SEVENTIETH SESSION

In re PLAGNAT

Judgment 1091

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Jean-Paul Plagnat against the International Telecommunication Union (ITU) on 2 March 1990 and corrected on 7 May, the ITU's reply of 23 July, the complainant's rejoinder of 24 August and the Union's surrejoinder of 27 September 1990;

Considering the applications to intervene filed by Mrs. María del Carmen Biarge, Mrs. Rachel Ducry-Dhérin, Mr. Roger Grand, Mr. Pierre Laporte and Mrs. Danièle Maia-Cabuzel;

Considering Articles II, paragraph 5, and VII, para-

graph 2, of the Statute of the Tribunal, Rule 11.1.1.2 a) and b) of the ITU Staff Rules and Service Order No. 111 (Rev. 2) of 1 July 1981 on the classification of posts;

Having examined the written evidence and decided not to order oral proceedings, which neither party has applied for;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant, a French citizen and employee of the ITU, was transferred as from 1 January 1983 from a post, No. 325/037, that was graded G.6 to another G.6 post, No. 682, as a "database services assistant" in the Computer Department. In a minute of 18 December 1986 to the Chief of the Personnel Department he asked for a description of his post. In answer he was sent a form dated 29 January 1987 and headed "Post description", to which was appended a description dated 4 February 1985.

Alleging "an appreciable increase in the difficulty and complexity of his work and in the responsibility and qualifications it required", he applied on 6 February 1987 to the Chief of the Personnel Department for review of the classification of his post.

A desk audit was carried out on 11 August 1987. Having no news of the findings, the complainant wrote on 1 May 1988 to the Secretary-General referring to his application for reclassification and asking for a decision under Rule 11.1.1.2 a), which says that a staff member who wishes to appeal against an administrative decision shall as a first step make a request for review. Having got no answer, he appealed to the Appeal Board on 6 July 1988 alleging that so much time had gone by since the procedure had begun that there was breach of the spirit of the Staff Regulations and Staff Rules and he had suffered professional and financial injury.

On 22 August 1988 the Chief of the Personnel Department forwarded to the Chief of the Computer Department a report on the grading of the post which confirmed it at G.6. In accordance with paragraph 3.3 of Annex 1 of Service Order No. 111 (Rev. 2) the complainant filed a request on 30 September 1988 for review by the Classification Review Board of the recommended grade of his post.

In a memorandum of 20 October 1988 to the complainant the Chairman of the Appeal Board referred to his appeal of 6 July 1988 and said that there was no decision that could form the subject of an appeal; but the Board "shares your concern that this process has taken far too long".

Having learned that his request of 30 September 1988 had not been put to the Chairman of the Review Board, the complainant wrote to the Secretary-General on 23 March 1989 under Rule 11.1.1.2 a) asking him to see that the provisions of the Staff Regulations, the Staff Rules and Service Order 111 were complied with. In the absence of a reply he lodged another appeal with the Appeal Board on 13 June 1989. The Board recommended in a report of 22 September 1989 that the Secretary-General reject that appeal for want of any challengeable administrative decision but seek ways of speeding up the processing of requests for classification.

The Chief of the Personnel Department sent the complainant a memorandum on 10 October 1989 to say that no action would be taken on his appeal. In a minute of 22 November to the Secretary-General he asked what action would be taken on the recommendation the Appeal Board had made in its report of 22 September 1989 and in particular when the process of review would get under way and the Review Board be convened. The Chief of the Personnel Department replied in a memorandum of 4 December that, though it was difficult to give an exact date, the Secretary-General had taken "several measures" and all cases before the Board, including the complainant's, would be dealt with by the end of 1990. That memorandum is the decision impugned.

B. The complainant contends that his complaint is receivable because the impugned decision clearly affects him adversely and he has met the time limits in the Tribunal's Statute.

He wants to have the classification of his post promptly reviewed without delay and seeks compensation for the Union's extraordinary dilatoriness. He cites the general rule that an appeal must be taken up and disposed of within a reasonable time. Before coming to the Tribunal someone who objects to the grading of his post has to follow a procedure that is in four stages: first, a request for review of the classification of the post under section 2 of Annex 1 of Service Order 111; secondly, a request for review by the Classification Review Board under paragraph 3.3 of Annex 1 of the Order; thirdly, a request for review to the Secretary-General under Rule 11.1.1.2 a); and lastly, an appeal under Rule 11.1.1.2 b) to the Appeal Board.

He submits that to avoid undue procedural delay the Union should have set reasonable time limits for each stage. For want of express provision for that purpose he relies on the case law, which requires that internal appeals be acted on within a reasonable time. That requirement was not met in his case. It all began, he says, in January 1983, when he put in his first request for reclassification, and not until August 1988 was he told that his post did not warrant regrading. Seeing that things were at a standstill he filed an appeal against the breach of the above requirement. Besides, the Appeal Board itself declared in its report on his appeal of 6 July 1988 that the process had already taken far too long. The Union blamed the delay on understaffing of the Board, but other appeals were promptly dealt with. The real cause of the delay was that other cases were picked out in preference to his.

C. In its reply the Union points out that it has recently created two posts, one for a grading officer and one for a secretary, and the procedure for review of classification should not take so long in future.

It argues that the complaint is irreceivable. The final decision adversely affecting the complainant was in the memorandum of 10 October 1989 from the Chief of the Personnel Department informing him that no action would be taken on his appeal. He is therefore mistaken in impugning the memorandum of 4 December 1989. His complaint is also time-barred because he did not file it until 2 March 1990, 142 days after the decision he impugns was notified to him and well over the ninety-day time limit in Article VII(2) of the Statute.

His complaint is in any event devoid of merit. Since the grading of his post was confirmed in 1988 on the strength of the description dated 4 February 1985, it would not have warranted a grade above G.6 even if the review had been carried out before 1986.

Since he was transferred on 1 January 1983 why did he not make his request for review of the classification until 6 February 1987? He cannot have suffered the alleged injury since the Union had taken no decision on the correctness of the grading.

The complainant mistakenly puts time limits for appeals on a par with the more flexible time limits for review of classification. Service Order 111 sets no time limit for such review. Besides, what is a reasonable time is a subjective matter that turns on the whole set of unforeseeable administrative and budgetary factors of life in an international organisation.

D. In his rejoinder the complainant seeks to refute the case made out by the Union in its reply.

As to the issue of receivability, he submits that there were new features in the decision of 4 December 1989, which did not just confirm the one of 10 October 1989. It does therefore constitute the challengeable decision and the complaint was in time.

On the merits he maintains that the injury he has sustained is, at the very least, moral and, if he eventually gets an upgrading, material as well. Between 1983 and 1986 he made several unwritten requests to his supervisors and got promises they did not keep. Someone who wants to make a request for review of classification has to comply with

a strict time limit. Moreover, the rule in the case law that internal appeals must be dealt with in a reasonable time is stated in general terms and so applies to all appeal bodies.

E. In its surrejoinder the Union maintains that the complaint is time-barred and that the memorandum of 4 December 1989 is not a decision. It develops its pleas on the merits and objects in particular to the complainant's reading of the case law. Whether or not he has suffered injury will depend on the eventual findings of the Classification Review Board.

CONSIDERATIONS:

1. As from 1 January 1983 the ITU transferred the complainant from a G.6 post, No. 325/027, to another G.6 post, No. 682. In December 1986 he asked for a description of his post and was given one in January 1987. In February 1987 he applied for a review of the grading of his post. A desk audit took place in August 1987, but despite reminders from him the findings were not published until August 1988, in a report that recommended no change of grade. In September 1988 the complainant filed a request for review with the Classification Review Board, but by 2 March 1990, the date at which he lodged this complaint, the Board had not yet reported.

On 1 May 1988 the complainant addressed to the Secretary-General under Rule 11.1.1.2 a) of the ITU Staff Rules a request that he take steps to establish the grading of the post but he got no reply and therefore lodged an appeal with the Appeal Board on 6 July 1988. In a memorandum of 20 October 1988 the Chairman of the Board informed him that the Board had held there were no grounds for appeal since there was no administrative decision, but had shared his concern about the delay.

Five months later, on 23 March 1989, the complainant made another request to the Secretary-General under 11.1.1.2 a) that he take the measures necessary to comply with the provisions of the Staff Regulations and Staff Rules on grading appeals. Again he received no reply and again he appealed, on 13 June 1989, to the Appeal Board.

In its report of 22 September 1989 the Board recommended rejecting that appeal on the grounds that there was no administrative decision, but expressed concern at the delays and recommended that the Secretary-General "find the appropriate methods of speeding up the processing of these classification requests". In a memorandum of 10 October 1989 the Chief of the Personnel Department conveyed to the complainant the Secretary-General's decision, "after consideration of the conclusions and recommendations of the Appeal Board", that no further action would be taken on his appeal.

On 22 November 1989 the complainant wrote to the Secretary-General asking what was to be done about the Appeal Board's recommendation: at about what date would the procedure start and the Classification Review Board meet? The Chief of the Personnel Department answered in a memorandum of 4 December 1989 on the Secretary-General's behalf that it was hard to say just when his case would come up; his understanding of the memorandum of 10 October 1989 was wrong; though the Board had rejected his appeal the Secretary-General had followed its recommendation by taking "several measures"; one of them had been a decision to increase the number of staff in charge of gradings in 1990; if someone suitable was found his case might be dealt with by the end of that year. That is the decision impugned.

2. The Union submits that the complaint is irreceivable because the decision of 10 October 1989 was the final decision and the memorandum of 4 December 1989 merely confirmed it; since he did not file his complaint until 2 March 1990 he failed to respect the time limit, set in Article VII(2) of the Tribunal's Statute, of ninety days from the date of notification of the final decision of 10 October 1989.

The complainant's answer is that the memorandum of 4 December 1989 did not just confirm the decision of 10 October. Though the memorandum of 10 October states that the Secretary-General has considered the conclusions and recommendations of the Appeal Board, the only decision it gives is about the rejection of the internal appeal and it says nothing of the Board's recommendation. Yet the decision on that point was fundamental because it would determine whether or not he would appeal to the Tribunal. That is why he asked in his minute of 22 November, before the ninety days had expired, at what date the review proceedings would start. The reply, in the memorandum of 4 December, was that it would probably be another year before his case could be dealt with. He states that if he had been given an assurance that the review would be completed in the near future, say in three months, he would not have appealed to the Tribunal at all.

3. The purpose of the internal appeal was to have the Secretary-General apply as soon as possible rules on review by the Classification Review Board. The memorandum of 10 October 1989 constitutes, on the face of it, utter rejection of that appeal, and he should therefore have been vigilant in filing his complaint within the prescribed time limit of ninety days from the date at which he had notice of that memorandum.

The memorandum of 4 December 1989 merely describes the action the Secretary-General had taken on the Appeal Board's recommendation: it made no difference whatever to the earlier total rejection of the internal appeal.

The complaint is time-barred and therefore irreceivable.

The applications to intervene

4. In the cases of Mrs. Biarge, Mrs. Ducry-Dhérin and Mrs. Maia-Cabuzel the facts are not similar to those of the complainant's. In their case a desk audit took place in July 1988, to date no report has been made, and they have no appeal pending, whereas in the complainant's case the report on the desk audit has been made and he has submitted to the Classification Review Board an appeal that is still pending.

In Mr. Grand's case the report on the desk audit was provided on 18 October 1988 and he appealed to the Classification Review Board on 10 February 1989. A further enquiry was carried out on 14 August 1990 and a new report, made on 24 September 1990, has been sent to the Board. His appeal is therefore being processed.

The facts not being identical, the applications by the above-mentioned interveners will not be entertained.

5. In Mr. Laporte's case the facts are identical save that whereas the complainant was transferred in January 1983 he was transferred in June 1983. Since his rights may be affected by the Tribunal's ruling his application is entertained.

Since the complaint is dismissed, however, so too is Mr. Laporte's application.

DECISION:

For the above reasons,

1. The complaint is dismissed.

2. The applications to intervene by Mrs. Biarge, Mrs. Ducry-Dhérin, Mr. Grand and Mrs. Maia-Cabuzel are irreceivable.

3. The application by Mr. Laporte, though receivable, is dismissed.

In witness of this judgment Mr. Jacques Ducoux, President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Edilbert Razafindralambo, Deputy Judge, have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 29 January 1991.

Jacques Ducoux
Mella Carroll
E. Razafindralambo
A.B. Gardner

Updated by PFR. Approved by CC. Last update: 7 July 2000.