



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, 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.

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