable process to formally request that the complainant be recognised as assuming or performing duties and responsibilities of a higher graded post.

By another memorandum of 3 May 2019, the complainant requested anew to be granted acting pay to the Director, Human Resources Management (HRM), as of 1 June 2018. She copied Ms C. and referred to her previous memorandum of 20 November 2018. On 25 June 2019, the Director, HRM, notified her that, having consulted her first-level supervisor and reviewed the personnel management information technology system, there was no basis for the grant of acting pay as there was no record of her being officially requested or required to temporarily perform the functions and responsibilities of the P-5 position of Senior Adviser to the DXD/MER nor was there an official designation of her acting in that role.

On 20 July 2019, the complainant submitted a request for administrative review, challenging the 25 June 2019 decision. She contended, in particular, that she had assumed the functions of the post at the higher grade in the office of the DXD/MER and that she had been asked to serve as first-level supervisor of two senior General Service staff members and took on the role of “leading the [o]ffice” upon departure of the incumbent of the P-5 post of Senior Adviser. Her request was rejected on 16 September 2019 by the Director of the New York Liaison

Office, who had received delegation of authority by Ms C. to avoid any perception of a conflict of interest.

On 14 October 2019, the complainant lodged an appeal with the Global Board of Appeal (GBA).

After requesting and receiving additional information from the Administration, the GBA issued its report on 24 June 2020, concluding that the formal conditions for requesting acting pay were not fulfilled and that the evidence did not establish that the complainant had performed the duties of the P-5 Senior Adviser post. It recommended rejecting the appeal.

On 11 August 2020, the Executive Director, accepting the conclusions and the recommendation of the GBA, decided to reject the appeal in its entirety. This is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision “with all legal effects flowing therefrom” and to award her “full acting pay and benefits retroactively as from 1 June 2018, through May 2019 when [she] went on long-term service incurred sick leave, for having performed the functions of the post of Senior Adviser, DXD/MER, P.5”. She also seeks moral damages in an amount of not less than 100,000 Swiss francs and reimbursement of all legal fees, as well as interest on all the amounts awarded at the rate of 5 per cent per annum from 1 June 2018. Lastly, she claims any other relief deemed just and fair by the Tribunal.

WHO asks the Tribunal to dismiss the complaint as unfounded in its entirety.

CONSIDERATIONS

1. The question which this complaint raises is whether the complainant should be granted acting pay under Staff Rule 320.4 which, she alleges, is due to her for assuming, from 1 June 2018 to May 2019, the functions and responsibilities of the P-5 post of Senior Adviser to the DXD/MER. Her former first-level supervisor, who had left UNAIDS in November 2017, had carried out those duties.

The complainant asks the Tribunal to set aside the impugned decision dated 11 August 2020 rejecting her appeal in which she had challenged the rejection of her request for acting pay, to award her “full acting pay and benefits retroactively as from 1 June 2018, through May 2019 when [she] went on long-term service incurred sick leave, for having performed the functions of the post of Senior Adviser, DXD/MER, P.5”, as well as moral damages, costs and interest on all the amounts due, and any other relief the Tribunal deems just and fair. This last claim is however too vague to be receivable (see, for example, Judgments 4916, consideration 10, and 4719, consideration 7).

2. The complainant signifies in the complaint form that she applies for oral proceedings. Her request is rejected as the Tribunal considers that the parties have presented sufficient submissions and documents to allow it to be properly informed of their arguments and of the relevant evidence to resolve the central issue which this complaint raises.

3. The following are the provisions within the Organization’s legal framework, which provide for acting pay in instances in which a staff member assumes the duties and responsibilities of a higher graded post.

Staff Rule 320.4 states that:

“A staff member with a continuing or fixed-term appointment **may be officially required** to assume temporarily the responsibilities of an established post of a higher grade than that which he occupies; such temporary arrangements shall not be continued for more than 12 months, unless otherwise decided by the Director-General. As from the beginning of the fourth consecutive month of such service, the staff member shall be granted non-pensionable extra pay normally equal to, but not exceeding, the difference between his current pay, consisting of net base salary, post adjustment and allowances, and that which he would receive if promoted to the post of higher grade.” (Emphasis added.)

Paragraphs 100 and 110 of Section III.5.8 of the WHO eManual state:

“100. In accordance with the provisions of Staff Rule 320.4, a staff member with a continuing or fixed-term appointment **may be officially designated** to assume temporarily the responsibilities of an established position of a

higher grade than that which he/she occupies for a maximum period of twelve (12) months unless otherwise decided by the Director-General.

[...]

110. The supervisor enters the dates of the initial period of acting at a higher level which should not be more than 3 months. At the end of the period the supervisor is notified that the period is ending and that a decision needs to be taken whether to continue the acting period. If the decision is to extend, the supervisor will enter the date of the extended period and the staff member will start receiving acting pay as from the beginning of the fourth consecutive month of such service, the staff member shall be granted non-pensionable extra pay (see Staff Rule 320.4). The [Human Resources] Administrator, [Global Service Centre] processes the appropriate administrative action.” (Emphasis added.)

4. In its report on the complainant’s internal appeal, in which it recommended that the appeal be rejected – which the Executive Director fully endorsed in the impugned decision – the GBA took note of the foregoing provisions. It also took note of the Tribunal’s case law, stated in consideration 11 of Judgment 3370, and in consideration 3 of Judgment 3569.

5. Notably, the GBA referred to the Tribunal’s statement in consideration 11 of Judgment 3370, which dealt with the application within another organisation of a similar provision to Staff Rule 320.4, that “it is tolerably clear that the expression ‘may be called upon’ [which was foreseen in the applicable regulatory provision on acting pay] is a reference to a request made of an employee by the administration to perform duties of a post not being her or his ordinary post but a post at a higher grade. In the present case, at best for the complainant, he was performing duties at a higher grade *de facto* and not as a result of a request by the administration of the type just discussed. Accordingly, at no time was the complainant in a situation where he was entitled to payment under [the applicable provision].” In Judgment 3370, the Tribunal rejected the complainant’s claim in which he sought the payment of an allowance in that regard.

6. The provision which the Tribunal considered in Judgment 3569, which concerned yet another organisation, similarly provided that an official “may be called upon to occupy temporarily a post in a grade in his function group which is higher than his substantive grade [and] shall receive a differential allowance equal to the difference between the remuneration carried by his substantive grade and step, and the remuneration he would receive in respect of the grade and of the step at which he would be classified if he were appointed to the grade of his temporary posting”. In its report, the GBA referred to the Tribunal’s statement in consideration 3 of Judgment 3569, that “while the complainant asserts that he performed all his superior’s duties, he acknowledges in his written submissions that he assumed them de facto and not by virtue of a formal decision of the administration [and that] [t]he requisite conditions for an official to be recognised as performing duties on a temporary basis, in other words that she or he has received a ‘request by the administration’ and that she or he ‘perform[s] duties of a post not being her or his ordinary post but a post at a higher grade’, are therefore not met”.

7. It was against this background that the GBA recalled that Staff Rule 320.4 and Section III.5.8 of the WHO eManual, respectively, set as the conditions for receipt of acting pay that a staff member “may be officially required” or “may be officially designated” to assume the duties of a higher graded post, and that the request should be formally made by the staff member. The GBA concluded that the formal conditions for the complainant’s request to be granted acting pay had not been met because it found no evidence that the Administration had made an official request to the complainant to perform the duties of the P-5 post of Senior Adviser to the DXD/MER.

8. The complainant submits that the GBA erred by relying on the Tribunal’s statements in Judgments 3370 and 3569, while ignoring consideration 13 of Judgment 1781 to which she referred. The Tribunal stated as follows in consideration 13 of that judgment:

“In this case there is an affirmation by the complainant that is supported by his contemporaneous note. At no stage in the proceedings, either in its reply or in its surrejoinder, has the WHO entered any direct denial by the Director-General, who was the only other person present at the discussion on 15 August 1995. While the Director-General may communicate within the Organization through others acting on his behalf, the best evidence available must be offered in proceedings before the Tribunal. In this instance it would have been direct denial by the Director-General himself.”

9. The complainant submits that the GBA erred when it recommended rejecting her internal appeal because it failed to take into account this statement and the fact that Ms C., who was appointed as DXD/MER in February 2018 and became her first-level supervisor, did not directly deny that she had requested her (the complainant) to perform the duties and responsibilities of the P-5 Senior Adviser’s post. This submission is unfounded. Moreover, the complainant’s reliance on this statement is misplaced. The GBA did not err by ignoring Judgment 1781. This latter case was not related to a claim for acting pay for assuming the responsibilities and duties of a higher graded position. It concerned a claim to be granted three step increments at grade P-5, which was allegedly based upon a prior agreement between the complainant and the Director-General. The statement in consideration 13 of Judgment 1781 was made in that context, which is unrelated and irrelevant to the present case.

10. Moreover, it cannot be suggested that the GBA erred by relying on the Tribunal’s abovementioned reasoning in Judgments 3370 and 3569 because the condition in Staff Rule 320.4 that a staff member “be officially required” to assume temporarily the responsibilities of a higher graded post is not the same as the requirement in the regulatory provisions considered in Judgments 3370 and 3569, where the condition was that an official “be called upon” to temporarily occupy a post in a higher grade. This emerges from the Tribunal’s finding in consideration 3 of Judgment 4307, that the complainant in that case did not fulfil the requirements for acting pay in accordance with Staff Rule 320.4, because, as the GBA had found in the underlying internal appeal and as the evidence showed, the complainant was not assigned

to carry out his supervisor's tasks nor perform an acting role. It bears recalling that the GBA relied on the condition set in Staff Rule 320.4 that a necessary condition for acting pay is that a staff member "be officially required" to assume the responsibilities of a higher graded post. The central issue to be determined then is whether the Executive Director erred in accepting, in the impugned decision, the conclusions of the GBA that the complainant was not assigned nor "officially required" to carry out or to perform the tasks of the P-5 post of Senior Adviser to the DXD/MER over the period for which she made the claim underlying this complaint.

11. In its analysis, the GBA noted the email of 20 February 2018, relied upon by the complainant, in which the DXD/MER referred to her as being the Executive Officer who "leads [her] office". The complainant considered this email to be evidence that she was "officially required" to assume the duties of the office of the DXD/MER in an acting capacity over the period in question. The GBA however noted that the 20 February 2018 email was an informal communication with a third party (not directly addressed to the complainant) which, in its view, could not be regarded as an official recognition that she assumed the office of the DXD/MER in an acting capacity. The GBA further noted that, in the said email, the DXD/MER expressly referred to the complainant's position as "Executive Officer" and not as "acting Senior Adviser". The GBA concluded, correctly, in the Tribunal's view, that the email did not constitute evidence that the complainant performed the duties of the P-5 post of Senior Adviser to the DXD/MER. The Executive Director was therefore also correct in endorsing this conclusion in the impugned decision.

12. Further, the Tribunal accepts the GBA's finding, also endorsed by the Executive Director in the impugned decision, that, upon examining the Performance and Learning Management (PALM) evaluations' of two senior General Service staff members, whom the complainant stated she supervised to support her assertion that she acted in the subject P-5 Senior Adviser post, that did not amount to evidence that she was "officially required" to act in that post. Notably, the GBA stated

that, in examining the PALMs of the two General Service staff members, it found that they were under the first-level supervision of the other Senior Adviser, Change Management, who also held a P-5 post within the office of the DXD/MER. The Tribunal sees nothing in the complainant's submissions nor in the evidence in the record that leads to a different conclusion. It also agrees with the GBA's related finding, accepted by the Executive Director, that, notwithstanding that the complainant's 2018-2019 PALM objectives included some elements that were similar to the functions listed in the job profile of Senior Adviser, there was no sufficient evidence to support that the complainant performed those functions.

13. The Tribunal notes that the GBA requested additional information from the Administration as to the distribution of the P-5 Senior Adviser's functions when that post was vacant. In the Tribunal's view, the GBA's conclusion, upon its examination of the Administration's responses and the complainant's comments thereon, that it did not find persuasive evidence that the complainant performed the duties of the subject P-5 post over the period for which she claimed acting pay, was open to it and the Executive Director did not err in accepting this conclusion.

14. The complaint is unfounded to the extent that it is premised on the foregoing bases. The complainant's further plea that there was a breach of the principle of equal pay for equal work is consequently also unfounded.

15. Lastly, the complainant alleges that WHO acted in bad faith. Under the Tribunal's settled case law, bad faith cannot be presumed and must be proven by the evidence (see Judgment 4897, consideration 10, and the case law cited therein). In the present case, as the complainant does not provide evidence to discharge the burden she bears to prove that the decision to reject her request for acting pay was taken in bad faith, her allegation is rejected.

16. It follows from the foregoing that the complaint is unfounded and will therefore be dismissed in its entirety.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 5 November 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.