



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D 'APPEL DES NATIONS UNIES

Judgment No. 2018-UNAT-857

Clemente
(Appellant)

v.

Secretary General
of the International Civil Aviation Organization
(Respondent)

JUDGMENT

Before:	Judge Richard Lussick, Presiding Judge John Murphy Judge Sabine Knierim
Case No.:	2018-1147
Date:	29 June 2018
Registrar:	Weicheng Lin

Counsel for Ms. Clemente:	Self-represented
Counsel for ICAO Secretary General:	Christopher M. Petras

JUDGE RICHARD LUSSICK , PRESIDING .

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against the decision of the Secretary General of the International Civil Aviation Organization (ICAO), dated 6 November 2017, to accept the Opinion of the Advisory Joint Appeals Board (AJAB) and reject Appeal No. 180. Ms. Maria Teresa Clemente filed the appeal on 1 February 2018, and the Secretary General of ICAO filed an answer on 3 April 2018.

Facts and Procedure

2. T

THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2018-UNAT-857

THE UNITED NATIONS APPEALS TRIBUNALS

completed at least 27 years of continuous satisfactory service; being less than three years from retirement age; at the top step of the grade level; not having had a promotion during the last five years; and no prospect of a promotion before retirement). As such, the personal promotion to the G-9 level which was granted to Ms. Clemente should not be construed as compensation for the higher-level duties assigned to her since 1 April 2010.

21. Ms. Clemente further submits that the D/ADB failed to inform her that she had to file an appeal of the 4 January 2012 decision (which confirmed that her post was correctly classified at the G-8 level) within 30 days from the date on which she received notification, even though ICAO Staff Rule 111.1 “implies that the appellant should have been advised accordingly”. Notably, ICAO Staff Rule 111.1(2) provides that “[w]hen informing a staff member following either review or appeal action, the Secretary General shall, where appropriate, advise the staff member as to possible further recourse actions”.

22. Ms. Clemente adds that whereas the cl

procedure or improper motivation, nor specifies any overlooked material fact or mistake of law on the part of the AJAB. To the contrary, the AJAB found that the ICAO procedure for classification review was followed.

- (b) The AJAB found that Ms. Clemente's personal promotion from G-8 to G-9 was consistent with the ICAO personal promotion policy, which establishes a promotion from one level to the next higher level; and that, having received a personal promotion to G-9, Ms. Clemente was ineligible for an additional personal promotion to P-2 because, under the policy, the granting of a personal promotion was conditioned on the staff member having not been promoted during the previous five years.
- (c) The Appeals Tribunal jurisprudence recognizes that the ICAO Secretary General has a broad discretion in making decisions regarding promotions and appointments. The AJAB applied these principles in Ms. Clemente's case and found that all criteria in the ICAO personal promotions policy had been properly considered. As has been demonstrated, however, Ms. Clemente has not identified any error of fact or law with respect to the AJAB's findings that she was neither eligible to receive, nor had any right to a personal promotion to the P-2 level. Instead, she merely reiterates her claim that ICAO failed to correctly classify her post.
- (d) Further, the Appeals Tribunal has consistently held that it is not sufficient for an appellant to simply state that he or she disagrees with the findings of fact or to merely repeat the arguments that did not previously succeed at a lower level. To meet the standard of review on appeal for determining if there has been an error of fact, the appellant must identify the apparent error of fact in the judgment and the basis for contending that an error was made, and the burden is on the appellant to satisfy the Tribunal that the finding of fact was not supported by the evidence or that it was unreasonable.

29. The ICAO Secretary General requests that the Appeals Tribunal dismiss the appeal in its entirety.

Considerations

30. Ms. Clemente states in her appeal that she “is now appealing to the UNAT under the provisions of the UNAT Statute, Article 2.1(e) on the grounds that the administrative decision constitutes non-observance of [her] contract of employment and the AJAB’s error on a question of fact which resulted in a manifestly unreasonable decision and unfair treatment”.

31. She claims that she had been told by the Payroll Officer, her supervisor, that her post needed to be upgraded to a P-2 level from the then current G-8 level and that a request for reclassification would be filed with the Administration. A review of her post confirmed it at the G-8 level. She states that she requested a classification review because she knew “just how much her level of responsibility had changed (...) from that of the GS category to the professional category”.

32. She avers that she “strongly believes that there was an oversight on the part of ADB/HRB to correctly classify her post to reflect the new reality of her position that commenced on 1 April 2010. [She] believes that this oversight constituted a non-compliance of her employment contract. Furthermore, the AJAB made the same error in not examining and not recognizing the changes in [her] terms of employment.”

33. On 4 January 2012, she was advised that, even after a second review, her post was maintained at the G-8 level.

34. Despite her claims that her post had been wrongly classified, she did not challenge that decision. Had she wished to do so, she was obliged under the ICAO Staff Rules to first request a review of that decision by sending a letter to the ICAO Secretary General within 30 days of receipt of the notification of the decision.

35. ICAO Staff Rule 111.1(5) provides in part that: “A staff member who wishes to appeal the decision referred to in Regulation 11.1 shall, as a first step, address a letter to the Secretary General requesting that the decision be reviewed. Su4(e)6.. e4.2(lett)-4.4(er)e4(er).0439 r6.7(de.7

THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2018-UNAT-857

37. There is no record that Ms. Clemente addressed this requirement in any way. She did not address a letter to the ICAO Secretary General and she did not request, pursuant to ICAO Staff Rule 111.1(8), that the delay in the filing of the appeal be waived in view of exceptional circumstances.

38. The AJAB accordingly found that Ms. Clemente had failed to observe the time limits applicable to a request for review of the 4 January 2012 decision that her position had been correctly classified at the G-8 level and had thus lost the right to appeal.

39. She does not deny in her appeal that she did not comply with the time limit, but she argues that ICAO Staff Rule 111.1(2) implies that she should

III, w heer api
dvisif t(estn)-4.6taff emoto epsur(e)-5.5

THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2018-UNAT-857

51. The AJAB observed that one of the criteria for a personal upgrading was that the staff member was not to have had a promotion during the last five years, whereas Ms. Clemente had just been granted a promotion to the G-9 level.

52. Moreover, the AJAB considered that personal promotions fall wholly within the discretion of the ICAO Secretary General,

THE U