

FICSA LEGAL ADVISOR

TIPS AND INFORMATION NEWSLETTER

January-February 2016

ILOAT Awards Whistleblower 150,000 Swiss francs for Moral Damages Against the Global Fund to Fight Aids, Tuberculosis and Malaria for Defamation, and Material Damages for Wrongful Dismissal

Staff Member's Right to Proper Classification Review

Whistleblower - ILOAT Judgment No. 3613

I am pleased to report that the former Inspector General of the multi-billion dollar Global Fund to Fight Aids, Tuberculosis and Malaria, whom I represented in an appeal to the ILO Administrative Tribunal of his wrongful dismissal on 15 November 2012, was awarded over three years plus of salaries, allowances and benefits, and 150,000 Swiss francs in moral damages, which is believed to be one of the highest awards by the ILOAT in this type of case. As the Government Accountability Project reported, the Tribunal's judgment has given my client total vindication and brought his three plus years' ordeal to an end.

The Global Fund Board had justified the dismissal on the grounds of unsatisfactory performance, and published a news release on its website that was re-reported by major news outlets. My client was three and a half years from retirement and had served with distinction during his long career in government service and in the international civil service. We argued that the grounds for the dismissal were false and that the news release was defamatory. The true ground for the dismissal was my client's courage to maintain his independence despite interference from the Board's Audit and Ethics Committee. Because my client was not willing to compromise his principles, he was made to suffer a quick and crushing blow that ended his career. The ILOAT found that the dismissal was unlawful since the oral performance report given by the Committee Chair at the Board's meeting was unauthorized. The Chair, moreover, was conflicted as this official was interfering with the IG's work. The ILOAT also found that the news release constituted defamation. More details of the case can be found on:

<https://www.whistleblower.org/press/john-parsons-global-fund-inspector-general-prevails-tribunal-termination-and-defamation-ruled>

Classification - ILOAT Judgment No. 3490

I represented a G-5 Senior Office Clerk at the IAEA in her quest to have her job description updated and the classification of her post revised to G-6. After the job description was updated in 2008 after a 5 year wait, she requested the retroactive reclassification of the post to the G-6 level and retroactive payment of the difference between a G-5 and a G-6 salary in the period 2003 to 2008. Subsequently, the

Organization initiated a job evaluation conducted by an external classification consultant, then a review by the Classification Review Committee. After long delays, the Agency finally concluded that the post remained at the G-5 level. The Tribunal found that the review process followed by the Agency was significantly flawed. The ILOAT explains that a "job evaluation and a classification review at the time of the registration of a new job description are very different actions" (Consideration 26). Instead of conducting a classification review, the Agency embarked on a job evaluation exercise and therefore impeded my client's right to have the classification of her post reviewed on the basis of her duties and responsibilities as set out in her updated job description in accordance with the common classification standards established by the ICSC.

Furthermore, the ILOAT reiterated the right of a staff member to have access to "all evidence on which the authority bases (or intends to base) its decision against him" and that "under normal circumstances, such evidence cannot be withheld on grounds of confidentiality" (Judgment 2700, Consideration 6). The Agency therefore acted unlawfully when it repeatedly refused Complainant's request to provide her with a copy of the desk audit report conducted by the external classification consultant.

Additionally, the Tribunal also found that the Organization's decision was tainted by an error of law, as the internal appeals body failed to consider the desk audit report - a central evidence - at all. Moreover, the Tribunal decided that a delay of two years for the final decision is unreasonable, given the straightforward nature of the request for reclassification.

The ILOAT ordered the IAEA to have Complainant's post reclassified by an independent classifier based on the updated job description within three months. The Tribunal awarded 15,000 euros in moral damages and 4,000 euros costs.

Laurence Fauth provides counsel and advice to international civil servants and staff unions. You can visit his website for more information: www.unattorney.com. The information and content contained in this newsletter is for general information only and does not constitute legal or other professional advice. You must not rely on any information or content contained in, or omitted from, this newsletter without obtaining independent legal advice.