

NINETY-THIRD SESSION

Judgment No. 2130

The Administrative Tribunal,

Considering the third complaint filed by Mr W. J. K. against the International Telecommunication Union (ITU) on 13 June 2000 and corrected on 10 October 2000, and the ITU's reply of 21 May 2001;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

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

A. Facts relevant to this case are set out under A in Judgment 2022 on the complainant's first complaint. He joined the staff of the ITU in June 1998 on a two-year fixed-term appointment as Head of External Affairs at grade P.5.

On 22 December 1998 the ITU issued vacancy notice No. 43-1998, advertising the D.2 post of Head of Strategic Planning and External Affairs Unit. The complainant applied for the post. His performance from 13 June 1998 to 31 May 1999 was evaluated in a periodical personal report drawn up by two successive supervisors. They rated his performance as unsatisfactory. The report was signed by the two supervisors on 12 July and by the Secretary-General on 16 July. By a letter of 14 October 1999 the acting Chief of the Personnel and Social Protection Department informed the complainant that his application for the post had "proved to be unsuccessful".

The complainant wrote to the Secretary-General on 18 November 1999, seeking a review of that decision. He proposed his services as a special adviser. For that purpose he made a twofold request: he asked for a special post allowance at grade D.1 from 1 December of the same year and wanted in the meantime to be placed on special leave with pay up to 30 November 1999.

In the absence of a reply from the Secretary-General, the complainant appealed to the Appeal Board on 15 January 2000 seeking a review of the decision of 14 October 1999 and again requesting a special post allowance in order to serve as a special adviser; he also asked for special leave with pay for January 2000. Having heard no more he has filed this complaint with the Tribunal challenging the implied rejection of his claims.

B. The complainant submits that because of a delay in producing his appraisal report the decision of 14 October 1999 was flawed, as was the procedure used by the ITU to process his application for the D.2 post he applied for. Citing Staff Rule 12.1.5, which states that an annual report shall be drawn up "prior to the date of every salary increment", he opines that in his case the relevant report should have been completed by 1 June 1999. He contends that the Union's failure to observe the rules it has set regarding reports only exacerbates its failure to comply with Rule 11.1.1 specifying the time limits in the procedure before the Appeal Board.

Furthermore, he submits that because the Appeal Board has failed to take up his internal appeal, the ITU cannot now oppose his request for special leave with pay. He claims such leave for the period from November 1999 to January 2000.

C. In its reply, without wishing to comment on the receivability of the complaint, the ITU submits that the complaint is totally devoid of merit. It points out that the complainant was absent from the office in mid-1999, without his whereabouts being known. His absence from Geneva constituted abandonment of post and the Administration initiated proceedings to end his appointment. The Joint Advisory Committee met on 8 and 9 November 1999 and unanimously recommended terminating his appointment on account of his unsatisfactory service and conduct. On 22 November he was notified that his last day of service would be 24 November, and his appointment would terminate on 24 December 1999. It notes that the complainant has not, to its knowledge,

challenged the termination of his appointment.

The ITU holds that the date of finalisation of the complainant's appraisal report was of no consequence in the context of his application for the D.2 post, and his argument involving the timing of the report cannot stand. The Secretary-General took the decision to appoint the successful candidate on 19 August 1999. The final version of the complainant's report was signed by his two supervisors on 12 June [sic] 1999, and by the Secretary-General on 16 June [sic], "more than two months prior to the challenged decision".

Moreover, it contends that the redress that the complainant is claiming has no relation with the decision under challenge, and cannot be considered relevant compensation in the event of non-appointment to a post. In any case, as from 24 November 1999 he was no longer a staff member and could no longer claim special leave with pay.

CONSIDERATIONS

1. In the original complaint form filed with the Tribunal, the relief sought by the complainant is that he be granted special leave with pay for the months of November and December 1999 and January 2000. In the brief filed in support of his corrected complaint he also appears to seek revision of a decision of the Secretary-General of the ITU taken on 19 August 1999, and communicated to him by a letter of 14 October 1999, informing him that his application for the post of Head of the Strategic Planning and External Affairs Unit at level D.2 had been unsuccessful.
2. The two claims are manifestly without merit. By a letter of 22 November 1999 the complainant was informed that his appointment would be terminated as of 24 December 1999. He does not dispute that he was paid up to that date. Obviously, he cannot claim special leave with pay for any period during which he received his regular salary.
3. Equally obviously, from 24 December 1999 to the end of January 2000, he was no longer on the staff and there can be no basis to his claim for special leave, with or without pay.
4. As regards his challenge to the Secretary-General's decision not to appoint him, the complainant alleges that the decision is flawed because the ITU failed to complete his appraisal report in a timely manner, in accordance with the Staff Regulations and Staff Rules. The plea is of no consequence here because the evidence shows that the report in question was communicated to the Secretary-General well prior to the date of the decision he is challenging. If there was any delay, the complainant did not suffer any prejudice thereby.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 9 May 2002, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Judge, and Mrs Flerida Ruth P. Romero, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 15 July 2002.

Michel Gentot

James K. Hugessen

Flerida Ruth P. Romero

Catherine Comtet

