Registry's translation, the French text alone being authoritative.

NINETY-FOURTH SESSION

Judgment No. 2203

The Administrative Tribunal,

Considering the complaint filed by Mr B. H. against the Universal Postal Union (UPU) on 30 October 2001 and corrected on 12 February 2002, the Union's reply of 30 April, the complainant's rejoinder of 7 August and the UPU's surrejoinder of 11 October 2002;

Considering Articles II, paragraph 5, and VII 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. The complainant was born in 1948 and has German nationality. He joined the International Bureau of the UPU in Bern (Switzerland) as an accountant under a short-term contract covering the period from 14 November to 22 December 1994. With effect from 3 January 1995 the Union granted him another contract of this type, at grade P.3. This contract was extended three times, until 31 May 1996. These contracts excluded participation by the complainant in the UPU's Provident Scheme.

Meanwhile, in November 1995 the Union had advertised two vacant posts for bilingual accountants at grade P.2/P.3. The vacancy notice stated that the successful candidate would be eligible to participate in the Provident Scheme under the new participation conditions, since the conditions in force at that time were being revised. The complainant applied on 11 January 1996 and was selected for the post. By a letter of 9 April the Director-General informed him that he had been granted a two-year probationary appointment with effect from 3 April 1996 and that the new minimal scale of pensionable remuneration would apply to him. On 6 June the Deputy Secretary of the Scheme wrote to inform him that he had been granted participation in the Provident Fund of the Provident Scheme with effect from 3 April.

In an office notice of 29 May 1996, the Deputy Director-General announced that at its session of 27 April, the Management Board of the Provident Scheme had adopted a new scale applicable, with effect from 1 January 1996, to participants joining the Scheme on or after that date, the aim being to achieve convergence between the contributions and benefits of the UPU's Provident Scheme and those in force in the United Nations common system.

On 9 February 1997 the complainant wrote to the Secretary of the Scheme asking for validation of the period from 14 November 1994 to 2 April 1996. His request was granted and he signed an agreement with the Scheme on 25 April 1997. The validation thus authorised was calculated on the basis of the new scale. The complainant was given a permanent appointment with effect from 1 April 1998.

Having been informed that the application of the new scale would lead to a reduction of approximately 30 per cent in the amount of his future pension, the complainant asked, in a letter of 11 February 1999 to the Secretary of the Scheme, to be subject to the scale applicable to staff members who had joined the Scheme prior to 1 January 1996. In November 1999 this request was referred to the Management Board, which rejected it during its session of 15 May 2000. The Secretary informed the complainant of this decision in a letter of 30 November 2000, adding that the Scheme's Secretariat was considering obtaining a legal opinion with a view to submitting it to the Management Board at its next session. On 26 January 2001 the complainant wrote to the Director-General to

request a review of the decision of 15 May 2000. At its session of 3 May 2001, the Management Board again rejected the complainant's request for the application of the old scale. In his capacity as a participant of the Scheme, the Director-General informed the complainant on behalf of the Management Board, in a letter of 16 July 2001, which is the impugned decision, that the decision of 15 May 2000 was "final and executory".

B. The complainant submits that Article 20(2) of the Regulations of the Provident Scheme, which provides that "[p]articipation shall commence on the date of admission to the Provident Fund", has been breached. Having become a participant of the Scheme on 3 April 1996, he ought to have been subject to the scale that was officially in force on that date, namely the old scale. Moreover, the validation of his period of prior service must alter the date of his admission to the Scheme. Thus, he should be deemed to have been a participant since 14 November 1994 and the scale applicable on that date should apply to him.

He considers that it was illegal to refer, in his letter of appointment of 9 April 1996, to a scale which did not yet exist, having not yet been approved by the competent authorities. He emphasises that he was not informed of the new scale, nor of its impact on the amount of his future pension, at the time when he accepted the said appointment. Consequently, the duty to inform and the principle of good faith were both violated. The decision to apply the new scale retroactively also contravenes the provisions of Article 64(2) of the Scheme's Regulations in that it adversely affects acquired rights pertaining to benefits.

Lastly, the complainant considers that the principle of equal treatment has not been observed, since his conditions of participation in the Scheme are considerably less favourable than those of staff members appointed prior to 31 December 1995.

The complainant seeks the quashing of the decisions of 15 May 2000 and 3 May 2001, and the "quashing of the retroactive effect" of the new scale. He also asks the Tribunal to order the Union to apply the old scale to his participation in the Scheme and to pay, with him, the additional contributions resulting from the application of that scale. Lastly, he seeks an award of costs.

C. In its reply the defendant raises objections to receivability. It argues that the complaint is time-barred, since it was filed on 30 October 2001 against a decision notified to the complainant on 30 November 2000. The defendant also challenges the receivability of the complaint on the grounds that it is directed against the decision of 16 July 2001, which merely confirmed the content of the letter of 30 November 2000. Furthermore, the complainant cannot directly challenge the retroactive effect of the new scale: according to the Tribunal's case law, staff members must challenge the individual application of a general decision to their particular case, although they may, in so doing, invoke the illegality of the general decision. In the present case, the first individual application decision was the letter of 6 June 1996, which the complainant did not challenge within the time limits. The claim for payment of the additional contributions is likewise considered by the Union to be irreceivable, the complainant having failed to exhaust the internal means of redress. Referring to the fact that the Scheme is governed by Swiss law, the Union points out that in Judgment 1451, delivered on 6 July 1995, the Tribunal did not exclude the concurrent jurisdiction of the Insurance Tribunal of the Canton of Bern. It emphasises that the present dispute concerns not the Union, but the Provident Scheme, which is subject to supervision by the Swiss Federal Social Insurance Office (hereinafter referred to by its French acronym "OFAS").

Subsidiarily, the defendant asserts that it fulfilled its duty to inform. Neither the Union nor the Scheme can be accused of having misled the complainant as to the retroactive application of the new scale. The information was communicated to him clearly on several occasions but he failed to take it into account. From the outset he accepted the principle that the new scale would apply retroactively. The defendant argues that it cannot be held responsible for the fact that he did not concern himself with the amount of his future pension until February 1999.

According to the Union, validation of prior service does not alter the date of the commencement of participation in the Scheme. It only affects the number of reckonable years for pension purposes. Referring to Judgment 832, the Union explains that, notwithstanding the adverse effect on the complainant's pecuniary interests, the Tribunal must declare that the modification of the scale does not amount to a violation of acquired rights. Indeed, the criteria defined by the case law for determining the existence of such violations are not satisfied. The Union points out that the Tribunal has previously held that there is no acquired right to a given scale.

The defendant submits that, in principle, under Swiss law the entry into force of a legislative text cannot have retroactive effect. However, an exception can be made provided that the retroactive effect is limited in time,

justified by a pertinent reason, and that it neither infringes acquired rights nor contravenes the principle of equal treatment. In this case, those conditions were met. The reasons for the modification were "valid and serious", and the only staff member who was in the same situation in fact and in law as the complainant was treated in the same manner. The comparison which the complainant purports to make with staff members admitted to the Scheme prior to 1 January 1996 cannot be accepted.

D. In his rejoinder the complainant explains that the decision of 30 November 2000 was not the final decision because the Secretary of the Scheme stated in that decision that he was considering obtaining a legal opinion, which was indeed obtained and referred to in the decision of 16 July 2001. Thus, the latter decision cannot be considered to be merely confirmatory. He asserts that he is in fact challenging the individual application to his particular case of the general decision introducing the new scale, and describes the distinction between the Provident Scheme and the UPU as "difficult and artificial".

The complainant states that he trusted the UPU and the Scheme, and that he never conceived that a scale resulting in a reduction of some 30 per cent in his future pension could be introduced with retroactive effect. Consequently, he did not study the updated scales that were published regularly and accepted his letter of appointment and his permanent engagement without reservation. He denounces the fact that the Scheme remained silent and failed to inform him clearly of the consequences of the modification of the scale, which was a complicated matter. Relying on Judgment 986, he submits that a 30 per cent reduction in the amount of his pension constitutes a breach of his essential terms of employment. Referring to the Tribunal's case law he argues that the Union ought to have awaited the publication of the new scale before contemplating its retroactive application. According to the complainant, this measure was designed purely to enable the UPU to save money.

The complainant emphasises that the practice of the United Nations Joint Staff Pension Fund is to calculate validation on the basis of the pensionable remuneration applicable at each moment of the period to be validated. Where there is doubt as to the effects of validation, the Regulations of the UPU Provident Scheme must be construed in favour of the staff member, as confirmed by the Tribunal in Judgment 1755.

E. In its surrejoinder the defendant reiterates its objections to receivability. It points out that by virtue of the application of the new scale, the complainant has made a savings of 56,938.70 Swiss francs, given that the reduction in benefits is partially compensated by a corresponding reduction in contributions. It considers that the Regulations of the Provident Scheme are clear and that they have been complied with.

CONSIDERATIONS

1. From the date when he joined the UPU, on 14 November 1994, the complainant was granted a series of short-term contracts; the last one was due to expire on 31 May 1996. These contracts clearly excluded participation by the complainant in the UPU's Provident Scheme. Having applied successfully for a vacant post, the complainant was informed, in a letter dated 9 April 1996, of his appointment to the post with effect from 3 April 1996, for a probationary period of two years. That letter indicated, inter alia, that he would be eligible for participation in the UPU's Provident Scheme, to which he would make monthly contributions amounting to 7.9 per cent of his "pensionable remuneration based on the scale applicable as of 1 January 1996, which [was to be] approved by the [Scheme's] Management Board in April 1996". The vacancy notice for the post in question had also indicated that the other terms of employment would be "similar to those of the United Nations", particularly with regard to family allowances and social security. In fact, the pensions paid in the past under the old scale had been considered too high, hence the decision to align them with those of the United Nations common system, which led to a reduction of approximately 25 to 30 per cent in pensions and in the pension contributions of both employees and employers. Staff were informed, by an office notice of 29 May 1996, that on 27 April 1996 the Management Board had approved the new scale which was to apply, with effect from 1 January 1996, to participants who had joined the Scheme on or after that date. Staff members who had joined the Scheme prior to 1 January 1996 would remain subject to the old scale.

By a letter of 6 June 1996 the Deputy Secretary of the Scheme informed the complainant that he had been granted participation in the Provident Fund of the Provident Scheme with effect from 3 April 1996.

By an agreement of 25 April 1997, the complainant obtained the validation of his service for the period from

14 November 1994 to 2 April 1996. The value of his "repurchased" contributions was calculated on the basis of the new scale. The complainant was given a permanent appointment with effect from 1 April 1998. His pension contributions continued to be calculated on the basis of the new scale.

By a letter of 11 February 1999 the complainant asked the Secretary of the Scheme to apply the old scale to him, as it did to staff members who had joined the Scheme prior to 1 January 1996, arguing that it would be more favourable to him.

In November 1999 his request was referred to the Management Board, which rejected it at its session of 15 May 2000. This decision was notified to the complainant on 30 November 2000.

Meanwhile, in a letter of 31 August 2000 to the Secretary of the Scheme, the complainant had pointed out that at the time of his appointment on 3 April 1996, the old scale alone had been in force. He therefore considered that it was this scale which ought to apply to him.

On 26 January 2001 he sent the Director-General a request for review of the decision of 15 May 2000.

At its session of 3 May 2001, the Management Board considered that its decision of 15 May 2000 "concerning a request for review of the participation conditions" had become "final and executory", since it had not been challenged before the Tribunal. The Board declared that all subsequent requests for review were irreceivable, since the Regulations did not allow the review of a decision on a request for review. The complainant was informed of this in a letter of 16 July 2001, which is the impugned decision.

In his complaint before the Tribunal, the complainant seeks the quashing of both decisions of the Management Board and the application of the old scale to his case.

Acting on behalf of the Provident Scheme the UPU claims, primarily, that the complaint is irreceivable, and subsidiarily that it should be dismissed.

Jurisdiction

2. Article 19 of the Regulations of the Provident Scheme provides as follows:

"**Settlement of disputes**

1 A participant or any other person able to show that he is entitled to rights under these Regulations by virtue of the participation in the Provident Scheme of a staff member who considers that a decision of the Management Board is prejudicial to him may, within 60 days of its notification to him, submit a written request to the Board asking it to review the decision.

2 If the Management Board maintains its decision or takes no action on the request within 60 days, the member concerned may file a complaint with the Administrative Tribunal of the International Labour Organisation in accordance with the Statute of that Tribunal and with the declaration recognizing its jurisdiction.[(1)]"

The Tribunal must first examine whether it has jurisdiction *ratione materiae*.

(a) On this issue, two rules may conflict.

(i) The UPU's Provident Scheme was set up as a foundation, within the meaning of Articles 80 *et seq* of the Swiss Civil Code, by a duly registered founding deed of 24 December 1963. Article 8 of the founding deed designates the Federal Council, i.e. the Swiss federal government, as the Scheme's supervisory authority; that supervision is in fact exercised by the OFAS, which is a subdivision of the federal administration. Article 19 of the Regulations adopted by the Scheme's Management Board originally stipulated that disputes between a participant and the Scheme could be referred to the Tribunal in accordance with the conditions laid down in the Statute of the Tribunal.

(ii) In its declaration of 25 May 1965 recognising the Tribunal's jurisdiction, which was approved on 19 November 1965 by the Governing Body of the International Labour Office, the UPU expressly referred to disputes concerning the "Regulations of the Provident Scheme" as being within the Tribunal's jurisdiction.

(b) On 1 January 1985 the Swiss Federal Act of 25 June 1982 on occupational old-age, survivors' and invalidity insurance (*Loi sur la prévoyance professionnelle vieillesse, survivants et invalidité*, or "LPP") came into force. This Act also modified the provisions of the Civil Code concerning foundations. Under Section 73 of the LPP, any dispute to which a provident scheme is a party must be brought, at first instance, before the cantonal insurance tribunal where the foundation has its headquarters; on appeal, the matter can be brought before the federal insurance tribunal using the Swiss administrative law appeal mechanism.

The UPU entered into discussions with the OFAS, which considered that Section 73 of the LPP also applied to the UPU's Provident Scheme because it was a mandatory legal provision which could not be altered by contract.

Consequently, the Management Board decided to amend the text of Article 19 of the Scheme's Regulations by removing the jurisdiction of the present Tribunal and substituting that of the Insurance Tribunal of the Canton of Bern, thereby shortening the time-limit for filing an internal appeal.

In the case which gave rise to Judgment 1451, the complainants challenged the decision amending the Scheme's Regulations. In that judgment, the Tribunal ordered the defendant to restore Article 19 to its original version. The Tribunal referred to the possibility of a conflict of jurisdiction between the present Tribunal and the Insurance Tribunal of the Canton of Bern and stated that in such a case each of the jurisdictions that may be competent will be able to determine its own competence according to the material rules on conflict. The two tribunals are presently considered to have concurrent jurisdiction. Although the Insurance Tribunal could base its jurisdiction on the fact that the Scheme voluntarily placed itself under the authority of Swiss law, the UPU and the Scheme might have reason to opt for the jurisdiction of the present Tribunal in view of the status of UPU staff members as international civil servants. This conflict of jurisdiction can only be resolved by an international convention between the UPU and the host country.

(c) Judgment 1451 does not appear to have prompted either the UPU - or the Provident Scheme - or its employees to seek to establish which tribunal in fact has jurisdiction. There appear to have been no discussions between the Union and the host country to resolve this difficulty, or at least, not since the delivery of the cited judgment. Thus, the defendant points out in its reply that Judgment 1451 did not exclude the jurisdiction of the Insurance Tribunal of the Canton of Bern, and in his rejoinder the complainant mentions the possibility of referring the matter to the Swiss authorities when the allegedly insufficient payment of his retirement pension occurs.

(d) However, in support of its reply, the Union has produced two letters, one from the Federal Department of Foreign Affairs (hereinafter referred to by its French acronym "DFAE") dated 30 November 1994, the other from the OFAS dated 14 December 1994. This correspondence concerned the application to the Scheme of the new Swiss legislation on free movement and incitement to home ownership. The first letter indicated that an exception to a Federal law on the basis of an international convention could only be granted by the federal authorities, but that the DFAE had no intention of submitting a draft agreement to that effect to those authorities by means of an exchange of letters. It concluded thus:

"However, we wish to emphasise that the immunity from jurisdiction and enforcement enjoyed by your Organisation in its capacity as an inter-governmental organisation prevents Switzerland from applying any enforcement measures. It follows from that principle that the UPU Provident Scheme's supervisory authority, namely the OFAS, has no means to compel your Organisation to apply the two new laws in question."

This was confirmed by the OFAS in its letter of 14 December 1994.

(e) Thus, the competent Swiss authorities take the view that by choosing to set up the Scheme as a foundation established under Swiss private law, the UPU, and by implication the Scheme itself, did not renounce the immunity from jurisdiction and enforcement conferred on them by the Headquarters Agreement. This position represents a departure from the view expressed in Judgment 1451, under 24, underpinning the finding that the Tribunal and the Swiss courts have "concurrent jurisdiction", namely that "[b]y making that option in law the Union perforce agreed to vest jurisdiction in the Swiss courts insofar as they have it under the substantive rules of Swiss law on foundations".

Whilst the opinion of the government authorities does not necessarily bind the tribunals, it would be correct to say, under the present circumstances, that the opinion expressed by the DFAE and the OFAS, which was communicated to both the Union and the Provident Scheme, represents the view of the Swiss Confederation.

As a general point, it is worth noting that organisations and individuals enjoying immunity from jurisdiction and from enforcement frequently have recourse to institutions which are subject to the law of the State granting them immunity, but without thereby forfeiting their immunity.

Thus, Switzerland also recognises the immunity of the UPU and of its Provident Scheme in relation to disputes which under domestic law would be covered by Section 73 of the LPP.

Where the resolution of such disputes lies within the scope of its immunity, an international organisation has a duty to provide internal means of dispute resolution (see Article VIII of the Agreement on the Privileges and Immunities of the United Nations Organization of 11 June and 1 July 1946 between the UN Secretary-General and the Swiss federal government, which is referred to in the exchange of letters of 5 February and 22 April 1948 between the UPU and Switzerland constituting the UPU's Headquarters Agreement). The Pension Scheme did so by adopting Article 19 of its Regulations, and UPU by its declaration recognising the Tribunal's jurisdiction.

Consequently, the Tribunal has jurisdiction.

Receivability

3. The defendant raises two objections to receivability on the basis of Article 19 of the Scheme's Regulations.

4. During the internal review procedure, it argued that the complainant's request for review was irreceivable under that article because the only decision open to review under Article 19(1) was the decision concerning his admission to the Scheme, which was notified to the complainant by a letter of 6 June 1996 but not challenged within the statutory six-month time-limit. The subsequent request for review therefore had to be considered as a request for review under Article 19(1). As such, it was time-barred. Furthermore, a decision on a request for review under Article 19 could not be the subject of a further request for review under that article. That is why the Management Board, in the impugned decision, stated that its previous decision was final and executory and that his subsequent requests were irreceivable.

If that reasoning were correct, the complaint before the Tribunal would be irreceivable not only on the grounds that it would be time-barred, but also for failure to exhaust the internal means of redress.

However, the defendant's interpretation of Article 19 of the Scheme's Regulations is erroneous.

Article 19 is clearly intended to cover only the internal appeal procedure in the event of a dispute. As in other organisations, it establishes an appeal or review procedure enabling staff members to ask the decision-making authority to review its decision before the matter can be referred to the judicial appeal body. Article 19(1) also applies to decisions taken at the request of a staff member, including decisions on a request for review.

However, there are no grounds for inferring that the consequence of this in substantive law is that administrative decisions become irreversible if they are not challenged immediately, which would be contrary to the general principles of administrative law.

Relying on Judgment 676, the Union rightly points out that staff members can also request the review of an administrative decision. However, it wrongly omits to apply Article 19(1) of the Scheme's Regulations to a decision of the Union rejecting such a request, thereby confusing the request for review under substantive law and the review procedure under Article 19(1) of the Regulations (on this issue, see Judgment 317, under 4).

Consequently, this objection to receivability fails.

5. Before the Tribunal, the defendant argues that the impugned decision was merely a confirmatory decision by which it simply maintained its point of view and its decision, and that this does not constitute a challengeable decision triggering a new appeal time-limit (on this issue, see in particular Judgments 259, 305, 364, 413, 530, 649, 698, 1490, 1528, 1983 and 2066).

There is no need to examine the extent to which a so-called confirmatory decision is open to appeal.

In any case, a decision taken, following an internal appeal, by the same authority as that which took the initial challenged decision, can hardly be considered to be confirmatory. In an appeal system requiring such means of

redress to be exhausted, the second decision alone can be challenged, even if in substance it merely confirms the first.

In this case, the complainant submitted to the Management Board a request for review of the initial decision subjecting him to the new scale. That request was rejected in a decision which, being challengeable before the Tribunal under Article 19(2) of the Scheme's Regulations, had to be the subject of a prior request for review under Article 19(1) of the Regulations.

The defendant wrongly treated that request as irreceivable and wrongly considers the second decision of the Management Board to be purely confirmatory in the sense described above.

Given that it was also filed in the correct form and within the time-limit required by the Statute of the Tribunal, the complaint is receivable.

The substantive issue of whether the request for review was well founded will be examined below.

6. Since the complaint was directed against a decision of the UPU's Provident Scheme, the Tribunal cannot order the Union to pay additional contributions based on the old scale, as the complainant requests. In this respect, the complaint is irreceivable (see Judgment 317, under 4).

In fact, that irreceivability extends to the entire complaint, because the aim of the complaint, which is to obtain the application of the old scale to the complainant, implies that the resulting additional cost will be met by additional contributions by the staff member (one third) and above all by the Union (two thirds). This solution would not be possible unless the Union either agreed to it or was compelled to make such contributions by a judgment delivered as a result of a complaint filed against it.

The request for review

7. The complainant has not mentioned any reason that has arisen since his admission to the Scheme to support his claim. He simply argues that the initial decision should be reviewed because it is illegal. Since the impugned decision was not challenged in due time when it was made, the complainant's request amounts to a request for review of a decision which is in force.

As a rule, the competent authority may alter or reverse any administrative decision unless it is expressly forbidden to do so and provided that acquired rights are safeguarded (see Judgment 618, under 5). The Tribunal has held that a staff member concerned by a decision which is in force may ask the administration for review either where some new and unforeseeable fact of decisive importance has occurred since the decision was taken, or else where the staff member is relying on facts or evidence of decisive importance of which he was not and could not have been aware before the decision was taken. If either condition is fulfilled the administration is under a duty to review, and even if the time limit was originally not respected the new decision will set a new one (see Judgment 676, under 1). Similarly, the decision which was not originally challenged may be illegal. If it is null and void, it will have no effect, but an illegal decision will only be null and void if it is tainted by a serious defect, failing which it will take effect until such time as it is challenged. If, however, the decision had long-term effects, it might have to be rectified in order to restore a legal situation (see Judgment 676, under 6). In such cases, the administration and the judge have to weigh the interests involved in order to determine in each case whether the interest of restoring legality by rectifying the decision should prevail over that of protecting acquired rights and stable contractual relations.

The Tribunal must examine whether such conditions apply to the complainant.

8. If the impugned decision were null and void, it could not be applied. However, for the reasons set forth below, the original decision determining the status of the complainant for pension purposes is not tainted by any serious defect rendering it void.

9. It is necessary to establish whether the complainant has valid grounds for asserting that the original decision he challenges was illegal.

(a) The impugned decision did not violate the complainant's right to equal treatment in relation to staff members appointed prior to 1 January 1996, since their situation was neither similar nor comparable to the complainant's.

Unlike the staff members appointed at an earlier date, the complainant was appointed subject to the express condition that the new scale would apply to him, which he accepted.

(b) Neither does the impugned decision breach the rule that measures adversely affecting a staff member cannot apply retroactively, since the complainant was informed from the outset, at the time of his appointment, that he would be subject to the new scale.

(c) Implicitly, the complainant also invokes a breach of the principle of the legality of administrative acts, by asserting that at the time of his appointment the Management Board had not yet modified the scale, so that the old scale alone was applicable. In this respect, the Management Board's decision had retroactive adverse effects for the complainant.

(aa) The measure taken by the Director-General was subject to the condition that the Management Board approved the planned modification. Had the Management Board refused to approve it, the old scale would have applied. Conversely, if the Management Board approved the modification, the said condition would be satisfied and the measure provisionally ordered by the Director-General would be validated and would assume a legal basis.

(bb) The complainant's appointment took effect on 3 April 1996, whereas the Management Board's decision, which took effect immediately, was dated 27 April 1996. Had the Union postponed his appointment by a mere three weeks until the Management Board had made its decision, the problem of the applicable scale would not have arisen. This could easily have been achieved, given that the complainant's contract was valid until 31 May 1996.

(cc) The complainant invokes his legitimate interest in receiving objective information from the Union prior to his appointment.

The rules of good faith imply that before entering into a contract an organisation and its employee must inform each other of any facts known to them individually which are liable to have a significant effect on the other party's consent (see Judgments 907, 946 and 1526). On this issue, the complainant criticises the Union and the Provident Scheme for having failed to inform him of the impact of the new scale, and of the fact that it would lead to a reduction of some 30 per cent in the level of retirement pensions. He was under the impression that on reaching the age of retirement he would receive a pension equivalent to those which were paid under the old scale.

It cannot be said that the planned modification was concealed from the complainant. The vacancy notice published by the UPU on 27 November 1995 for the post in question indicated that the terms of employment would be "similar to those of the United Nations" particularly with regard to family allowances and social security. It also contained the following information:

"10. Provident Scheme

Unless the letter of appointment indicates otherwise, staff members participate in the UPU's Provident Scheme. To that end, they pay regular contributions amounting to 7.9 per cent of their pensionable remuneration. Since the conditions for membership of the Provident Scheme are currently being revised, the new conditions shall apply to the selected candidate."

The letter of 9 April 1996 by which the Director-General offered the post to the complainant contained the following statement:

"**Participation in the Provident Scheme:**

You shall become a member of the UPU's Provident Fund of the Provident Scheme. As such, you will pay monthly contributions amounting to 7.9 per cent of your pensionable remuneration based on the scale applicable as of 1 January 1996, which is to be adopted by the Management Board in April 1996. An amount equal to 15.8 per cent of that remuneration shall be contributed by the UPU."

In addition, by then the complainant had been employed by the UPU for over a year under short-term contracts. The modification of the scale of pensionable remuneration was a topic of discussion and all staff members concerned could obtain the necessary information.

Thus, the UPU and the Provident Scheme gave the complainant all the information he needed in order to be

familiar with most aspects of the scheme. The above-mentioned documents indicated that the old scale was being revised, and the complainant therefore cannot argue in good faith that he believed that the old scale would remain in force. Regarding the amount of his pension, the reference to the United Nations common system provided him with an indication. If he required further details, they were available to him.

Thus, neither the Provident Scheme nor the UPU can be accused of any action which might have invalidated the complainant's consent. This plea is unfounded.

(d) The Tribunal's case law also emphasises that it is in the interest of both organisations and staff members to be able to rely on the stability of unchallenged administrative decisions which are not tainted by any serious defect and which are intended to govern long-term relations.

As far as the respective contributions of staff member and organisation are concerned, from the time of his appointment onwards the complainant's relations with the Provident Scheme, and hence with the UPU, were governed by the conditions laid down in his letter of appointment. Both parties agreed that the old scale would not apply. Moreover, although it is not inconceivable that the contributions of both parties could be adjusted to reflect the old scale, this could not be achieved without difficulty.

In view of the foregoing considerations, the stability of unchallenged and accepted decisions must clearly prevail in this case over the complainant's interest in obtaining the rectification of a possible error.

In any case, the Provident Scheme committed no breach of law in rejecting the complainant's request for review.

All the complainant's claims must therefore be rejected.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 8 November 2002, Mr Michel Gentot, President of the Tribunal, Mr Jean-François Egli, Judge, and Mrs Hildegard Rondón de Sansó, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 3 February 2003.

(Signed)

Michel Gentot

Jean-François Egli

Hildegard Rondón de Sansó

Catherine Comtet

1. However, in Judgment 1451 of 6 July 1995, the Administrative Tribunal of the International Labour Organization did not exclude the concurrent jurisdiction of the Insurance Tribunal of the Canton of Bern.

Updated by PFR. Approved by CC. Last update: 13 February 2003.