

**NINETY-SEVENTH SESSION**

**Judgment No. 2330**

The Administrative Tribunal,

Considering the complaint filed by Mr A. B. against the International Telecommunication Union (ITU) on 27 June 2003 and corrected on 16 July, the Union's reply of 20 August, the complainant's rejoinder of 19 September and the ITU's surrejoinder of 27 October 2003;

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. The complainant, a French national born in 1945, joined the ITU in 1980. On 14 July 1995, after his post was reclassified, he was promoted to grade G.6 with effect from 1 January 1995.

On 29 October 2001 the complainant's supervisor, the Head of the Logistics Services Division of the Department of Common Services, drew up an amended description of the complainant's post, entitled "Chief, Messengers, Ushers, Drivers, Guards, and Security", with a view to its reclassification. The classification report advocated reclassifying the post as grade G.7, which was approved with effect from 1 March 2002. The complainant's file was submitted to the Appointment and Promotion Board (hereinafter the "APB") for a recommendation as to the possibility of promoting him to grade G.7. On 28 May the APB unanimously decided not to recommend his promotion. On 4 June the complainant wrote to the Secretary-General drawing attention to his situation. On 5 July the Chief of the Personnel and Social Protection Department replied, on behalf of the Secretary General, that the APB had been of the view that the complainant did not meet all the required qualifications of the post and that, based on the case law of the Tribunal, the ITU was obliged to adhere strictly to the required qualifications stated in its vacancy notices.

In a memorandum dated 6 August addressed to the Secretary General, the complainant appealed against that decision. Having received no reply, he brought his case before the Appeal Board on 10 September 2002. Having met on 6 and 11 March 2003, the Appeal Board found that the relevant procedures and rules had been duly applied and that the Secretary-General's conclusions complied with the Staff Rules and with Service Order No. 9 of 2 June 1999. Nevertheless, it recommended examining the possibility of acknowledging the responsibilities taken on by the complainant, for instance by means of a post allowance, or, if appropriate, reconsidering the advertising of the post in the light of the Board's comments. On 21 March 2003 the Secretary-General wrote to the complainant confirming the decision not to promote him to grade G.7 but accepting the Appeal Board's recommendation concerning a special post allowance which he would be granted with retroactive effect from 1 March 2002. That is the impugned decision.

B. The complainant, while admitting that an official whose post has been reclassified need not necessarily be promoted as a result, maintains that in those cases promotion should be the rule. He further argues that the impugned decision breaches the principle of equal remuneration for work of equal value, since it was the increase in his responsibilities, following a colleague's retirement, which had led to the post being reclassified in the first place. In his view, because he has followed several training courses related to the duties of his post, his practical abilities are sufficient to qualify him for the post even though he has not completed the theoretical training that would lead to one of the required diplomas. He adds that, as the Appeal Board pointed out, the job description in question, contrary to common practice, does not allow missing diplomas to be offset by a candidate's experience. Lastly, he draws attention to the fact that, according to Staff Regulation 3.8(a), the special post allowance is payable only to staff members who are "temporarily" required to assume the responsibilities and duties of an

existing post in a higher grade. Considering that he is not due to retire until May 2005, the situation is clearly not temporary. The impugned decision causes him injury to the extent that, quite apart from the “extremely demoralising and demotivating effect of the denied promotion”, experienced as “a real humiliation”, the special post allowance is not taken into account for retirement pension purposes.

The complainant requests that the Tribunal set aside the impugned decision, order the ITU to promote him to grade G.7 with retroactive effect from 1 March 2002, and order it to pay him interest at 8 per cent per annum on sums due, as well as 5,000 Swiss francs in compensation for moral injury; he also claims costs.

C. In its reply the defendant recalls that the APB unanimously concluded that the complainant did not have all the required qualifications, since he had no “post-secondary school diploma in the specialized field in question”. The procedure before the APB is not a mere formality, its purpose being to ensure that the official does in fact possess the qualifications required by the job description. The ITU rebuts the complainant’s allegation that the decision not to promote him to grade G.7 breaches the principle of equal remuneration for work of equal value, pointing out that he is in receipt of a special post allowance. Lastly, it denies that it is common practice to allow a missing diploma to be offset by equivalent experience. In its view, the Appeal Board’s report is mistaken in that respect. In fact, prior to July 2002, no such practice existed for jobs in that grade. Since the job description in question and the APB’s recommendation predated the decision to modify the standard qualifications required for posts in the General Service category – in order to take account of the classification standard of the International Civil Service Commission (ICSC) – the latter decision cannot be used as an argument by the complainant.

D. In his rejoinder the complainant refers to paragraph 17\* of the APB’s Rules of Procedure. He contends that the APB breached that rule by simply noting that he did not have one of the required diplomas, without taking account of the fact that his experience exceeded that required in the job description by several years. Since the new responsibilities entrusted to him had justified the reclassification of his post, he fails to understand why it was subsequently denied that he had the necessary qualifications to assume those responsibilities. He points out that his appraisal reports were always excellent. He reiterates that his promotion should logically have followed the reclassification of his post and adds that, in the light of the explanations given by the ITU as to its reasons for changing its policy regarding the standard qualifications required for posts in the General Service category, it would appear that the ITU’s approach went against the ICSC’s instructions, although these should have been applicable at the ITU.

E. In its surrejoinder the Union points out that the wording of paragraph 17 of the APB’s Rules of Procedure allows the Board a degree of discretion as to whether it accepts experience in lieu of certain diplomas. Since his extra responsibilities had started when a colleague retired on 31 December 1997, it was only from that date that the complainant was in a position to take over the additional duties which eventually led to his post being reclassified. It is therefore wrong to assert that his experience in the post exceeded the ten years required by the job description. As far as compliance with the ICSC’s standards is concerned, the ITU maintains that the international organisations were left a degree of discretion which allowed them to require qualifications over and above those required by the ICSC classification standard.

## CONSIDERATIONS

1. The complainant challenges the decision not to promote him to grade G.7 following the reclassification of the post he currently holds and instead to grant him a special post allowance in recognition of the fact that since 1 March 2002 he has, in practice, been performing the duties of a post at grade G.7.

2. He argues that the impugned decision breaches the principle of equal remuneration for work of equal value and that the special post allowance he has been granted is “not an appropriate manner to compensate him for the unjustified refusal to promote [him] to grade G.7”.

In his view, even though the Union’s Staff Regulations do not determine the consequences of the reclassification of a post as regards the grade of its incumbent, promoting a staff member to a grade equivalent to that of the reclassified post should be the rule, failing which the principle of equal remuneration for work of equal value would be breached.

Citing the Tribunal’s Judgment 2097 (under 18), he asserts that this principle, which is designed to ensure that

persons performing different work of the same or similar value should receive equal remuneration, implies that, when a post is reclassified, the incumbent who performs the duties attached to that post should receive the same remuneration as that granted to the incumbents of posts classified at the same level as his own. It follows, in his view, that if the incumbent of a reclassified post is not promoted to a grade equivalent to that of the post, the Tribunal must consider that the duties he performs are not of the same or similar value to those of others holding a grade equivalent to the new job classification.

He adds that the Tribunal's case law shows that other international organisations have regulations specifically covering such cases. He mentions rulings where a staff member's promotion was regarded as the logical consequence of the reclassification of his post, as in Judgments 1207 and 2076.

He concludes from the above that the reclassification of the post he occupies was decided after consideration of the duties he actually performs, particularly as a result – as the job classification report shows – of a “redistribution” of tasks brought about by a colleague's retirement. As a result, on account of his increased responsibilities he should have been promoted to grade G.7.

3. The complainant also argues that the Secretary-General's decision is based on “an arbitrary requirement added without reason to the list of skills and qualifications required for applicants” to his post, namely that candidates for the post reclassified as G.7 should possess a “post-secondary school diploma in the specialized field in question”.

He states that he has taken several courses related to the qualifications and responsibilities required for his post and argues that the job description deviates for no apparent reason from the practice whereby candidates for a post are required to have either a diploma certifying the completion of specific training, or the equivalent of that diploma in terms of experience or other training. To illustrate his argument, he produces a vacancy notice which includes among the qualifications required of a candidate “advanced training in the field of graphic arts or the equivalent in terms of learning, training or experience”.

He submits, therefore, that the defendant's reference to “the lack of a higher diploma”, without taking into consideration the equivalent training he has acquired, is a further reason for quashing the impugned decision. He further supports this argument by pointing out that the APB's Rules of Procedure do not make provision for any specific procedure in the case where the Board has to deal with a staff member's request for promotion, in accordance with Service Order No. 9. All it can do in such a case is, by analogy, to apply the provisions of paragraph 17 of its Rules of Procedure governing the filling of vacancies.

4. Lastly, the complainant submits that he has a clear legal interest in obtaining a promotion to grade G.7 rather than a special post allowance.

He draws attention to the fact that, according to Staff Regulation 3.8(a), the special post allowance is payable to any staff member who is temporarily required to assume the responsibilities and duties of an existing post at a higher grade. But since he personally is not due to retire until the end of May 2005, that is, 39 months after 1 March 2002, which is the date when the special post allowance took effect, he considers that “it may seriously be doubted whether a period of over three years would still qualify as the ‘temporary’ assumption of responsibilities of a post at a higher grade”.

He notes that a special post allowance is not taken into account for pension purposes and is therefore ignored in the calculation of a staff member's retirement pension.

5. In its reply the defendant contends that the impugned decision was taken in full compliance with the relevant rules and procedures and that the Secretary-General's conclusions are in accordance with the Staff Regulations and Service Order No. 9.

It submits that the procedure introduced by Service Order No. 9 is no mere formality. Its purpose is to ensure that the official possesses the qualifications required by the job description. The promotion of a staff member cannot therefore be the mere “logical consequence” of the reclassification of his post, since the APB, in the light of the facts before it, may issue a negative recommendation, and the Secretary General may endorse that recommendation if he is satisfied that it is based on objective considerations.

The defendant denies having breached the principle of equal remuneration for work of equal value, pointing out

that, on the Appeal Board's recommendation, the Secretary-General decided to grant the complainant a special post allowance, so that the latter receives fair remuneration for the duties he performs.

In response to the allegation that the qualifications required in the modified job description are arbitrary insofar as, contrary to the Union's normal practice, no alternative in terms of experience or training is permitted for the requirement of a "post-secondary school diploma", the defendant argues that such a practice "not only has not been demonstrated by the complainant [...] but did not even exist".

It supports this argument by producing 14 job descriptions for G.7 posts, which are intended to show that such a practice was not applied to jobs at that level. That, it maintains, was the reason why the modified job description did not include any alternative to the diploma requirement. It points out that the vacancy notice produced by the complainant is dated after the decision taken in July 2002 to modify the standard qualifications required for posts in the General Service category in order to take account of the classification standard established by the ICSC, as is the practice in other international organisations of the United Nations common system with headquarters in Geneva. It adds that therefore this vacancy notice cannot be used as a valid example in this case.

6. The above-mentioned Service Order No. 9 reads as follows:

"1. In agreement with the Coordination Committee and after consulting the Joint Advisory Committee, I have decided to make the Appointment and Promotion Board, in the appropriate composition taking into account the grade of the post under consideration, responsible for considering proposals for the promotion of staff members holding posts for which an upgrade has been approved.

2. This responsibility will be carried out, by analogy, under the procedures laid down in Regulation 4.9 of the Staff Regulations and in the Appointment and Promotion Board's rules of procedure currently in force, as adopted in 1992 and amended in 1999.

3. [...]"

According to paragraph 17 of the APB's Rules of Procedure:

"In establishing this short list, the Board shall give primary consideration to the qualifications of the candidates in relation to the job requirements set out in the vacancy notice. However, it may decide that some of the required degrees and diplomas may be replaced by special experience, over and above the minimum required in the field of work of the advertised post."

7. It may be understood from these two texts that the APB's Rules of Procedure apply whenever it considers a proposal for the promotion of a staff member holding a post for which an upgrading has been approved, as in the present case.

The question then is whether the complainant, who did not have the required diploma, could, by virtue of his experience, be awarded a promotion as a result of the upgrading of his post.

8. It is not disputed that the complainant, following a colleague's retirement, had taken over some of the latter's duties and that, after the upgrading of his post, the new grade tended to coincide with the duties required of the incumbent. Thus, his experience might have offset the missing diploma. However, such experience should have been more than the minimum required in the field concerned, in this case at least ten years in the field of security, preferably in an international organisation. As the defendant points out, the complainant had not acquired more than ten years' experience in the duties concerned. Consequently, in the absence of the required diploma, the APB could not exercise its discretion to recommend the promotion of the complainant to a higher grade on the basis of his experience.

9. It is plain from the evidence that, in view of the complainant's modified job description dated 19 February 2002, attached to the job classification report, the APB could not recommend promoting a staff member who did not have all the required qualifications. The Secretary-General, who followed the APB's recommendation, cannot therefore, as rightly pointed out by the Appeal Board, be accused of failing to observe existing procedures and rules or of taking a decision which was not in compliance with the Staff Regulations or with Service Order No. 9.

10. The complainant accuses the defendant of breaching the principle of equal remuneration for work of equal

value. This plea does not stand in view of the fact that the complainant receives remuneration corresponding to his own grade G.6 and that in addition, on a recommendation by the Appeal Board, the Secretary-General decided to grant him a special post allowance.

Naturally, the complainant would have preferred to be promoted to a higher grade and casts doubts on the lawfulness of the grant of the allowance, since in his view the conditions stipulated in Article 3.8 of the Staff Regulations are not met. Yet since he could not be promoted to grade G.7 for the reasons indicated above, the only way to recognise that he was performing duties pertaining to a grade above his own was indeed to grant him a post allowance, the validity of which he has no interest in denying. His argument that the allowance is not taken into consideration for the purposes of calculating his retirement pension cannot stand either, since it has been shown that the complainant did not meet the conditions required to be promoted to a higher grade and, therefore, to qualify for a retirement pension corresponding to that higher grade.

11. The conclusion is that the complaint is without merit and must be dismissed.

## DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 7 May 2004, 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 14 July 2004.

Michel Gentot

Jean-François Egli

Seydou Ba

Catherine Comtet

---

\* This paragraph is quoted under consideration 6, below.