

## NINETIETH SESSION

Judgment No. 2026

The Administrative Tribunal,

Considering the second complaint filed by Mrs M. P. against the International Telecommunication Union (ITU) on 3 December 1999 and corrected on 26 January 2000, the ITU's reply of 31 March, the complainant's rejoinder of 25 April and the fact that the Union has not exercised its right to enter a surrejoinder;

Considering Articles II, paragraph 5, and VII 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's career at the ITU was recounted under A in Judgment 1976 on her first complaint. In that case the Appeal Board recommended in its report of 22 March 1999 that a new job description should be drawn up for post 205 which she occupied as an administrative assistant at grade G.6 in External Affairs.

In April 1999 she was seconded to a newly created section called Corporate Communication to work on the ITU website. On 4 June she was given a new job description for post 205, which had been transferred with her.

Annexed to it was an "ICSC <sup>(1)</sup> job description questionnaire". The same day her supervisor gave her a "work plan" listing the duties of her post.

On 20 June she wrote to the Secretary-General protesting that neither the job description nor the questionnaire reflected the tasks she was performing in her new post. She mentioned that she had also been given a work plan enumerating the tasks she was currently performing and asked whether the job description or the work plan took precedence: in her view neither document corresponded to a post at grade G.6 under the terms of the "Common General Service Job Classification Standard for Geneva". She requested that the tasks assigned to her, and the grade, be revised accordingly.

Having received no reply from the Secretary-General she filed an internal appeal on 20 August 1999 seeking a ruling as to whether it was the job description or the work plan which "prevailed". In her appeal she stated that the discrepancy and ambiguity had given rise to "mobbing" (professional harassment) and "bullying activities". She claimed compensation under several heads.

On 2 September she received a copy of a post classification report, No. 51/99, dated 20 August, in which it was recommended that her post be confirmed at grade G.6.

The Appeal Board issued its report on 21 December 1999, concluding that her appeal was irreceivable. It explained that, because of restructuring within the ITU, there had been delays in the Board taking up the complainant's case. Meanwhile, on 3 December 1999, the complainant had filed this complaint with the Tribunal challenging the implied rejection of her internal appeal.

B. The complainant submits that, since the job description, the ICSC job questionnaire and the work plan are at variance, it is not clear which of them determines her duties. In asking her to "simultaneously sign and agree to all three" the Union showed disregard for due process. She has four main pleas. First, she submits that she has been performing work at a level higher than grade G.6. without the corresponding remuneration. She considers that she is entitled to a retroactive pay increase or a special post allowance, otherwise the result would be unjust enrichment for the organisation. Secondly, she perceives the ITU's failure to resolve the conflict regarding her job description as a form of "psychological harassment", which was worsened by its giving her "conflicting and confusing work assignments". Thirdly, the organisation has failed in its duty to treat her with respect. It showed bias towards her

and she has suffered moral injury. Fourthly, she objects to the conditions of her transfer to the Corporate Communication section because it took place with virtually no consultation or notice; she was not treated fairly or in good faith and was denied due process. As a result she has suffered loss of career prospects, salary and pension rights.

In addition she says that by following the recommendation of Post Classification Report No. 51/99, which confirmed her post at the G.6 level, the ITU misappraised the facts and committed a mistake of law.

The complainant seeks: the quashing of the decision "to maintain [her] job at the G.6 level as per Post Classification Report No. 51/99"; a "properly defined" job description and ICSC questionnaire that are in line with the "professional" work plan she was given; the reclassification of her post and "a new post classification report ... relating to the tasks she is being asked to carry out with corresponding grade level"; a special post allowance for work which demands skills of a higher level than those expected from someone at grade G.6; and disciplinary measures - against the officials concerned - to stop "mobbing activities" against her. She seeks compensation: for "hindrance to her career development"; for "abuses sustained" through not having a relevant job description defining certain tasks that she has been performing at the Professional level; for the poor health which has resulted; and for loss of salary and pension rights. In view of the harassment suffered and the erroneous conclusions drawn by the ITU in not reclassifying her post she asks for: (a) the difference in pay between that of her G.6 post and that of a post at a higher level; and (b) damages of 1,471,357 United States dollars for moral injury.

C. In its reply the ITU contests the receivability of the complaint on the ground that it was filed prematurely. It points out that the procedure for requesting review of the classification of a post is laid down in Service Order No. 111 (Rev. 2) of 1 July 1981. The complainant did not adhere to the correct procedure for contesting either her job description or the classification of her post. Her request to the Secretary-General of 20 June 1999 was made before the classification procedure had run its full course. The post classification report of 20 August 1999 contained a recommendation to the Secretary-General with regard to the grade of her post. It was only subsequent to receiving that report that she could initiate a request for review. She did not, therefore, exhaust the internal remedies available to her.

D. In her rejoinder the complainant contends that her complaint is receivable. She submits that the ITU did not respect the rules governing appeals. Under the terms of Staff Rule 11.1.1 if the Appeal Board's procedure was expected to take longer than fourteen weeks the parties had to be notified of the delay. She received no such notification and was consequently free to file her complaint with the Tribunal.

The complainant indicates that the ITU produced another version of the work plan that she was asked to sign on 4 June 1999. According to the wording of that later version, dated 29 July 1999, she only "assists" with each of the tasks it listed, implying that she no longer has the same degree of responsibility for the duties she is performing. That constituted an attempt on the part of the organisation to downgrade the importance of her work. Moreover, asking her to sign the job description was an "astute way" of getting her to work at a higher level while keeping her on a G.6 salary.

The complainant questions whether Service Order No. 111 of 1981 is still in force, particularly as it has not been referred to in subsequent versions of the Staff Regulations and Rules. She says that the ITU failed to observe Rule 2.1 c) which calls for regular updating of procedures relating to classification plans.

From correspondence produced with the defendant's reply, she deduces that attempts were made by her supervisors to discredit her. She raises the issue of being awarded damages for libel, and costs, but leaves it to the Tribunal to decide on the matter.

## CONSIDERATIONS

1. This is the complainant's second complaint to the Tribunal, the first being the subject matter of Judgment 1976. In the context of her first complaint the Appeal Board recommended, on 22 March 1999, that the necessary steps be taken to establish a new job description for post 205 as soon as possible. A job description relating to the duties and responsibilities of the post occupied by the complainant was issued on 2 June 1999 together with an ICSC General Service job description questionnaire.

2. On 20 June 1999 she wrote to the Secretary-General referring to the job description and ICSC questionnaire and also to a work plan drawn up for her by her immediate supervisor. She said the job description and questionnaire did not reflect the tasks she was then being requested to carry out and asked which of those documents took precedence. She also said that neither the job description nor the work plan corresponded to a G.6 level post and requested that the tasks assigned and the grade be revised accordingly.
3. On 20 August 1999 a post classification report, No. 51/99, on post 205 was issued by the Personnel and Social Protection Department recommending that the post be confirmed at grade G.6 on the basis of the job description and the ICSC questionnaire that were given to the complainant on 4 June 1999.
4. On the same day, 20 August 1999, the complainant lodged an appeal with the Appeal Board in which post classification report No. 51/99 is cited as the "administrative decision". She requested the following relief: (a) the quashing of the decision to maintain the grade of her post at G.6 as recommended in post classification report No. 51/99; (b) a job description and job questionnaire in line with the "professional" work plan that had been given to her; (c) the reclassification of her post; (d) disciplinary measures to stop "mobbing" (professional harassment) towards her; (e) compensation for hindrance towards her career and intellectual development, by virtue of "mobbing activities"; (f) compensation for the moral injury sustained as a result of not having a relevant job description reflecting professional tasks that she is requested to perform, such as writing brochures; (g) compensation for poor health caused by unfair treatment; and (h) compensation for loss of salary and pension rights.
5. The Appeal Board was unable to deal with the matter within the time specified in the Staff Rules and Regulations. Accordingly, the complainant lodged this complaint with the Tribunal on 3 December 1999 challenging the implied rejection of her appeal of 20 August 1999 under Article VII(3) of the Statute of the Tribunal. Her claims are listed under B above.
6. Classification procedures are provided for in Service Order No. 111 (Rev. 2) of 1 July 1981. Section 2 sets out the procedure for reviewing the classification of posts following changes in duties and responsibilities. The contents of a proposed new post description must be approved by the "head of organ" before it is submitted for classification; this person is responsible for settling any differences about the contents. The Personnel Department assesses the level of the post and recommends a grade; this is then notified to the Secretary-General, the "head of organ concerned" and the incumbent of the post.
7. According to Service Order No. 111 the Classification Review Board is "an advisory body responsible solely for dealing with classification questions and is not involved in, nor does it replace, the statutory appeal procedure". Point 3.3 of this order provides that staff members may request a review of the Personnel Department's recommendation on the grade of a post within six weeks from the time the staff member received notification of it in writing. The Board investigates the matter according to the procedures laid down and makes a recommendation to the Secretary-General. The Coordination Committee then considers the recommendation and takes a decision on the matter. Finally, the Personnel Department notifies the official concerned.
8. When the complainant received the proposed post description together with the questionnaire, she did not apply to the "head of organ"; instead, she complained to the Secretary-General on 20 June, asking for a revision of the job description. She was in effect asking for the grade of her post to be revised before a recommendation had been issued. She initiated an internal appeal procedure on 20 August 1999 without exhausting the other internal remedies available to her.
9. Similarly, as to the relief claimed based on "mobbing" (professional harassment), she initiated the internal appeal without first obtaining an administrative decision against which she could appeal under Staff Rule 11.1.1.
10. The complaint, including all the claims for consequential relief, is irreceivable for failure to exhaust the internal remedies.

## DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 15 November 2000, Mr Michel Gentot, President of the Tribunal, Miss Mella Carroll, Vice-President, and Mrs Flerida Romero, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 31 January 2001.

Michel Gentot

Mella Carroll

Flerida Romero

Catherine Comtet

1. International Civil Service Commission