

NINETY-FIFTH SESSION

Judgment No. 2251

The Administrative Tribunal,

Considering the third complaint filed by Mr T. B. against the Universal Postal Union (UPU) on 18 March 2002, the Union's reply of 21 June, the complainant's rejoinder of 6 August and the UPU's surrejoinder of 18 September 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's career and certain facts relevant to the present dispute are set out in Judgment 1929 delivered on 3 February 2000 on the complainant's first complaint. By that judgment the Tribunal set aside the decision to transfer the complainant to the Postal Technology Centre and sent the case back to the Union. He was subsequently assigned, with effect from 24 April 2000, to a newly-created post at grade P.5, as head of project. In the course of 2000 a reclassification of the posts coming under the regular budget of the International Bureau of the UPU was undertaken and an external classifier was appointed. The complainant's post description questionnaire, which was completed by him on 23 January 2001 and approved by his supervisor on 25 January, was given to the classifier. Following this classification exercise, the complainant was informed on 2 March 2001 that he was to retain his P.5 grade.

The procedure for appealing against post classification decisions was defined in administrative circular (PER) No. 17/Rev 2 of 28 November 2000. This circular provides that a staff member wishing to appeal against the classification of his post may, within 30 days of notification of the classification, request a copy of the point rating worksheet completed by the external classifier. The appeal must then be sent to the Director-General, who forwards it to the Chairman of the competent Standing Classification Review Committee. If the appeal is considered to be receivable, it is referred to a second external classifier. The final decision lies with the Director-General.

By an e-mail message of 28 May 2001 the complainant informed the Director of Human Resources that he intended to appeal against his post classification. That same day the Administration replied that since his post classification had taken effect on 2 April 2001, he ought to have requested the point rating worksheet no later than 1 May 2001, and that his appeal was therefore time-barred. The complainant enquired whether this was the Union's "official position" on the matter, to which the Union replied on 30 May that he had until "the end of May 2001" to submit his appeal. On the following day he requested the documents that were completed by the classifier.

On 23 June the complainant sent his appeal to the Director-General. By a letter of 10 August the Chairman of the Standing Classification Review Committee for the Professional and Senior categories informed him that he had failed to request the point rating worksheet within the prescribed time limit and that his appeal was therefore irreceivable. On 19 August the complainant informed the Director-General that he wished to file an internal appeal against this decision. The Director-General replied on 28 August that in view of his "work-related absences during April 2001" he would exceptionally agree to refer the appeal to the new classifier. The complainant was informed, in a letter of 15 October from the Director-General, that the new classifier had confirmed the classification of his post at grade P.5.

On 29 October 2001, referring to Staff Regulations 11.1 and 11.2 and to Staff Rule 111.3, he asked the Director-General to review this decision. The Director-General replied, on 5 November, that in accordance with Staff Rule 111.3(2) his internal appeal had to be submitted directly to the Joint Appeals Committee, and on 21 November he wrote to inform the complainant that he had forwarded the appeal to the Committee himself. On 26 November the complainant was asked to confirm the filing of his appeal with the Committee. By a letter of 12 December he informed the Chairman of the Joint Appeals Committee that the Director-General's action was "contrary to all applicable rules". The Chairman informed him on 18 December 2001 that since he had not confirmed the filing of his appeal with the Committee, the time limit, which extended until 5 December 2001, had expired. In a letter to the complainant dated 2 January 2002, which constitutes the impugned decision, the Director-General observed that the internal remedies had not been exhausted within the statutory time limit and informed the complainant that the proceedings initiated to challenge the decision of 15 October 2001 were "closed".

B. The complainant argues at length on the issue of the exhaustion of internal remedies. He considers that the decision of 15 October 2001 closed the additional appeal procedure instituted by administrative circular (PER) No. 17/Rev 2, and that pursuant to that circular he then had to comply with the provisions of the Staff Regulations and Staff Rules. He had therefore submitted a request for review to the Director-General. The letter of 5 November 2001 in which he was asked to appeal directly to the Joint Appeals Committee was contrary to the applicable rules, and particularly to Rule 111.3. The complainant considers that by forwarding his request for review of 29 October to the Committee on his own initiative the Director-General misused his authority. Indeed, he transferred to a non-competent body documents which were clearly not addressed to it. He adds that his appeal was wrongly declared irreceivable. According to the complainant, the time limit for filing his appeal with the Joint Appeals Committee expired on 21 December 2001, and not on 5 December 2001.

He also argues that the point rating worksheet completed by the first classifier on 7 February 2001 is not based on the post description questionnaire approved by his supervisor on 25 January 2001. Consequently, that worksheet is flawed by a mistake of fact resulting from misuse of authority by the Administration, since it provided the classifier with documents that he himself had not approved, instead of passing on the said questionnaire. Thus, the UPU failed to observe the rules it had established for itself.

Lastly, the complainant denounces a breach of the principle of the hierarchy of rules, since several provisions of administrative circular (PER) No. 17/Rev 2 are, in his opinion, in contradiction with those of the Staff Rules.

The complainant asks the Tribunal to acknowledge that the Administration abused its authority, disregarded its own rules, and that the point rating worksheet of 7 February 2001 is flawed by formal defects. He claims a total of 80,000 Swiss francs in compensation for the resulting damage to his career. He also asks the Tribunal to set aside the decision of 15 October 2001, to "acknowledge the irregularities in the internal appeal proceedings", to declare that the time limit for filing an appeal with the Joint Appeals Committee expired on 21 December 2001 and to award him 10,000 francs on that basis. He seeks the annulment of the decision of 28 November 2000 implementing administrative circular (PER) No. 17/Rev 2 and 20,000 francs in damages. Lastly, he claims 15,000 francs in costs.

C. In its reply the UPU asserts that the complaint is irreceivable in several respects. Under administrative circular (PER) No. 17/Rev 2 the time limit for appealing against the "final" decision of 15 October 2001 expired on 15 November 2001 at the latest. Since the complainant refused to confirm the filing of an appeal with the Joint Appeals Committee and hence to exhaust the internal remedies, his complaint is irreceivable. The UPU also points out that the complainant has neither a cause of action, since he does not seek the annulment of the impugned decision, nor any legal interest in obtaining rulings in law from the Tribunal. His claim for annulment of an administrative circular is irreceivable since, according to the case law, a complainant is not entitled directly to seek the annulment of a general decision that must ordinarily be given effect by an individual decision. The UPU considers that the complainant has not proved that he suffered any injury warranting compensation. It emphasises that it has submitted certain documents on a confidential basis solely for the use of the Tribunal and asks that these documents should not be disclosed to the complainant.

The Union observes that the Tribunal exercises only a limited review of post classification decisions. It submits that the documents required for post classification, including the complainant's post description questionnaire, were communicated to the external classifier in December 2000 and January 2001. The complainant was in no sense disadvantaged by the communication of general documents which, being of an official nature, required no prior approval by him or his supervisors. It therefore did not misuse its authority.

The defendant asserts that the procedural rules were observed. Administrative circular (PER) No. 17/Rev 2 merely defines the review procedure; it does not create an exception to Staff Rule 111.3, but supplements it. The spontaneous forwarding of the appeal to the Committee was simply an "act of sound management" aimed at protecting the complainant's interests.

Lastly, considering the complaint to be abusive in that it is designed purely to "harm" and "paralyse" the Union, the defendant asks the Tribunal to order the complainant to pay the costs of the proceedings.

D. In his rejoinder the complainant carefully refutes all the objections to receivability put forward by the UPU. Relying on Judgment 2062 he argues that, save under exceptional circumstances, a party cannot be denied access to evidence produced by the other party on the grounds that it is confidential.

He contends that the UPU has acknowledged the facts which he views as amounting to abuse of authority. Indeed, it has acknowledged that it provided the classifier with general documents not mentioned in the relevant administrative instructions. It has not proved that the classifier had received the necessary documents before 7 February 2001.

The complainant modifies part of his claims. Since the defendant has produced what he considers to be "defamatory documents" harming his dignity and reputation, he seeks an additional award of 20,000 francs in damages. His claim for costs is raised to 20,000 francs.

E. In its surrejoinder the UPU adds, on the issue of receivability, that since the complainant submitted no claims in the internal appeal proceedings, all his claims before the Tribunal are irreceivable. It denies the complainant's allegations and reiterates its arguments on the merits.

CONSIDERATIONS

1. In the context of the reorganisation of the International Bureau of the UPU, a reclassification of the posts coming under the regular budget was undertaken and the details of how all post descriptions were to be re-examined were made known to staff on 26 September 2000. Each staff member was asked to complete a post description form and to answer a questionnaire. Once they had been harmonised, these documents were to be forwarded to an external classifier.

The conditions governing review of and appeals against post classifications were set out in administrative circular (PER) No. 17/Rev 2 of 28 November 2000.

2. The complainant completed the questionnaire concerning his post on 23 January 2001. This questionnaire was approved by his supervisor on 25 January 2001, initialled that same day by the Deputy Director-General and sent to the external classifier on 31 January 2001. The complainant did not, however, complete the requested post description form. The classifier completed an evaluation worksheet concerning the complainant's post on 7 February. The results of the post classification exercise were published in office notice 22/2001 of 2 March 2001. The complainant's post was graded P.5.

3. The complainant then initiated an internal appeal. The Administration considered that he had filed it out of time, so it was only on an exceptional basis that it was referred to another external classifier for a second evaluation of his post. The second classifier recommended that his post be graded P.5, although she gave the complainant approximately 100 more points than the first classifier. The Director-General confirmed that classification to the complainant on 15 October 2001.

By an internal note of 29 October 2001, to which a request for review was appended, the complainant asked the Director-General to reconsider that decision. The latter replied on 5 November that his internal appeal should be submitted directly to the Joint Appeals Committee. On 16 November 2001 the complainant informed the Director-General that he wished to bring his case directly before the present Tribunal. The Director-General replied on 21 November that the conditions for doing so were not met and that he was forwarding the complainant's letter of 29 October 2001 to the Joint Appeals Committee.

There followed an exchange of correspondence between the Chairman of that Committee and the complainant as

he had been asked to confirm whether he wished to maintain his appeal.

On 18 December 2001 the Chairman informed the complainant that his appeal was time-barred, since he had failed to confirm the filing of his appeal with the Committee within the statutory time limit, which had expired on 5 December 2001. On 2 January 2002 the Director-General informed the complainant that the proceedings initiated to challenge his decision of 15 October 2001 were closed for failure to exhaust the internal remedies within the statutory time limit.

It is that decision of 2 January 2002 which the complainant impugns before the Tribunal. His claims are set out under B and D, above.

4. The defendant replies, primarily, that the complaint is irreceivable. Subsidiarily, it argues that the complaint should be dismissed, but it considers that the complainant should in any case be ordered to pay the costs of the proceedings.

5. The defendant has produced documents which it considers to be confidential and asks that they should not be disclosed to the complainant.

In accordance with its case law, the Tribunal cannot rely on such documents to the detriment of the complainant without disclosing them to him (see in particular Judgment 2062). Furthermore, the Tribunal considers it unnecessary to dwell on that part of the parties' submissions and evidence which concerns other proceedings not directly related to the present case.

Receivability

6. At this stage, the Tribunal does not consider it appropriate to rule on the receivability of the claims to the quashing of the administrative circular of 28 November 2000 and the decision of 15 October 2001, which confirmed the complainant's post classification at grade P.5.

The defendant argues that the claims to rulings in law are irreceivable. On this issue, the Tribunal notes that the complainant has no cause of action warranting such rulings, when in practice he can obtain the quashing of the decision and redress (see Judgments 1929 and 1666). Consequently, these claims are not receivable as separate claims.

Moreover, most of these claims are also irreceivable insofar as they concern the first classification exercise, which was subject to an appeal that led to the second classification.

The complainant's claims which have not been the subject of an internal appeal must be declared irreceivable.

Likewise, his pecuniary claims attached to the above-mentioned irreceivable claims would only be admissible if the complainant were able to prove that he suffered an injury, which is not the case as far as the first classification exercise is concerned.

The merits

7. The Tribunal notes that the complainant is challenging the decision of 2 January 2002 by which the Director-General dismissed as a closed matter his request for review of the confirmation of his post grade as P.5 on 15 October 2001. In fact, he is challenging the decision to classify his post as grade P.5, and his main claim is for the quashing of that decision. Subsidiarily, he seeks the annulment of administrative circular (PER) No. 17/Rev 2 of 28 November 2000, the provisions of which he considers to be contrary to those of the Staff Rules.

He also seeks damages for the injury he has allegedly suffered.

The claim to set aside the decision of 15 October 2001

8. According to the Tribunal's case law, the grading of posts is a matter within the discretion of the executive head of an international organisation. Consequently, the Tribunal will not interfere with the decision impugned unless it was taken without authority or shows some procedural or formal flaw or a mistake of fact or of law, or overlooks

some material fact, or is an abuse of authority, or draws a clearly mistaken conclusion from the facts. Moreover, the Tribunal will not substitute its own assessment of the facts for that of the executive head (see in particular Judgment 1281, under 2). It should also be noted that the grading of a post depends on evaluation of the work done and the degree of responsibility it involves: the evaluation must be done by those who by training and experience are able to apply the relevant criteria (see Judgment 1067, under 2).

9. The complainant accuses the UPU of having committed a mistake of fact as a result of several instances of misuse of authority.

He asserts that the Administration committed a first misuse of authority by failing to provide the first classifier with the post description questionnaire approved on 25 January 2001 by his supervisor. He sees a second misuse of authority in the fact that documents which he had not approved were submitted to the said classifier for the purpose of grading his post.

The Tribunal notes that the facts concerning alleged instances of misuse of authority relate to the first classification exercise, which was the subject of an appeal which resulted in the reclassification of his post by a second classifier. As mentioned above, these alleged instances of misuse of authority can therefore not justify setting aside the decision of 15 October 2001, which was taken on the basis of the classification by the second classifier.

The Tribunal further notes that none of the alleged facts, which indeed have not been proved, amounts to misuse of authority within the meaning of the case law. There will be misuse of authority where the Administration exercises it for some purpose other than those prescribed by law or, to put it more broadly, those that the general interest requires (see in particular Judgment 1392, under 35). That is not the case here.

Consequently, the mistake of fact which, according to the complainant, resulted from those instances of misuse of authority and invalidated the point rating worksheet completed by the first external classifier on 7 February 2001, cannot be taken into account to justify setting aside the impugned decision.

10. The complainant asserts that the UPU also misused its authority during the internal appeal, because the Director-General, acting on his own initiative and in the absence of any statutory provision authorising him to do so, forwarded to the Joint Appeals Committee his request of 29 October 2001 for review of the decision confirming the classification of his post at grade P.5.

The fact that the Director-General treated the complainant's request as an internal appeal for submission to the Joint Appeals Committee - on the basis of an interpretation of the applicable provisions that is not shared by the complainant - and consequently took the initiative of forwarding the related documents to the said Committee, thereby intending, according to the defendant, to protect the complainant by an act of sound management, is not considered by the Tribunal to constitute misuse of authority within the meaning of the case law cited above.

The claim to set aside administrative circular (PER) No. 17/Rev 2 of 28 November 2000

11. The complainant accuses the UPU of having disregarded the hierarchy of rules. He asserts that several provisions of administrative circular (PER) No. 17/Rev 2 contravene the relevant provisions of the Staff Rules and that in that respect the provisions of the administrative circular "are liable to mislead staff members and to operate as a trap for them".

He refers to paragraphs 7(a), 7(b) and 9 of Chapter IV of the administrative circular in question, which provide as follows: [\(1\)](#)

"7. The procedure to be observed in appealing against the result of a post classification is as follows:

a) The post incumbent and the head of the department to which the post is attached may appeal against the post classification decision.

b) The supervisor, or the staff member concerned, may obtain a copy of the point rating worksheet completed by the post classifier by sending a written request to the Personnel Section within 30 days of notification of the classification.

9. [...] The examination of the appeal by the Joint Appeals Committee shall cover only the procedural aspects and cannot give rise to a new classification."

It is worth recalling that in previous judgments the Tribunal has held that a complainant cannot challenge a rule of general application unless it is applied in a manner prejudicial to him (see Judgment 1852, under 3).

In the present case, the complainant has not established that he suffered an injury as a result of the application of the provisions cited above. Indeed, despite the fact that his appeal had been considered irreceivable by the Standing Classification Review Committee, it was referred by the Director-General to a second classifier for a further reclassification of his post. The Joint Appeals Committee, for its part, did not have to examine the merits of his appeal, since it considered the appeal to be time-barred.

Furthermore, the complainant has not put forward any convincing arguments to explain how the texts he cites contravene specific provisions of the Staff Rules or what harm he suffered as a result.

12. The conclusion is that the complainant's claims to set aside the decision of 15 October 2001 and administrative circular (PER) No. 17/Rev 2 of 28 November 2000 must fail, and so must all claims related thereto.

13. Since the complaint must be dismissed, the claims discussed above are rejected on their merits and the Tribunal shall not rule additionally on their receivability.

14. The defendant has asked the Tribunal to award costs against the complainant. In the circumstances of the case, the Tribunal does not consider it appropriate to grant that request.

DECISION

For the above reasons,

1. The complaint is dismissed.
2. The defendant's counterclaim is dismissed.

In witness of this judgment, adopted on 16 May 2003, Mr Michel Gentot, President of the Tribunal, Mr Jean-François Egli, Judge, and Mr Seydou Ba, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 16 July 2003.

(Signed)

Michel Gentot

Jean-François Egli

Seydou Ba

Catherine Comtet

1. Registry's translation.