

EIGHTY-THIRD SESSION

*In re* Rubio

Judgment 1644

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs. Marina Rubio against the Universal Postal Union (UPU) on 10 September 1996 and corrected on 14 November 1996, the UPU's reply of 16 January 1997, the complainant's rejoinder of 24 February and the Union's surrejoinder of 24 March as supplemented on 25 March 1997;

Considering Articles II, paragraphs 5 and 7, and VII, paragraph 1, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, 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, who is Uruguayan, served as a translator in the Spanish Translation Service (STES) in the General Secretariat of the Postal Union of the Americas, Spain and Portugal (UPAEP) in Montevideo. That service was run by the Spanish Language Group (GLES) of the UPU. The STES in Montevideo used to send a translator to the UPU in Bern to do urgent translation work. Under a system of rotation introduced a few years earlier the complainant was twice seconded to the STES in Bern. Her last assignment in Bern ended at 31 December 1992, whereupon she returned to her post in Montevideo.

By a "resolution" of 1 April 1996 notified to her on 3 April the Secretary-General of the UPAEP, who is also the "spokesman" of the GLES, told the complainant that her appointment was to end on 8 April 1996. On 29 April she lodged a "complaint" against the decision with the Director-General of the International Bureau of the UPU. The Director-General replied on 8 May 1996 that he was not "free to interfere in internal matters of the UPAEP". By a letter of 31 May she lodged an appeal with the Joint Appeals Committee of the UPU. In its report of 7 June 1996 the Committee held that it was not competent to hear the appeal. The Director-General sent the report to the complainant on 10 June 1996, saying that he endorsed its conclusions. That is the decision she is now impugning. An appeal she filed with the Consultative and Executive Council of the UPAEP was rejected in March 1997.

B. The complainant observes that since the GLES and the UPAEP have no independent appeal bodies there is no due process. Citing Judgments 122 (*in re* Chadsey) and 1013 (*in re* Zayed Nos. 4 and 5), she submits that the Tribunal may entertain a dispute between a language group such as the GLES and its employee.

She refutes all the arguments put forward by the spokesman of the GLES to justify her dismissal and submits that none of the grounds for termination set out in Article 25 of UPAEP's Staff Regulations applies to her. The resolution of 1 April 1996 is therefore "unlawful, unwarranted and invalid". She pleads discrimination on the grounds that from 1990 onwards she had a tithe of her pay docked as her own contribution to the UPAEP's Pension Fund instead of the usual twentieth that was being subtracted from the pay of other staff.

In her submission the impugned decision offends against general principles of law, international law and the UPAEP's own rules and amounts to misuse of authority. She has suffered a "breach of human rights" in that the UPAEP's failure to compensate her for its unlawful action and to give her a properly detailed certificate of service that would help her to find another job. The impugned decision has caused her serious moral and financial injury.

She seeks the quashing of the decision to dismiss her and reinstatement in her post or, failing that, an "amount equal to at least the pay that would have accrued to [her] up to the age of retirement (65) without

prejudice to any damages to which [she] may claim in due course". She seeks material and moral damages for loss of employment, costs and repayment of her "overpayments to the Savings Plan Fund, plus interest, and damages for what [she] had to undergo in Bern from 1989 to 1991". She asks for the correction of mistakes in the tally of her contributions to the Savings Plan. She reserves the right to appeal to "other competent bodies" and to do whatever she must to obtain damages.

C. In its reply the defendant explains that the smaller Unions are not part of the UPU but legally autonomous. So is the STES, which the UPAEP set up and the GLES administers, and whose staff are not employees of the UPU. So to the UPU the General Secretariat of the UPAEP is a "sub-contractor". The judgments cited by the complainant confirm that the Tribunal may hear complaints from STES staff in Bern but not in Montevideo, where she was at the material time. Her complaint is irreceivable, mainly because the UPAEP has not recognised the Tribunal's jurisdiction and subsidiarily because she has not exhausted the internal means of redress: the Consultative and Executive Council of the UPAEP would not be hearing her appeal until March 1997.

D. The complainant rejoins that the impugned decision is a final one within the meaning of Article VII of the Tribunal's Statute. She points out that she had a permanent appointment with the UPAEP and that her status was governed by the Staff Regulations and not by contract. Since the UPAEP Congress neither dismissed her nor abolished any post, and since there is no evidence of any delegation of authority, her dismissal is unlawful and invalid. The decision was unsubstantiated, she was given no notice and the Joint Advisory Committee was not consulted. She believes that she may appeal to the Government of Uruguay, which is not only the host country of the GLES but her own. She presses her pleas.

E. The Union draws a distinction between STES staff in Bern and those in Montevideo. The STES works not for the UPU but for the GLES, which is free to farm out translations to anyone it likes. The complainant's filing of appeals with the UPAEP and with the Government of Uruguay acknowledges that she is not covered by the Staff Regulations of the International Bureau and that the Tribunal is not competent to hear her case.

## CONSIDERATIONS

1. The complainant was a Spanish translator with the General Secretariat of the Postal Union of the Americas, Spain and Portugal (UPAEP), which has its headquarters in Montevideo. She was dismissed by a decision that its Secretary-General took on 1 April 1996. She has appealed to the UPAEP itself, to several Uruguayan bodies and to the Director-General of the International Bureau of the Universal Postal Union in his capacity as "agent" of the Spanish Language Group (GLES). The Director-General rejected her appeal on 8 May 1996 on the grounds that he had no authority to interfere in internal matters of the UPAEP. She thereupon appealed to the Joint Appeals Committee of the UPU. In its report of 7 June 1996 that Committee held that it was not competent to entertain the appeal. It said:

"(a) On the basis of individual agreements, staff members of the translation services who are employed by the language groups established within the UPU, are granted, for the duration of their term at the International Bureau, working conditions similar to those of staff members of the Bureau. In such cases certain provisions of the Staff Regulations apply to them by analogy and the Director-General then acts as agent of the language group concerned.

(b) The appellant's last secondment to Bern having ended on 31 December 1992, the Director-General of the International Bureau ceased to act as agent from that date."

The Director-General told the complainant on 10 June 1996 that he endorsed the Committee's conclusion.

2. She pleads that that decision was unlawful and that the dismissal she had thus unsuccessfully appealed against to the Director-General should be set aside. She submits that the GLES, to which she belongs, was set up under UPU rules, and so it is the agent of the GLES -- the Director-General -- who may review decisions about GLES staff. Several judgments -- she observes -- have declared the Director-General and the Tribunal to be competent in such cases, and ignoring precedent would deprive the staff of their right to due process.

3. What, then, are all these institutions? On the answer will turn the Tribunal's ruling on the complaint.

4. The Universal Postal Union has its headquarters in Bern. It is an international organisation which has recognised the Tribunal's competence under Article II, paragraph 5, of its Statute to entertain complaints concerning the staff of the Union.
5. The Postal Union of the Americas, Spain and Portugal is a smaller organisation set up under Article 8 of the UPU's Constitution. It has legal personality and autonomy and its own terms of reference.
6. Language groups are set up within the UPU under Article 107.2 of its General Regulations, by "the member ... countries which have requested a language other" than French, the official one. They are autonomous and, as prescribed by the General Regulations, ordinarily bear the costs of translation into the language they want. The costs the language group is to bear are split between the members in proportion to the amounts of their contributions to UPU expenditure. In line with decisions by the UPU's Executive Council each group appoints a spokesman with whom the International Bureau discusses the administration of the translation service.
7. The Spanish Language Group (GLES) is one such group. Its spokesman is the Secretary-General of the UPAEP and it does not have legal personality. The Spanish Translation Service (STES) forms part of the UPU's International Bureau. The Executive Council of the UPU set it up in 1966 as an autonomous body. It is accountable to the GLES. It is governed by Regulations of 12 May 1980 which say that it is a small unit of the Bureau that does "urgent translation into Spanish"; that the Bureau "shall, in its capacity as authorized agent of the GLES, ensure the operation and administration of the STES"; and that the staff of the STES have "the same conditions of service as the staff members of the UPU International Bureau", of which the Staff Rules and Regulations apply to them "by analogy".
8. Besides the translation service in Bern, the GLES has set up a "decentralised translation system" at UPAEP's headquarters in Montevideo. It is independent of the UPU and its staff have an employment relationship with the International Bureau only when seconded to the translation service in Bern.
9. The UPAEP recruited the complainant in 1969. She was seconded to the STES at the International Bureau from 1 June 1974 to 18 December 1976 and from 16 December 1989 to 31 December 1992 and while there was covered by the UPU Staff Rules and Regulations. But, being a member of the UPAEP's translation service in Montevideo, she had the status of a staff member of its General Secretariat, and it is not an international organisation that has recognised the Tribunal's jurisdiction.
10. To get round the difficulty she offers several pleas. One is that according to precedent the UPU's recognition of the Tribunal's jurisdiction extends to its component language groups. Another is that the general principles of international law and several international conventions require that the employee of an international organisation should in the event of dispute have the right of appeal to an independent and impartial tribunal. Whatever the force of those pleas, she cannot succeed.
11. Several judgments do affirm the Tribunal's competence to entertain complaints from staff members of the UPU's translation services. Judgment 122 (*in re* Chadsey) ruled that the Tribunal was competent to entertain a complaint from a translator appointed by the UPU to the English Translation Service on a six-month contract that was twice renewed. The Tribunal held that, the Director-General of the Union having accepted its jurisdiction, this acceptance was also binding as regards the language groups since it was a service within the framework of the UPU. But that ruling does not apply here. Translation into English was done by a permanent central service of the International Bureau and by analogy its staff had the same status as the employees of the Union. Likewise, Judgments 868 (*in re* Zayed No. 1), 1013 (*in re* Zayed Nos. 4 and 5) and 1043 (*in re* Zayed No. 6) were about cases in which a translator from the Arab Language Group was challenging dismissal. The Tribunal said that the language groups "lack legal personality of their own" and that the UPU's recognition of its jurisdiction held good "for the Arab and other language groups of the Union as well" and that it was competent because the complainant was a staff member of the UPU and was guaranteed the same status as the employees of the International Bureau. This case is quite different. The complainant is a staff member not of the UPU but of the UPAEP. She had the status of a staff member of the International Bureau only while on secondment to Bern. The case law she cites is irrelevant to a dispute with an international organisation that has not recognised the Tribunal's jurisdiction.
12. So she cannot succeed in her plea -- which she may plead before a domestic court -- that refusal to

entertain her case would be denial of due process and contrary to general principles, to the Universal Declaration of Human Rights and to the American Convention on Human Rights of 22 November 1969. However valid the principle she cites -- that an employee of an international organisation is entitled to the safeguard of an impartial ruling by an international tribunal on any dispute with the employer -- the Tribunal cannot but declare that it is not competent.

13. The conclusion is that her claim to the quashing of the decision she impugns must fail and so too must her other claims.

## DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment Sir William Douglas, President of the Tribunal, Mr. Michel Gentot, Vice-President, and Mr. Julio Barberis, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 10 July 1997.

*(Signed)*

William Douglas  
Michel Gentot  
Julio Barberis  
A.B. Gardner