

UNITED NATIONS JOINT APPEALS BOARD
REPORT TO THE SECRETARY-GENERAL

Case of Mr. Wendell Bacchus et al.

1. The Panel of the Joint Appeals Board (JAB) consisting of:

Mr. Parviz Fartash, Chairperson;

Ms. Ellen Aamodt,
Member appointed by the Secretary-General; and

Mr. Anatoli Sidorenko,
Member elected by the Staff,

having considered the appeal of **Mr. Wendell Bacchus et al.** (hereinafter "Appellants") against the decision of the Office of Human Resources Management (OHRM) not to reclassify their posts, as required by section 5 of ST/AI/1998/9, hereby submits its report to the Secretary-General.

Employment History

2. Appellants¹ have been employed at the General Service level for 15 years or more in the Publishing Section, formerly the Distribution Section,² of the Department of General Assembly Affairs and Conference Management (DGACM).

Summary of the facts

3. In December 1998, the reclassification of 28 job descriptions in the Publishing Section of DGACM was recommended by an intra-departmental Staff/Management Task Force.

¹ Appellants are: Aziza Aly, Wendell Bacchus, Andre Brown, Jose Cherian, Steven W. Cone, Carl O. Corriette, Jorge Diaz, Amjad Ejaz, Jose F. Elizabeth, Severio V. Frias, Anthony Gamit, Louis Giordano, Jose Golfarini, Asfaha Hadera, Earl M. Hammond, Emad Hassanin, Trevor Holder, San Htoo, Miguel Kaufman, Soe Naing Maung, Thomas McCall, Jr., Joseph Nemeth, Reynaldo Pava, John Saffir, George Samuel, Errol Sebro, Julio Sgarbi, Alex O'Keith Smith Sr., Wensley Smith, Elaine Sutherland, Carlos Uleri and Robert Vocile.

² For consistency, the location of Appellants' posts will be referred to throughout as the Publishing Section.

4. In October 2000, a departmental Staff/Management Working Group, via the Executive Officer of DGACM, called for the reclassification of the 28 job descriptions in the Publishing Section.
5. On 14 January 2004, Mr. Emad Hassanin, Second Vice President, Staff Union, wrote to Ms. Marianne Brzak-Metzler, Chief, Conditions of Service Section, OHRM, on behalf of 43 staff members of the Publishing Section to obtain the outcome of the Classification Audit and resulting reclassification exercise carried out by OHRM and to request that these staff members receive a formal notification on the conclusion of the Audit and the results concerning their respective posts.
6. On 3 February 2004, Ms. Brzak-Metzler replied to Mr. Hassanin stating that "Section 2.4 of ST/AI/1998/9 provides that a notice of classification results, including the final ratings and/or comments on the basis of which the decision was taken, shall be sent to the requesting executive or administrative office, which will keep it in its records and provide a copy to the incumbent of the post." She further stated that the results had been previously sent to the staff members' Executive Office and that because her database did not associate classification actions against the names of the posts' incumbents or their index numbers, they should redirect their request to their Executive Office.
7. On 4 March 2004, the decisions related to the Audit and classification of posts were announced by email to the staff members who were also invited to collect a copy of his/her job description.
8. On 8 May 2004, Mr. François Loriot, counsel for a group of 32 staff members of the United Nations Publishing Section filed an appeal with the Assistant-Secretary-General/OHRM, enclosing a copy of the respective audited job descriptions received from the Executive Office, requesting a fair and independent review under section 5 of ST/AI/1998/9 of the results which Appellants claimed did not correspond to earlier analysis and agreements between staff and management.
9. On 9 September 2004, Ms. Jan Beagle, Director for Organizational Development/OHRM replied to Mr. Loriot that the procedures set out in section 2 of ST/AI/1998/9 had been fully observed and the process fully consistent with the agreements reached with the staff. Drawing his attention to section 5 of ST/AI/1998/9 defining the parameters for classification appeals, she informed him that if they wished "to proceed on that basis, it would be necessary to show for each post that the classification standards were incorrectly applied resulting in the classification of the post at the wrong level."
10. On 22 December 2004, Mr. Loriot replied to Ms. Beagle stating that the major priorities under Recommendation 7 of paragraph 36 of the Task Force report had not been fully applied, that the procedures for the classification of posts had not been fully observed by OHRM and the process had not been consistent with the agreements reached with staff, leading to unequal treatment of staff performing the same work, but not entitled to the same career path. He stated that in a few cases the priorities of recommendation 7 had been properly applied and that those staff members had recently obtained updated job descriptions as "lead functions" while his

clients working in the same Unit, doing the same work, had been denied them. He requested that his clients' job descriptions be reclassified by OHRM under the same standards applied to "lead functions job descriptions" and if OHRM did not reclassify them at that level, that the matter be appealed under section 5 of ST/AI/1998/9. In that letter, he reiterated his statement in his 8 May 2004 letter that a copy of each client's job description had been included in his letter to the ASG/OHRM.

11. On 29 August 2006, the Under Secretary-General for Management upheld the recommendation of the JAB in Report No. 1805 (Case No. 2005-021, Aziza Aly et al), dated 31 May 2006, with respect to the decision not to formally advertise the posts at issue. The JAB agreed with the Administration that Appellants' rights had not been violated by the promotion of 14 other staff members in the Publishing Section to posts, without prior advertising, that they had been encumbering and that had been reclassified at a higher level.

12. On 18 September 2006, Mr. Lorient wrote again to Ms. Beagle to inquire as to the status of his 22 December 2004 request and the status of his clients' appeals before the Classification Appeals Committee (CAC). He also drew her attention to the outcome of the above-mentioned appeal and requested that the JAB report be added to the 8 June 2004 submission to the CAC.

13. On 8 November 2006, Appellants filed a request for an administration review against the decision by OHRM to deny their right to have their reclassification requests submitted to the CAC.

14. On 22 June 2007, Appellants filed a statement of Appeal with the JAB.

15. On 27 December 2007, Respondent filed her Reply. In her Reply, which alleged, *inter alia*, that the JAB was the incorrect forum for this Appeal and that the Appeal was time-barred, Respondent invited Appellants to submit their appeal directly with the CAC and pledged not to raise issues of timeliness before that body.

16. On 8 January 2008, Mr. Lorient wrote to the Chief of the Administrative Law Unit to thank her for communicating the decision of OHRM to waive the time-limits in order to allow the classification appeals of 18 of his clients to move forward at the CAC. With respect to the JAB case, he explained that his clients were "not challenging the classification of posts" as their classifications had never changed. They were appealing the Administration's failure to act in a timely fashion on their 2004 reclassification appeals at OHRM/CAC and the discrimination which they alleged had prevailed against them.

17. On 28 January 2008, Appellants filed their Observations on Respondent's Reply of 27 December 2007. They explained that they would agree to file their appeal directly to the CAC only if the following conditions were met: (a) compliance with procedures mandated by ST/AI/1998/9; (b) prior disclosure of the ICSC standards used by OHRM in the Distribution Unit classifications referred to by Ms. Beagle in the annex to her letter of 9 September 2004 and; (c) three-months of net salary in compensation and retroactivity of the CAC reclassification.

18. On 29 February 2008, Respondent filed her Comments on Appellants' Observations. With respect to (a) of para. 17 above, Respondent stated that she could not strictly comply with the provisions of ST/AI/1998/9 because the time to undertake certain actions had already lapsed. Regarding (b) of para. 17 above, Respondent provided a chart of the ICSC standards used in the initial classification exercise. As for (c) of para. 17 above, Respondent stated that the Administration was not in a position to award damages to Appellants for alleged violation of their due process rights. That was for the JAB to determine. Moreover, the "demand" for monetary damages was premature as it prejudged both the outcome of the present appeal and the future one before the CAC. Furthermore, the retroactive recognition of a reclassification decision was envisaged under section 4.1 of ST/AI/1998/9 application, but the request in this case was in any event also premature as it presupposed the outcome of the proceedings of the CAC, which was the competent body to grant upward reclassifications and when such classifications were to take effect.

19. On 19 March 2008, Appellants filed their Comments on Respondent's Comments on Appellants' Observations.

Contentions

Appellants

20. Appellants' contentions may be summarized as follows:

- (a) JAB competence extended to the present appeal in that Appellants were not seeking reclassification of their posts, but compliance with due process and compensation for Respondent's failure to act in a timely fashion on their 2004 classification appeals at the CAC;
- (b) the appeal was not time-barred as the letter seeking reclassification of their posts was dated 8 May 2004, within two months of receiving notices of the classification decisions made in mid-March 2004;
- (c) the 2003-2004 classification decisions had the effect of arbitrarily freezing Appellants' classification levels and discriminating against them, while a few other work colleagues in the Publishing Section were reclassified at the higher level for performing the same work;
- (d) Appellants waited four years in vain for their reclassifications appeals to be processed by OHRM, an excessive delay which in itself constituted a violation of their due process rights;
- (e) this four-year delay was compounded by a previous four-year period of interminable "classification reviews" that took place between March 2000 and December 2004;

- (f) Ms. Beagle's letter of 9 September 2004 did not constitute a new decision on the classification appeals to the CAC, but explained only how the classification reviews were conducted and therefore did not require another appeal in addition to the one filed in May 2004;
- (g) the Analysis Record produced by Respondent on 29 February 2008 was only a general reference document found in ICSC and OHRM Manuals and did not explain how it was actually applied to each individual reclassification request and therefore did not provide real information on which the JAB or CAC could weigh Appellants' claims and the 2004 classification decisions taken by OHRM in 2003.
- (h) the mandate of the CAC expired in late 2003 and to date the Staff Union (as required by ST/IC/2000/28/Add.6) had not asked the Secretary-General to "approve the extension" of CAC members whose terms had expired, rendering the ST/AI invalid;
- (i) in light of (h) above, there was no legal quorum at the CAC to handle and hear Appellants' classification cases and the Respondent had neither the legal right nor moral authority to substitute itself for the electoral process and appoint or extend the terms of office of the former staff representatives at the CAC and;
- (j) Appellants could not accept OHRM's offer to refer their cases directly to the CAC until the composition and membership of that body were truly representative of staff, properly constituted and the required quorum was in place.

Respondent

21. Respondent's contentions may be summarized as follows:
- (a) the appeal was not receivable because the CAC, not the JAB, was the competent body to receive classification decisions;
 - (b) the appeal was time-barred because Appellants filed their appeal more than two years after they received notice of the classification decisions on their posts which was on or about 9 September 2004;
 - (c) in cases where the classification of posts was challenged, the JAB was limited to considering only whether a procedural error had taken place, not to the propriety of the classification decision taken;
 - (d) Appellants had not identified any procedural or other flaws in the classification process that impacted the terms of their employment or rights as staff members;

- (e) the procedures for the classification of posts set out in section 2 of ST/AI/1998/9 were fully observed and the process fully consistent with the agreements reached with the staff;
- (f) the dissemination of classification results was carried out under the established practice and;
- (g) staff as a whole benefited from the upwards classification of almost all posts.

Pleas

22. Appellants respectfully request the Panel to:

- (a) find and rule that their due process was violated by Respondent by not addressing fully and fairly Appellants' requests for reclassification;
- (b) recommend that Appellants' requests for reclassification of their posts be conducted fairly by Respondent within 90 days of the decision on the JAB report, including reference to two independent classification analyses and to the relevant ICSC Classification Standards;
- (c) recommend, should the case be remanded to OHRM and the CAC for institution or correction of the required procedure, that three-months net base salary be paid to Appellants in accordance with article 1(2) of the statute of the Administrative Tribunal and;
- (d) recommend awarding to Appellants, in the absence of action on plea 22. (c) above, two-years net base salary for the financial and moral damages suffered by Appellants since 1999, resulting from Respondent's actions or lack thereof on their reclassification requests, for the harm to their careers and for the abusive delays in the handling of their cases.

23. Respondent respectfully requests the JAB to make no recommendation in favour of this appeal.

JAB proceedings

24. The Panel met on 5 June and 17 July 2008. Pursuant to section III.L of the Rules of Procedure and Guidelines of the Joint Appeals Board at HQ, the Panel decided to submit a series of two interrogatories to Respondent and did so on 5 June 2008. Respondent submitted her answers on 13 June 2008. On 28 June 2008, Appellants' counsel submitted Comments on his clients' behalf. The Panel adopted its report thereafter.

Considerations

25. After reviewing the facts and various contentions, the Panel clarified for itself what Appellants were seeking, as Appellants claimed on the one hand that they were not seeking reclassification of their posts, but on the other that they suffered excessive delay in having their “*reclassification (emphasis added) appeals*” processed by OHRM. While these claims were not contradictory in themselves, other statements/information contained in the appeal led the Panel to believe that Appellants were in fact drawing on the issue of the delay, though valid in and of itself as a *raison d’être* for the appeal, to contest the overall results of the classification exercise (see paras. 26-28 below). Since the JAB was not the proper forum for the resolution of classification cases, the Panel confined itself to the stated purpose of the appeal, the excessive delays, and to determining if the Administration had been at fault.

26. The Panel considered that it was important to understand the dynamics that had led to the present appeal, noting that a previous JAB had dealt with a case (2005-021) brought in late 2004 by the same Appellants as those figuring in the present case and featuring much of the same correspondence between the parties to bolster their arguments. The main contention in that case was that without having been advertised, over 20 upgraded posts were filled with their incumbents, thus depriving the present Appellants (many of whom claimed to be performing the same functions as those who had been promoted), who had no opportunity to apply for them, of fair consideration. The background to the case originated in 2000-2003, when the then Department of General Assembly Affairs and Conference Services (DGAACS) apparently failed to provide proper notification of the job classification results and began the reclassification and promotion of some staff in the Publishing Section without a prior selection process.³ The somewhat vague language employed in footnote 3 cited below left the Panel with the strong impression that something had gone seriously amiss with respect to the dissemination of the results and that the Publishing Section was at fault for not being transparent and for not sharing the classification results with the staff and that ultimately it was that lack of disclosure that led to the previous and present JAB appeals.

27. The Panel in the instant case felt that from its inception the classification exercise in the Publishing Unit appeared to have been fraught with dissension and mistrust. Those feelings had already been festering and were inevitably exacerbated by the decision in the 2005-021 case which, rightly or wrongly, perpetuated perceptions of favouritism, discrimination and lack of due process.

28. The Panel saw the time-line in the present case as divisible into two distinct periods: the one between October 2000 and February 2004 during which Appellants awaited the results of the CCPU review, the subsequent audit and the job reclassifications, and the period from March 2004 to December 2007 during which Appellants received the results of the job reclassifications and lodged their appeals. For the Panel, the period 2000-2004 was fairly clear: a reclassification

³ This was confirmed by Ms. Beagle in the first full paragraph on page 3 of her 9 September 2004 letter (see para. 9 above), in which she states: “With respect to your concerns in connection with the dissemination of classification results, we advised the Executive Office of the classification results on 8 November 2002 and 5 February 2003, *anticipating dissemination* under the established practice. *We understand that, after an initial delay this was done*” (emphasis added).

exercise took place, concluding in early 2003, but Appellants were kept in the dark as to its outcome until they submitted a formal query to OHRM in January 2004 (see paras. 4-7 above). Because Appellants were not aware of the results of the reclassification exercise, they had no opportunity during the first time period (2000-2004) to appeal their reclassifications, a violation of their due process rights.

29. For the more recent period, 2004 to the present, the Panel considered that an examination of the exchange of correspondence between the Administration and Appellants' attorney could be helpful in establishing whether Appellants had been fairly treated. The Panel summarized the relevant correspondence as follows:

- The first Statement of Appeal from Appellants' attorney, dated 8 May 2004, was addressed to the Assistant-Secretary-General/OHRM and requested "a fair and independent review under section 5 of ST/AI/1998/9" of Appellants' audited job descriptions which were enclosed with the letter.
- The above-cited letter elicited the 9 September 2004 from Ms. Beagle (see para. 9 above), regretting "the delay" in responding and containing, *inter alia*, the statement quoted therein. Ms. Beagle's letter affirmed Appellants' understanding that Section 5 of ST/AI/1998/9, rather than Section 7 which deals with the CAC, applied and made no mention of the CAC.
- Although Appellants' counsel wrote again on 22 December 2004 to Ms. Beagle requesting, *inter alia*, that his clients' job descriptions be reclassified by OHRM, the correspondence came to a halt, with no reply from Ms. Beagle and no further action from Appellants' counsel.
- Some 21 months later, on 18 September 2006, Appellants' counsel again wrote to Ms. Beagle, referencing his 22 December 2004 letter and inquiring as to the status of his clients' appeals *before the CAC* (emphasis added). Appellants' counsel received no reply to his letter.
- On 8 November 2006 Appellants' attorney wrote again, requesting an administrative review of the OHRM decision denying the right in a separate appeal of 32 staff members to have their cases heard by the CAC.
- Receiving no reply to the 8 November 2006 letter, Appellants filed their appeal on 22 June 2007.
- On 27 December 2007, some three years after Appellants filed their original appeal requesting a review, Respondent initially claimed it was not receivable on the grounds that the CAC, not OHRM, was the proper venue for an appeal and that it was time-barred. However, OHRM subsequently agreed to allow Appellants to file their cases directly with the CAC and Respondent agreed not to raise issues of timeliness.

30. While the correspondence reveals a lack of follow-through on both sides, the Panel was more troubled by the Administration's repeated failures to reply, and especially to the 22 December 2004 letter from Appellants' Counsel, than by any later lapses on the part of Appellants, as it was by replying to the 22 December 2004 letter that the Administration, in the Panel's view, could have set matters right and possibly precluded the appeals that followed. The Panel reasoned that both sides may have been under the misapprehension that they were right, Appellants by believing that they had already supplied the necessary information by providing with Counsel's 8 May 2004 letter the job descriptions (see para. 8 above), and the Administration by stating (see Ms. Beagle's 9 September 2004 letter) that Appellants would have to "show for each post that the classification standards were incorrectly applied resulting in the classification of the post at the wrong level" and assuming that these would be forthcoming as the basis for the appeal. In other words, Appellants may have thought that they had already taken the necessary steps to appeal by providing the job descriptions and that the absence of a reply from the Administration clarifying the situation or requesting further information may have served to confirm Appellants' understanding, while for its part the Administration was still waiting for Appellants to file their appeals dealing with the individual cases along the lines recommended by Ms. Beagle. The misunderstandings may have been compounded by an expectation on the part of OHRM that it would be conducting the review and by Appellants' understanding that their cases were being submitted to the CAC. The Panel felt it was important to recognize, however, that Appellants were on record with a follow-up letter after 9 September 2004 (that of 22 December 2004) and considered therefore that the Administration was remiss in not replying to clarify the procedures. Such a reply may have resolved the misunderstandings referred to above.

31. The Panel next considered the 21 month hiatus in the correspondence between December 2004 and September 2006, during which time the ball was in the Administration's court to reply. The Panel nevertheless wondered why Appellants did not pursue a reply from the Administration. However, the Panel then recalled that during that period Appellants' case 2005-021 was under consideration by the JAB (see para. 26 above). In fact, it was only after the decision in that case was issued by the Secretary-General in August 2006—a decision that did not find in Appellant's favour—that in November 2006, Appellants' Counsel requested an Administrative Review of the JAB decision in case 2005-021, followed by the filing of the present appeal in June 2007. It appeared to the Panel that Appellants had deliberately refrained from petitioning the Administration while the 2005 JAB was deliberating, but after the Secretary-General ruled against them, they resumed their pressure by initiating the present case.

32. Given the above considerations, the Panel felt that the Administration's offer to allow Appellants to file their case directly with the CAC and the Respondent's offer to waive the time-line offered Appellants a fair and reasonable way to address any past injustice on the part of the Administration towards them. In light of this outcome, the Panel did not find it necessary to enter into consideration of the contentions concerning whether or not the case was time-barred. The Panel deemed that the CAC provided Appellants with an independent professional forum in which to present their cases and air their concerns. The Panel therefore recommended that Appellants take up the offer to submit their case to the CAC, that they do so as expeditiously as possible and no later than 90 days from the date of the Secretary-General's decision on the present report. The Panel rejected the request of Appellants' attorney to order OHRM to disclose

the ICSC standards as this was not part of its mandate and was, in any case, a matter for the CAC to decide. The Panel observed that rulings to produce evidence fall under the jurisdiction of those bodies directly tasked with reviewing the evidence in question.

33. On the matter of the composition of the CAC, the Panel consulted all of the relevant ST/ICs thereon. The most recent one, ST/IC/2000/28/Add. 6, dated 19 August 2003, stated that “the extension of the term of office of the members of the New York General Service Classification Appeals Committee” was approved “until such time as elections have been conducted for the United Nations Staff Union to allow for new membership nominations to be made and for the Joint Advisory Committee at Headquarters to recommend to the Secretary-General the appointment of the Chairperson of the New York General Service Classification Appeals Committee”. The fact that the Staff Union failed to observe its part of the procedural requirements with respect to the CAC by not having held elections since 2003 does not make the Administration responsible for any subsequent procedural problems. The Panel considered that the Secretary-General’s decision to issue the ST/ICs continuing the composition of the CAC by holding over the same members nominated by the staff until such time as the Staff Union fulfilled its obligations was a means of maintaining the classification appeals system and a reasonable exercise of discretion. The Panel, therefore, saw no reason why Appellants’ reclassification grievances could not now be directly submitted to the CAC.

34. The Panel turned next to the pleas for compensation by Appellants. In considering Appellants’ request for financial compensation on the basis that their careers had been harmed, the Panel considered that to do so would anticipate the outcome of the reclassification appeals, which would be inappropriate. Moreover, in cases where reclassifications were to be recommended, the Panel assumed and trusted that these would take effect retroactively, thereby repairing any financial harm that the affected staff members may have experienced.

35. As to compensation for moral damage, the Panel was mindful of its obligation to take into account the Administrative Tribunal’s rulings on delays. The Panel consulted, among others, UNAT Judgement No. 861 *Knowles* (1996), Judgement No. 880 *MacMillan-Nihlén* (1998), Judgement No. 892 *Sitnikova* (998) and Judgement No. 1136 *Sabet & Skeldon* (2003). While the particulars of the cases differed, all of them were consistent on the issue of delay and individually cited Judgment No. 353 *El-Bolkany* (1985), which stated that an inordinate delay “not only adversely affects the administration of justice, but on occasion can inflict unnecessary anxiety and suffering to an applicant”, and “...because of the dilatory and casual way in which [the Applicant’s] case was dealt with, [she] is entitled to some compensation.” As noted above, the Panel considered that the Administration incurred the lion’s share of blame for the delays. This was particularly true for the period 2002-2004 when Appellants experienced a black-out as to the outcome of the Classification Audit. Moreover, Respondent made the following telling admission in her 13 June 2008 replies to the Panels Interrogatories:

“Following the October 2000 review, *owing to an oversight* (emphasis added), none of the cases of the subject thirty-two staff members were referred to the New York General Service Classification Committee (NYCSC).”

The above-cited statement, along with the other considerations outlined above, convinced the Panel that there was a need to recognize the delays that had occurred through compensation as a means of redressing the injustice that Appellants had experienced as a result of the Administration's lack of care in their regard.

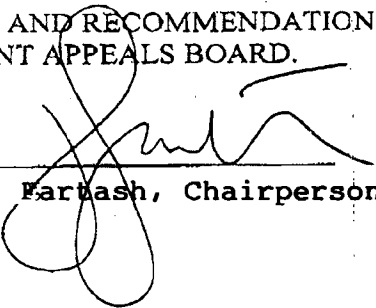
Conclusions and recommendations

36. In light of the above analysis, the Panel *unanimously concluded* that Appellants' due process rights had been violated by the Administration's failure to review their cases in a timely manner. Therefore, the Panel *unanimously agreed* to recommend that for the moral injury suffered, Appellants be granted three months net-base salary at the rate in effect as at end August 2008, i.e. the date of this report.

37. The Panel further *unanimously agreed* to recommend that Appellants submit their cases to the CAC as expeditiously as possible and no later than 90 days from the date of the Secretary-General's decision on the present report.

38. The Panel rejected all other claims.

REPORT AND RECOMMENDATIONS [UNANIMOUSLY] ADOPTED BY THE PANEL OF THE JOINT APPEALS BOARD.

X 
Parviz Farhah, Chairperson

X _____
Ellen Aamodt,
Member appointed by the Secretary-General

X _____
Anatoli Sidorenko,
Member elected by the Staff

X Linda Saputelli 12 August 2008
Linda Saputelli, Secretary to the Panel Date:

C N I E T A

REPORT AND RECOMMENDATIONS [UNANIMOUSLY] ADOPTED BY THE PANEL OF THE JOINT APPEALS BOARD.

X _____
Parviz Fartash,
Chairperson

X Ellen Aamodt
Ellen Aamodt,
Member appointed by the Secretary-General

X _____
Anatoli Sidorenko,
Member elected by the Staff

X Linda Saputelli 12 August 2008
Linda Saputelli, Secretary to the Panel Date:

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REPORT AND RECOMMENDATIONS [UNANIMOUSLY] ADOPTED BY THE PANEL OF THE JOINT APPEALS BOARD.

X _____
Parviz Fartash, Chairperson

X _____
Ellen Aamodt,
Member appointed by the Secretary-General

X *Anatoli Sidorenko*
Anatoli Sidorenko,
Member elected by the Staff

X *Linda Saputelli* *12 August 2008*
Linda Saputelli, Secretary to the Panel Date.

C



THE DEPUTY SECRETARY-GENERAL

6 November 2008

Dear Mr. Bacchus *et al.**,

I enclose a copy of the Report No. 2001 in Case No. 2007-057 of the Headquarters Joint Appeals Board (JAB), on your appeal against the decision relating to the reclassification of your posts.

The JAB decided to confine its review to the excessive delays, and to determining if the Administration had been at fault. The JAB noted that for the period 2000-2004, a reclassification exercise took place, concluding in early 2003, but that you were kept in the dark as to its outcome until you submitted a formal query to OHRM in January 2004. For the period 2004 to the present, the JAB examined the correspondence between the Administration and your counsel and noted that the correspondence revealed a lack of follow-through on both sides. The JAB, however, was more troubled by the Administration's repeated failures to reply, especially to the 22 December 2004 letter from your counsel, than by any later lapses on your part. The JAB was of the opinion that it was by replying to the 22 December 2004 letter that the Administration could have set matters right and possibly precluded the appeals that followed.

The JAB next considered the 21-month hiatus in the correspondence between December 2004 and September 2006, during which time the ball was in the Administration's court to reply. In considering why you did not pursue a reply from the Administration, the JAB recalled that during this period, your case no. 2005-021 was under consideration by the JAB.

Mr. Wendell Bacchus *et al.**
Department of General Assembly Affairs
and Conference Management

*Other Appellants are: Aziza Aly, Andre Brown, Jose Cherian, Steven W. Cone, Carl O. Corriette, Jorge Diaz, Anjad Ejaz, Jose F. Elizabeth, Severio V. Frias, Anthony Gamit, Louis Giordano, Jose Golfarini, Asfaha Hadera, Earl M. Hammond, Emad Hassanin, Trevor Holder, San Htoo, Miguel Kaufman, Soe Naing Maung, Thomas McCall, Jr., Joseph Nemeth, Reynaldo Pava, John Saffir, George Samuel, Errol Sebro, Julio Sgarbi, Alex O'Keith Smith Sr., Wensley Smith, Elaine Sutherland, Carlos Uleri and Robert Vocile.

It appeared to the JAB that you had deliberately refrained from petitioning the Administration while the 2005 JAB was deliberating, but after the Secretary-General ruled against you, you resumed your pressure by initiating the present case. In light of the foregoing, the JAB considered that the Administration's offer to allow you to file your case directly with the Classification Appeals Committee (CAC) and to waive the time-line, offers you a fair and reasonable way to address any past injustice on the part of the Administration towards you. The JAB considered that the CAC will provide you with an independent professional forum in which to present your cases. The JAB therefore recommended that you submit their cases to the CAC no later than 90 days from the date of the Secretary-General's decision on the present report.

With respect to your claim regarding the composition of the CAC, the JAB considered that the Secretary-General's decision to issue ST/IC/2000/28/Add. 6, continuing the composition of the CAC by holding over the same members nominated by the staff until such time as the Staff Union fulfills its obligations, was a means of maintaining the classification appeals system and a reasonable exercise of discretion. The JAB, therefore, saw no reason why your reclassification grievances could not now be directly submitted to the CAC.

With respect to your requests for compensation, the JAB considered that financial compensation on the basis that your careers had been ruined is inappropriate as this would anticipate the outcome of the reclassification appeals. As to compensation for moral damages, the JAB considered that the Administration incurred the lion's share of blame for the delays and found that you should be awarded compensation for the delays.

In light of the foregoing, the JAB unanimously concluded that your due process rights had been violated by the Administration's failure to review your cases in a timely manner. The JAB therefore unanimously agreed to recommend: (i) that you be granted three months net-based salary at the rate in effect at end August 2008, i.e. the date of this report; and (ii) that you submit your cases to the CAC as expeditiously as possible and no later than 90 days from the date of the Secretary-General's decision on the present report.

The Secretary-General has examined your case in light of the JAB's report and all the circumstances of the case. The Secretary-General accepts the JAB's recommendation that you submit your cases to the Classification Appeals Committee expeditiously. Accordingly, you are requested to take all appropriate action in this regard within 90 days from the date of this decision letter. The Secretary-General, however, has decided not to accept the JAB's recommendation that you be granted three months net-based salary as compensation for the delays. In this respect, the Secretary-General considers that the Administration offering, in December 2007, to allow you to file your cases directly with the CAC and offering to waive the time-line, is a fair and reasonable way to address any delays that may have occurred. Additionally, the Secretary-General has taken note of Section 6.15 of ST/AI/1998/9 which stipulates, "[i]n those cases where the appeal is successful, the effective date of implementation of the post classification shall be, subject to the availability of a post, the same effective date as that of the original decision as defined in section 4.1 [...]". Section 4.1 stipulates that "[c]lassification decisions shall become effective as of the first of the month following receipt of a classification request fulfilling the conditions of section 2.2 above [...]". Consequently, the Secretary-General notes that if your reclassifications are recommended by the CAC, the reclassifications would take effect retroactively to the first of the month following receipt of the classification request in October 2000, thereby repairing any financial harm that you may have experienced.

Pursuant to Staff Rule 111.2(p), this decision is "the final decision on the appeal". Any recourse in respect of it should be addressed to the Administrative Tribunal. Your attention is drawn to the specific time limitations that apply, which are set out in Article 7 of the Administrative Tribunal's Statute. This document, and other relevant information, can be accessed on the internet through a link at www.un.org/law. Information can also be requested from the Administrative Tribunal by email at unat@un.org. A copy of the Secretary-General's decision and of the JAB's report will be transmitted to the United Nations Ombudsman, the United Nations Ethics Office and to the President of the New York Staff Committee, unless you indicate to us within one month that you do not want it to be so transmitted.

Yours sincerely,



Asha-Rose Migiro