

Introduction

1. The Applicant, a Budget Assistant recruited at the FS-4 level with the United Nations Interim Force in Lebanon (UNIFIL), is
failure to classify the Budget Assistant post which she encumbered, from FS-4 level to FS-5level,

9. The Applicant had been placed on a roster of pre-approved candidates for the position of Finance and Budget Assistant at the FS-5 level.²

10. On 14 November 2018, the Director of the United Nations Headquarters -Field Budget and Finance Division (FBFD) advised by facsimile to all the United Nations peacekeeping missions, that the roles performed by international posts had evolved in recognition of their increasing complexity. Therefore, in the recent establishment of new missions, the *lowest level entry* point for international finance and budget posts has been set at the FS-5 level.³ With immediate effect, this was established as the minimum level of recruitment for international finance and budget posts across all United Nations field missions.⁴

11. The Director recommended a review to determine the correct classification for all Budget and Finance posts at the FS-4 level in missions.⁵

12. On 24 July 2019, the UNFIL Human Resources Section (HRS) requested to UNHQ a reclassification for the position no. 300646 associated to the Job description of Budget and Finance assistant at the FS-5 level.⁶

13. On 2 August 2019, UNHQ sought further justification for the reclassification of the post encumbered by the Applicant and requested UNIFIL to describe how the functions associated with this post changed. UNHQ explained that the facsimile from the Director of UNHQ/FBFD dated 14 November 2018 was not a guaranteed upgrade for the post.⁷

14. The OHR requested UNIFIL to give details and concrete examples of the change in functions against the FS-5 level Terms of Reference.⁸ The UNIFIL

²Application, page 4, para.2.

³*Ibid.*, at annex 1, *UNHQ.FBFD.FAX.13488.1. Finance and Budget function in the Field Service category.*

⁴*Ibid.*, at annex 2- *E mail correspondence between Ms. Hoxha and mission.*

⁵Reply, page 4, para. 6.

⁶Application, page 4, para.4.

⁷Reply, annex R/3.

⁸Application annex 3, *additional justification for reclassification.*

resubmitted its request on 16 August 2021.⁹

15. In September 2019, the UNIFIL sent the requested information to UNHQ.¹⁰

16. On 13 October 2021, the Applicant was informed by email that the status of her position would be considered again by UNIFIL and UNHQ.¹¹

17. On 13 January 2022, the Applicant concluded that the Administration did not intend to reclassify her post and filed a request for management evaluation contesting the decision not to reclassify her post.¹²

18. On 1 March 2022, the OHR wrote to UNIFIL HRS indicating the possibility of classifying the Post at Level FS-5 per the duties in the Standard Classified Job Description submitted with the case. However, they informed UNIFIL that it was unclear which of these duties fell under the post since the UNIFIL had a fully functional finance and budget section.

19. OHR requested clarification on whether the budget assistant in the security section was carrying out similar functions as those of the Finance and Budget FBMS) FS-5 finance and budget assistants for the whole mission.¹³

20. On 4 March 2022, the Management Evaluation Unit (MEU) gave its recommendation concerning the failure to reclassify the Budget Assistant post encumbered by the Applicant from an FS-4 level to an FS-5 level and held that the request was premature as there was no final decision taken on the reclassification¹⁴.

21. On 30 March 2022, the UNIFIL HRS requested the Chief Security Officer to revise the original Job Description submitted with the request to add additional

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the principle of equal pay for equal work provided for by art.23.2 of the Universal Declaration of Human Rights has its origins in gender inequality where women got less pay for doing the same work as men. In *Chen* (UNDT/2010/068, from para. 39), the Dispute Tribunal held that this principle is applicable in the United Nations system.

30. A detailed justification for reclassification provided by the Mission would entailed additional responsibility progressively over the years, which justified a reclassification.

31. The Applicant submitted that since 24 July 2019, when the OHR request for reclassification was presented to UNHQ, the Administration has not given any reasons for the delay nor provided the status of the reclassification.

32. The Applicant relies on different judgments holding that the absence of a positive decision may also amount to a decision¹⁹. She states that the jurisprudence of

circumstances, constitute a denial of that request. This would constitute an appealable administrative decision since it may amount to an implied unilateral decision with direct legal consequences.²⁰

33. the following. An implied unilateral decision with direct legal consequences is an administrative decision under art. 2(1) of the d multiple direct legal consequences. First, the Applicant has not been paid according to the amount of work she has been carried out. Secondly, her career progression has been affected as she would have been eligible to apply for FS-

Respondent's submissions

34. The Respondent in his reply, objects that the application is moot and not receivable.

35. The application describes the contested decision as failing to classify the Post from FS-4 to FS-5, while there is no such implied decision.

36. On the other hand, on 16 June 2022, UNIFIL notified the Applicant of the OHR decision to classify the Post at the FS-5 level. As a consequence, the Dispute Tribunal lacks jurisdiction to examine the merits of a substantive decision that the Administration's subsequent actions have superseded.

37. As to the merits, the Respondent states that the UNHQ/ facsimile did not require the reclassification from

no discrimination if the difference was motivated by the pursuit of general goals and policies and not designed to treat individuals or categories of them unequally.²¹

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the budget and finance responsibilities across the Organization. When such changes occur, there is a procedure for addressing them and it was followed in this case. Accordingly, the Applicant's reliance on *Chen* is inapposite.²² In *Chen*, the staff member had requested upward classification which was denied for 10 years. Here,

description.

Considerations

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from FS-4 to FS-5 level was unlawful.

42. The application is receivable.

43. The jurisprudence of UNAT makes it clear that the absence of a response on

and could therefore be considered at the moment the application was lodged with the Tribunal- as a refusal to do so.

46. It results from the additional documents filed by the Respondent that on 16 June 2022, the Chief Human Resources Officer (CHRO) for UNIFIL notified the Applicant of the decision to reclassify upwards the FS-4 Budget Assistant post to FS-5 Finance and Budget Assistant (the Post).

47. Following the reclassification, the Post was advertised and at the end of the selection process, the Applicant was offered the FS-5 level position, which she accepted on the same day.

48. The Respondent claims that the application is now moot since it has been superseded by the creation of a new post in 2022.

49. The Tribunal is of the view that the application is not moot, as the matter of the dispute did not end in the case, nor did the Applicant lose her legal interest in the dispute, as there are remaining effects of the challenge.

2. As you are already aware, there has been significant change over the last five years with the transfer of transactional functions to shared service centers and a corresponding shift towards a strategic resourcing,

67. The compensation shall bear interest at the United States of America prime rate with effect from the date this Judgment becomes executable until payment of said compensation. An additional five per cent shall be applied at the United States of America prime rate 60 days from the date the Judgment becomes executable.

(Signed)

Judge Francesco Buffa

Dated this 21st day of June 2023

Entered in the Register on this 21st day of June 2023

(Signed)

Eric Muli, Legal Officer, for

Abena Kwakye-Berko, Registrar, Nairobi