SEVENTY-SECOND SESSION

In re BAILLOD

Judgment 1149

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Rémy Marc Baillod against the International Telecommunication Union (ITU) on 21 December 1990 and corrected on 15 March 1991, the ITU's reply of 21 June, the complainant's rejoinder of 23 July and the Union's surrejoinder of 16 August 1991;

Considering Articles II, paragraph 5, and VII, paragraph 1, of the Statute of the Tribunal and Regulation 9.9 and Rule 4.10.1 d) of the ITU Staff Regulations and Staff Rules;

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 Swiss citizen, was born on 30 September 1929 and joined the ITU in 1967 at grade P.2. He served first as an engineer, later as a counsellor to study groups. He was promoted several times and when last promoted, in 1982, reached grade P.5. His retirement was due to begin on 30 September 1989 when he reached the age of 60, but he had his appointment extended by seven months to 30 April 1990. By a memorandum of 23 March 1990 the head of the Personnel Department informed him that he could have no further extension.

The complainant's doctor having prescribed sick leave on 9 April 1990, he applied by letter of 18 April to the Secretary-General for a three-month extension. The Secretary-

General refused by letter of 25 April; on 26 April he submitted a second request, which the Secretary-General turned down on 9 May, and on 22 May a third, which the Secretary-

General rejected on 31 May. In the meantime he went into hospital for an operation on 29 April and was kept there until 12 May 1990. His convalescence took five months, until 13 October 1990.

On 20 June he appealed to the Union's Appeal Board against the Secretary-General's refusal to grant him an extension. In its report of 2 August the Board declared his appeal irreceivable and, by letter of 5 October 1990, the decision impugned, the Secretary-General endorsed the original decision in the light of the Board's report.

B. The complainant submits that, contrary to the Union's pleas before the Appeal Board, his internal appeal was receivable. He had made quite plain what the decision he objected to was and cannot agree that he failed to state a claim. In any event the present complaint includes quite specific claims.

On the merits he contends that the Union infringed two general principles of law.

It failed, for one thing, to discharge its duty as an international organisation to respect the dignity of its staff and treat them with due considerateness. The Secretary-General confirmed the decision that the complainant should retire at 30 April 1990 even though he was on sick leave at the time and so unable to bring his career to a fitting close.

The Union was also in breach of its duty not to cause its officials any unnecessary hardship. The ITU's change of mind over the end-of-service medical examination provided for in Rule 4.10.1 d) "upset" him. Although originally scheduled for 17 April 1990 it never took place, the Union having come to the view first that the check-up he had had on 23 March 1989 had been adequate and later that it was a mere formality which the Secretary-General was free to waive. The complainant describes as "shocking" the Secretary-General's confirmation of the decision to retire him at 30 April 1990 since that meant he had to fetch his belongings from the office while on sick leave. The Union's treatment caused him grave moral injury.

He invites the Tribunal to quash the decision of 5 October 1990 and to order the Union to pay him "compensation for the decision not to extend his appointment to 31 October 1990" as well as moral damages in an amount to be set by the Tribunal. He also claims an award of costs.

C. In its reply the ITU contends that the complaint is irreceivable. In his submissions to the Appeal Board the complainant failed, first of all, to comply with the basic rule that he identify clearly and unambiguously the decision adversely affecting him which he impugns. Nor did he discharge his duty under the case law, which applies by analogy to internal appeals, to state a claim. Even supposing he did make one in his original appeal he has greatly inflated it since then.

The Union's pleas on the merits are subsidiary. It submits that, as the date at which the complainant retired had been set well in advance and only after a seven-month extension, there was nothing undignified about the end of his career. Under Regulation 9.9 the Secretary-General may keep someone beyond the usual retirement age in the Union's interest, but has no duty to do so. The extension the complainant did get past retirement age was fair recognition of a "fine" career.

In answer to his second plea the Union submits that neither his release from the obligation to undergo the end-of-service medical examination - to which the Secretary-General could have held him - nor his having to remove his belongings during sick leave - however inconvenient that may have been - caused him undue or unnecessary hardship. He suffered no moral injury.

D. In his rejoinder the complainant enlarges on his pleas on receivability. He dismisses the Union's contention that the procedural rules applicable in international courts also apply to internal appeal bodies, relying on essential differences between the two jurisdictions. He gives his reasons for broadening his claims before the Tribunal and denies that in doing so he has suddenly changed tack.

On the merits he submits that there was nothing unusual about the extension the Union granted him since most staff members who, like him, were in the senior counsellor or Professional categories also got extensions. Besides, a further extension would have been in the Union's interest. He develops the other pleas in his complaint.

E. In its surrejoinder the Union says that the complainant is mistaken in arguing that certain rules need not be applied as stringently by appeal boards as by international tribunals. It sees no relevance in the reasons he gives for broadening his claims. It contests his allegations about the number of officials who did get their appointments extended beyond retirement age and submits that a further extension of his contract would not have been in its interest.

CONSIDERATIONS:

Receivability

1. The ITU has three objections to the receivability of the complaint. It put two of them to the Appeal Board of the Union, and it raises a third objection to the claims the complainant addresses to the Tribunal. The first two are that he fails to identify the decisions he is impugning, and that he put no claims in his internal appeal to the Board. The third is alternative to the second: that there is inconsistency between the claims in his internal appeal and the claims in this complaint.

2. In its first plea the Union maintains that in his internal appeal the complainant cited three letters of the Secretary-General's without saying which of them he wished to challenge and that the Board should therefore have declared his appeal irreceivable.

It appears from the three letters that the complainant was challenging the refusal of his request for extension of appointment and that in the letter of 9 May 1990 the Secretary-General rejected his case. All that was required was that the Board should be able to identify the substance of his appeal from the relevant correspondence. Being satisfied that the Board was able to do so, the Tribunal rejects the plea.

3. The Union's second plea fails for the same reason. What the complainant was asking for was the extension of his appointment by three months, and indeed the Board understood that quite well. The substance of the claims in his complaint is also clear enough to enable the Tribunal to make a ruling.

4. The Union's third plea succeeds in part, however.

Whereas in his internal appeal the complainant sought three months' extension, in his complaint he is claiming six. According to the case law the scope of claims to the Tribunal may not go beyond that of the claims that formed part of the internal appeal, since any claim that goes further is barred under the rule in Article VII(1) of the Tribunal's Statute that the complainant must have exhausted the internal means of redress. The complainant's claim is therefore receivable only insofar as he is asking for the three months' extension.

The merits

5. The success of that claim turns on the issue of the lawfulness of the decision, notified to the complainant in the memorandum of 23 March 1990 from the head of the Personnel Department not to extend his appointment by three months, over and above the seven months' extension he had already been granted beyond the month in which he had reached the age of 60.

It is not in dispute that the Staff Regulations and Staff Rules of the Union vest in the Secretary-General discretion to extend a staff appointment after that age. But the complainant submits that such authority must not be exercised in an arbitrary fashion and that in the circumstances the Secretary-

General's refusal to extend his appointment was in breach of two general principles: that an international organisation must in its dealings with its staff show proper respect for their dignity, and that it has the further duty to take care not to cause them undue injury. Since the decision not to renew his appointment was taken while he was on sick leave it prevented him from ending in dignity his career as an international civil servant. It also caused him undue injury.

6. The Tribunal has held that every contract of service implies not only that the staff member shall be loyal, treat his superiors with due respect and safeguard the reputation of the organisation but that the administration in its treatment of staff members shall care for their dignity and reputation and shall not unnecessarily cause them personal distress.

7. Applying those precepts to the circumstances of this case, the Tribunal is not satisfied that the complainant's dignity was in any way impaired by his being on sick leave when his appointment expired. That an official is in hospital rather than at work at the office at the previously appointed date of termination is a mere accident of life. It cannot be seen by any reasonable person as detracting from the respect due to someone whose career the Union has described in the course of these proceedings as "fine".

8. In support of his contention that the Union caused him undue injury he cites two facts.

The first is that a medical check-up he was supposed to undergo on 17 April 1990 was cancelled because he was ill. This prompts the complainant to charge the Secretary-General with going back on his decision to require the examination in pursuance of Rule 4.10.1 d).

The parties agree that 4.10.1 d) lays no duty on the Secretary-General to require officials to undergo an end-of-service medical check-up. The Tribunal is satisfied that in the circumstances of the case the fact that the complainant did not undergo the check-up caused him no undue injury.

The second fact the complainant cites is that he had been obliged to remove his belongings from the office while he was still on sick leave.

That was no more than a minor inconvenience of everyday life of a kind that cannot constitute a flaw in the impugned decision.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Tun Mohamed Suffian, Vice-President of the Tribunal, Miss Mella Carroll, Judge, and

Mr. José Maria Ruda, Deputy Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 29 January 1992.

Mohamed Suffian
Mella Carroll
José Maria Ruda
A.B. Gardner

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