

EIGHTY-FIRST SESSION

In re SAUNDERS (No. 15)

Judgment 1527

THE ADMINISTRATIVE TRIBUNAL,

Considering the fifteenth complaint filed by Mr. Yann Harris Saunders against the International Telecommunication Union (ITU) on 9 March 1995;

Considering the interlocutory order in Judgment 1468 of 1 February 1996;

Considering Mrs. Patricia Faccin's letter of 23 February 1996 to the Registrar of the Tribunal, the complainant's observations of 8 March and the Union's final comments of 2 April 1996;

Considering that the submissions may be summed up as follows:

A. Mrs. Patricia Faccin, apart from observing that the duties she performs are those "assigned" to her, says she has no comments to make on the complaint.

B. The complainant observes that Mrs. Faccin does not say whether her post is the same as the one Mr. A. Maggio held as former head of the Fellowships Service. On the strength of the descriptions the two posts are, he submits, "essentially the same".

C. The ITU points out that Mr. Maggio had to manage the entire Fellowships Programme, whereas Mrs. Faccin's duties are of "a more administrative and coordinating nature than a managerial one".

CONSIDERATIONS:

1. The facts relating to this complaint are set out in Judgment 1468.

2. Mrs. Patricia Faccin, the complainant and the Union have made the submissions that the Tribunal invited in that judgment.

3. Mrs. Faccin has merely stated that she continues to carry out the tasks assigned to her by her supervisors and has no further comment to make.

4. The Union has submitted descriptions of the post that Mr. Maggio used to hold - BS3T/P3/421 - and of the one now held by Mrs. Faccin - BS3T/P3/422. It explains that Mr. Maggio, who retired in 1992, was responsible at the Union's headquarters in Geneva for organising and supervising the Fellowships Service and managing the Fellowships Programme as a whole. After he had gone the management of the Programme was "decentralised" and made over to the Union's regional field offices and to the regional units of the Telecommunication Development Bureau at headquarters, and his post, No. 421, was used to serve "other administrative purposes, which are not at all linked to the Fellowships Service". Mrs. Faccin's original grade G.7 post was reclassified and became post No. 422. Because of "restructuring" and "decentralisation" the number of posts in the Service was reduced from five to three, and two at G.7 were "eliminated".

5. The evidence is that upon the conclusion of the whole exercise the Service still needed a head. The descriptions of the two posts, 421 and 422, show that their essential functions were similar. The real upshot of the restructuring and reclassification was, not the upgrading of the post of administrative assistant with the addition of some duties of the head of the Service, but the re-establishment of Mr. Maggio's old post, albeit with a few changes in functions. That being so, the Union ought to have followed the procedure laid down in Service Order No. 111(Rev.2) of 1 July 1981, on the classification of posts, and in particular sections 1.1.2 ("Changes recommended in duties, responsibilities or qualifications required") and 1.1.3 ("Vacancy notice procedure").

6. Whether or not the old post had been abolished, the position in February 1994 was that the P.3 post for head of the Service was vacant. Regulation 4.8 c) of the ITU Staff Regulations and Staff Rules reads:

"Selection for posts in grades P.1 and above and for posts of a technical character at the Headquarters in grades G.7, G.6 and G.5 shall be made on a competitive basis; vacancies shall be advertised to the Administrations of all the Members of the Union, to the United Nations and other specialized agencies and to the staff of the Union, indicating in detail the nature of the post to be filled, the qualifications required and the terms of appointment."

The post should therefore have been properly advertised and a selection made by competition. Even though Mrs. Faccin had been performing the duties for about a year on her own G.7 post of administrative assistant, she could have been appointed to the vacant post only after the prescribed procedure had been followed. The ITU was not free to pass the procedure by promoting her to P.3.

7.The Union lightly dismisses the complainant's chances of being appointed to the vacancy, had it been advertised, as "so far-fetched that it remains in the domain of pure hypothesis and ... not worthy of being taken seriously in any respect". Yet he had performed functions comparable to Mrs. Faccin's as early as 1975 and been promoted to grade P.2 in 1986, whereas in 1994 Mrs. Faccin was still at grade G.7. And there is no suggestion that he was not qualified to apply for the post. The appointment directly affected him and he is entitled to challenge it.

8.The conclusion is that the appointment of Mrs. Faccin as head of the Fellowships Service by promotion to grade P.3 was in breach of Regulation 4.8 c), which is quoted in 6 above, and Regulation 4.9, which is about the procedure before the Appointment and Promotion Board. In view of the circumstances in which her appointment and promotion came about they are not severable and must both be quashed.

DECISION:

For the above reasons,

- 1.The appointment and promotion of Mrs. Faccin to the post of head of the Fellowships Service are quashed.
- 2.The Union shall fill the post in accordance with Regulations 4.8 and 4.9.
- 3.It shall pay the complainant 4,000 Swiss francs in moral damages.
- 4.It shall pay him 1,000 Swiss francs in costs.
- 5.His other claims are dismissed.

In witness of this judgment Sir William Douglas, President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Mark Fernando, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 11 July 1996.

William Douglas
Mella Carroll
Mark Fernando
A.B. Gardner