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JUDGE SOPHIA ADINYIRA, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNDT/2014/087, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 26 June 2014 in the case of *Pedicelli v. Secretary-General of the United Nations*. Ms. Lisa Pedicelli appealed on 22 August 2014 and the Secretary-General answered on 23 October 2014.

Facts and Procedure

2. Ms. Pedicelli is a Meetings Services Assistant at the Secretariat of the Convention on Biological Diversity (SCBD) based in Montreal. As the SCBD is part of the United Nations Environment Programme (UNEP), which is headquartered in Nairobi and administered by the United Nations Office at Nairobi (UNON), the SCBD is also administered by UNON.

3. Ms. Pedicelli joined the Organization in June 1998 at the G-6 level. On 29 August 2006, she took up service with the SCBD as a General Services staff member at the G-7 level.

4. In March 2010, the International Civil Service Commission (ICSC) promulgated a new seven-level job classification standard for General Services (GS) and related categories within the United Nations Common System.

5. On 10 February 2011, Ms. Pedicelli's appointment was converted to a permanent appointment with retroactive effect as of 30 June 2009. At the time, she held a post at the G-7 level, Step 10.

6. In March 2012, the International Civil Aviation Organization (ICAO), which acts as the lead agency for ICSC and UN Common System matters in Montreal, announced that in April 2012 it would commence the conversion from the nine-level salary scale then applied to GS staff at the Montreal duty station to the seven-level salary scale promulgated by the ICSC.

7. In late March 2012, UNON's Human Resources Management Service informed the SCBD staff that, pursuant to the ICAO's lead, it would

8. In early May 2012, a number of staff members, including the Appellant, received Personnel Action forms confirming their new grade. Ms. Pedicelli's Personnel Action form indicated that effective from 1 April 2012 she was appointed at the G-6 level, Step 10.

9. On 20 May 2012, Ms. Pedicelli requested management evaluation of the decision to "reclassify and/or downgrade [her] salary scale level from G7 to G6 due to the introduction of the Global Classification Standard for General Services positions" at the SCBD in Montreal. She claimed that the renumbering exercise amounted to a downgrading of her post, breached Administrative Instruction ST/AI/1998/9 (System for the Classification of Posts), and was conducted without due diligence in the planning and implementation phases.

10. On 28 August 2012, the Management Evaluation Unit (MEU) advised Ms. Pedicelli that her request was moot. The MEU found that SCBD's "realignment exercise" appeared premature and that the SCBD uniformly renumbered all posts without regard to the actual functions and description of each post or tailoring the process. However, while the MEU considered that the renumbering exercise should have been carried out by the SCBD in a non-arbitrary manner that respected the rules of natural justice, the contested decision, i.e., the "realignment exercise", had been rendered moot as the SCBD was conducting a classification exercise pursuant to Administrative Instruction ST/AI/1998/9.

11. On 26 November 2012, Ms. Pedicelli filed an application with the UNDT contesting the manner in which SCBD implemented the Global Classification Standard for GS-positions in Montreal, namely by a unilateral renumbering exercise that resulted in a de facto reclassification of posts down one level in breach of ST/AI/1998/9. She requested, inter alia, reinstatement to her personal grade at the level of G-7, Step 10, and related salary adjustments.

12. On 26 June 2014, the UNDT issued its Judgment and dismissed Ms. Pedicelli's application on the basis that it was not receivable. The UNDT found that Ms. Pedicelli had failed to challenge an "appealable administrative decision" in that the contested decision was made by the ICSC and not the Secretary-General, and the latter had no discretionary authority in proceeding with implementing the ICSC's decision. The UNDT further found that the contested decision was not taken solely with respect to Ms. Pedicelli, nor did the renumbering exercise give rise to legal consequences that adversely affected her given that her functions, salary and emoluments remained the same even after her post was reclassified at the G-6 level. Consequently, it found that Ms. Pedicelli had no standing to

contest the decision. Notwithstanding its findings on receivability, the UNDT also considered the merits of Ms. Pedicelli's claims, and found that her application did not disclose a cause of action.

Submissions

Ms. Pedicelli's Appeal

13. The UNDT erred in law and failed to exercise its jurisdiction when it found the application not receivable. The UNDT confused the regulatory authority of the ICSC with the question of Ms. Pedicelli's contractual rights. Relying on the 1954 Advisory Opinion of the International Court of Justice (ICJ) on the inviolability of contracts,¹ Ms. Pedicelli submits that the downgrading of her grade was an "administrative decision" that affected the terms of her appointment, and over which the internal justice system had jurisdiction notwithstanding that the decision arose as a result of the ICSC's policies. The UNDT's conclusion that her claim was not receivable is inconsistent with its own prior rulings as to the definition of an "appealable administrative decision". Further, its finding that the decision had no adverse consequences for her is not based on facts. Her demotion to the G-6 level resulted in a salary freeze and a loss of \$420 per month, to which she was entitled had she remained at the G-7 level. The demotion to the G-6 level also affects her service record since it implies that she had never served at the G-7 level and will have to reestablish her position at the G-7 level by competing for other posts at that level.

14. The Judgment is contrary to the Appeals Tribunal's jurisprudence in *Al Surkhi et al.*² insofar as it implies that it is not open to staff members to challenge decisions of a general order n18s0n7f168 Tc.C

even if it would result in a post being classified at a lower grade, should not adversely affect the incumbent of that post. The UNDT also erred in stating that Ms. Pedicelli refused to authorise the classification review of her post whereas she cooperated with the subsequent classification review.

16. Ms. Pedicelli requests that this Tribunal find that her UNDT application was receivable, that the renumbering exercise was an “administrat

contested decision was not taken solely with respect to Ms. Pedicelli, and that Ms. Pedicelli did not establish that the renumbering exercise gave rise to legal consequences that adversely affected her given that her functions, salary and emoluments remained the same even after her post was renumbered at the G-6 level. Consequently, it found that Ms. Pedicelli had no standing to contest the decision.

25. Article 2(1)(a) of the Dispute Tribunal Stat

27. In the framework of the foregoing principles, we have found that several challenges to the ICSC's decisions were not receivable insofar as the ICSC is "answerable and accountable" only to the General Assembly and not the Secretary-General, to whom ICSC decisions cannot be imputed in the absence of any discretionary authority to execute such decisions.⁸

28. In the present case, the Appeals Tribunal concurs that the Secretary-General was duty bound to implement decisions of the ICSC as directed by the General Assembly in resolution 67/241. For the most part, such decisions are of a general application and therefore are not reviewable.

29. Notwithstanding the foregoing, it is an undisputed principle of international labour law and indeed our own jurisprudence that where a decision of general application negatively affects the terms of appointment or contract of employe

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Dated this 2nd day of July 2015 in Geneva, Switzerland.

(Signed)

Judge Adinyira, Presiding

(Signed)

Judge Lussick

(Signed)

Judge Faherty

Entered in the Register on this 20th day of August 2015 in New York, United States.

(Signed)

Weicheng Lin, Registrar