

The Administrative Tribunal,

Considering the complaint filed by Mrs A. E.-R. against the International Telecommunication Union (ITU) on 19 January 2007 and corrected on 26 February, the ITU's reply of 1 May, the complainant's rejoinder of 8 June and the Union's surrejoinder of 10 July 2007;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and disallowed the complainant's application for hearings;

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

A. The complainant, who has dual French and Swiss nationality, was born in 1949. At the material time she was a staff representative on the Appointment and Promotion Board, which advises the Secretary-General in all cases where a vacancy is advertised. According to Staff Regulation 4.9, the Board comprises a representative of the General Secretariat and of each Bureau of the Union and, for posts in the General Service (G.1 to G.7) and Professional (P.1 to P.5) categories, two staff representatives or their alternates designated by the Secretary-General from a list of names submitted by the Staff Council.

In April 2005 the Board met to draw up a shortlist of applicants for the post of Head of the Study Group Assistants Unit in the Radiocommunication Bureau, at grade G.7, which was advertised in vacancy notice No. 1/2005. The complainant and the other staff representative on the Board refused to examine the list of pre-selected candidates, on the ground that the qualifications required for the advertised post were not in conformity with the Common General Service Job Classification Standard for Geneva, and walked out of the meeting. The remaining Board members decided to continue the procedure and drew up a shortlist of candidates which was submitted to the Secretary-General without the signatures of the staff representatives. The Secretary-General considered that the Classification Standard had been applied and asked that the Board, composed of the same members, meet again and re-examine the list of pre-selected candidates. The Board met on 8 June 2005 but was unable to reach a consensus on a shortlist of candidates. The staff representatives again refused to sign the shortlist drawn up by the other members of the Board because the name of a candidate they had asked to be removed from the shortlist appeared on that list. A heated argument ensued between the complainant and Mr S., the representative of the Radiocommunication Bureau.

By memorandum of 9 June 2005 the staff representatives on the Appointment and Promotion Board informed the Secretary-General that during the meeting of 8 June Mr S. had made false allegations against the complainant, had insulted her and threatened to take reprisals against her. Referring to that memorandum the Staff Council wrote to the Secretary-General on 21 June expressing its concern about the fact that the complainant had been "physically approached" during the aforementioned meeting.

By memorandum of 7 July 2005 Mr S. asked the Staff Council to relieve the complainant, with immediate effect, of all her duties related to staff representation on the Appointment and Promotion Board, on the ground that she had deliberately obstructed the Board's proceedings. He alleged that she had acted in breach of the Board's code of conduct and practices, had manipulated the Board's members and had provided incorrect information concerning certain candidatures. On 28 July the Office of the Secretary-General, to whom the memorandum was also sent, requested that all the members of the Board provide their comments on these allegations.

On 29 July 2005 the Chairman of the Staff Council replied to the memorandum of 7 July expressing support for the complainant and pointing out that she had represented the staff on the Board since 1990 without facing any criticism. On 26 August he wrote to the Secretary-General stating that the complainant had the Staff Council's full support and that it had decided to reject Mr S.'s request that she be relieved of her duties as staff representative on the Board. He pointed out that prior to the nomination of Mr S. to the Board in 2004 the candidatures for the various vacancy notices had been discussed by the Board's members without altercations and that there was no excuse for the "abusive language" Mr S. used with regard to the staff representative. He requested on behalf of the

Staff Council that the Secretary-General take the necessary measures to replace Mr S. on the Board and that Mr S. apologise to the complainant.

By memorandum of 24 November 2005 the Secretary-General informed the Chairman of the Staff Council and the Chairman of the Appointment and Promotion Board that after receiving the memoranda of 7 July and 26 August he had consulted the members of the Board who were present at the meeting of 8 June. In his view, the complainant's behaviour was incompatible with the role of a staff representative, which was to defend the interests of all the staff. He had therefore decided to release her from all her duties related to staff representation on the Board, and he requested that the Staff Council propose another staff representative to replace her. The Chairman of the Staff Council replied on 28 November that the Staff Council had unanimously decided that the complainant should remain a staff representative on the Board because her behaviour was beyond criticism.

By memorandum of 5 December 2005 the Chairman of the Staff Council informed the Secretary-General that the staff representatives were no longer in a position to participate in the work of the Board and asked him to reconsider his decision. The Chief of the Personnel and Social Protection Department replied the following day that the Secretary-General had decided to maintain his decision of 24 November. He urged the Staff Council to reconsider its position, failing which the Secretary-General would be compelled to take the necessary measures to ensure continuity of the work of the Board.

On 15 December 2005 the Secretary-General issued Decision No. 12542 concerning the composition of the Appointment and Promotion Board. The complainant was no longer listed as a member of the Board; indeed, only one staff representative was identified, concerning the other one the decision stated "vacant". On 26 January 2006 the complainant requested a review of that decision. Her request was turned down on 3 March. She filed an appeal with the Appeal Board on 15 May challenging the Secretary-General's decision to reject her request for review of Decision No. 12542. In its report of 23 August 2006 the Appeal Board considered that the appeal was receivable since Decision No. 12542 constituted an individual administrative decision. On the merits, it found that the withdrawal of the complainant's name from the composition of the Appointment and Promotion Board "appears to be" a disguised disciplinary measure taken on the basis of allegations of bias; it therefore held that the complainant was entitled to claim compensation for the injury suffered. It also considered that the Secretary-General had breached her rights to freedom of association and to freedom of expression. For these reasons, it recommended that Decision No. 12542 be set aside.

By a letter of 23 October 2006, which is the impugned decision, the Secretary-General informed the complainant that he had decided to maintain Decision No. 12542. He considered that her internal appeal was irreceivable on the ground that she had no individual right to be a member of the Appointment and Promotion Board. In the absence of such a right, the decision to withdraw her name from the list of the Board's members could not be considered as a disguised disciplinary measure. He added that, according to Staff Regulation 4.9, the composition of the Board lay within his discretionary authority and that he was responsible for the proper functioning of the Board. Since the complainant had not been impartial in her function as staff representative, he had the duty to replace her. He denied any breach of her right to freedom of association or freedom of expression.

B. The complainant submits that her complaint is receivable since the Union abused her right to freedom of association by deciding that she could not enjoy "her elected position as staff association representative". That right, she asserts, is embodied in the Staff Regulations and Staff Rules.

On the merits, she alleges violation of the applicable rules and regulations concerning the nomination and selection of staff representatives on the Appointment and Promotion Board. She points out that the Staff Rules provide that the Staff Association has the right to choose and elect its own representative to participate in committees or boards on which it has a representative. She considers her "forced removal" from the Appointment and Promotion Board as an attempt to restrict her freedom of speech and an improper interference in staff association affairs. The Secretary-General's interference in the nomination of the staff representatives on the Board constitutes a misuse of authority.

The complainant also argues that the Secretary-General deprived her of her right to participate in the work of the Appointment and Promotion Board although she had been elected to act as a staff representative on the Board. She considers that such a decision amounts to a disguised disciplinary sanction. She submits that the impugned decision is tainted with errors of fact insofar as the Secretary-General did not consider her career and in particular the fact that she had participated in various committees as a staff representative. She stresses that she had been on the

Appointment and Promotion Board for more than 18 years. She adds that the impugned decision was taken for an improper purpose, namely to protect the “administration’s nominee”, that is Mr S.

In addition, she alleges that her dignity and reputation were injured following “attacks” upon her role as a staff representative on the Appointment and Promotion Board. The Secretary-General refused to take measures against Mr S., who had shouted at her and insulted her during some of the Board’s meetings, thereby failing to defend her reputation and causing her distress. Moreover, the Secretary-General made the “spurious and unfounded accusation” that her behaviour during the meeting of 8 June 2005 was incompatible with the role of a staff representative, which was to defend the interests of all the staff.

The complainant asks the Tribunal to grant her compensation for moral injury in the amount of 44,000 Swiss francs. She also seeks an apology from Mr S., costs and any “additional damages as the Tribunal sees fit”.

C. In its reply the ITU contends that the complaint is irreceivable because it is not directed against an individual administrative decision adversely affecting the complainant. It notes that the impugned decision merely confirms the decision of 15 December 2005 concerning the composition of the Appointment and Promotion Board and that, under the Staff Regulations and Staff Rules, the complainant did not have an individual right to sit on the aforementioned Board.

On the merits, the Union denies any breach of the Staff Regulations and Staff Rules. It submits that as the staff representatives on the Appointment and Promotion Board are designated by the Secretary-General from a list of names submitted by the Staff Council, the latter has no power to impose the staff member of its choice.

With regard to the allegations of misuse of authority and disguised disciplinary sanction, the defendant submits that the Secretary-General’s decision was genuinely and solely motivated by the fact that the complainant’s behaviour was incompatible with her duties as a staff representative. It explains that the impugned decision was triggered by the allegations of bias made by Mr S. in his memorandum of 7 July 2005. The latter accused the complainant of having tried to bring about the removal of a candidate’s name from the list drawn up by the Appointment and Promotion Board by making unfounded and erroneous allegations. In that respect, the ITU points out that Mr S. was acting as the representative of the Radiocommunication Bureau and not as the Secretary-General’s “representative”, as suggested by the complainant. Consequently, it denies that the impugned decision was taken for an improper purpose. It adds that the Secretary-General took his decision “within the framework of his duty as guarantor of the [Board’s] proper functioning” and not by way of a sanction. In its view, he had the duty to replace the complainant as staff representative on the Board since she had acted against the staff’s interests.

The ITU denies having failed in its obligation to respect the complainant’s reputation and dignity. Indeed, in its opinion the Union cannot be deemed to have needlessly placed the complainant in a difficult personal situation given that her replacement was made necessary because she had failed to act in good faith and to defend the staff’s interests, in particular during the meeting of 8 June 2005. It acknowledges that Mr S.’s behaviour was regrettable but it had been provoked by the complainant herself.

D. In her rejoinder the complainant reiterates her pleas. She contends that as a staff representative she had to point out to the other members of the Appointment and Promotion Board the irregularities she had noted with regard to one of the shortlisted candidates. According to her, that candidate’s qualifications did not meet the requirements of vacancy notice No. 1/2005; therefore she asked that her name be removed from the list of pre-selected candidates.

E. In its surrejoinder the ITU maintains its position. It adds that the role of the Appointment and Promotion Board is to advise the Secretary-General where a vacancy is advertised by drawing up a shortlist of candidates eligible for appointment; the Board is not required to check the terms and in particular the grading of advertised posts. The Union stresses that the job vacancy at issue was drawn up on the basis of the Common General Service Job Classification Standard for Geneva.

## CONSIDERATIONS

1. The complainant impugns the Secretary-General’s decision of 23 October 2006 informing her that he had decided to maintain his decision of 3 March 2006 by which he had rejected her request for review of Decision No.

12542 concerning the composition of the Appointment and Promotion Board. According to that Decision, which was issued on 15 December 2005, the complainant was no longer a member of the Board.

2. The complainant's grounds for complaint are as follows: (i) violation of the Staff Regulations and Staff Rules concerning the nomination, election and selection of staff representatives on the Appointment and Promotion Board; (ii) the actions of the Secretary-General amount to an "attack" on the collective right of staff to organise and elect their representatives; (iii) the Secretary-General's "illicit interference with the role of an elected official" amounts to an "attack" on the right of elected officials to enjoy freedom of speech and "the full and unfettered exercise of elected entitlements"; (iv) the Secretary-General's unlawful interference in the staff association's affairs constitutes misuse of authority; and (v) errors of fact and law in that, in his final decision, the Secretary-General failed to explain adequately why he did not adopt the Appeal Board's reasoned conclusions.

3. The ITU's argument that the complaint is irreceivable on the grounds that the complainant had no individual right to be a member of the Appointment and Promotion Board is unfounded. It is clear that each staff member has an individual and legitimate interest in being a member of the aforementioned Board or any other board or committee as a staff representative, in accordance with the Staff Regulations and Staff Rules; therefore, each staff member, if appointed, has an individual legitimate right in not being removed. This right derives directly from a staff member's terms of employment and is therefore challengeable.

4. In her submissions the complainant focuses mainly on the Secretary-General's decision to remove her from the Appointment and Promotion Board, thereby breaching her right to freedom of association and freedom of expression. In its reply the ITU argues that the Secretary-General came to the conclusion that the complainant had failed "to display objectivity" and believed that the behaviour of the complainant was incompatible with the role of a staff representative, which is to defend the interest of all the staff. It considers that the Secretary-General "as guarantor" of the proper functioning of the Appointment and Promotion Board had not only the right, but also the duty to replace the complainant as the staff representative on the Board, since "she had acted with an aim that was contrary to that of defending the interests of the staff, as was her duty".

5. It is the Tribunal's view that the complainant's arguments of misuse of authority and violation of the Staff Regulations and Staff Rules concerning the appointment of the staff representative members on the Appointment and Promotion Board are founded. The Secretary-General's decision of 24 November 2005 to release the complainant from all her duties related to staff representation on the Board and to replace her was based on his opinion of her behaviour during the Board's meetings concerning the drawing up of a shortlist of candidates for the post advertised in vacancy notice No. 1/2005. The Tribunal notes that, while the decision was not a disguised disciplinary sanction, the Secretary-General breached the principles of freedom of association and freedom of expression by substituting the complainant's opinion and method of defending staff interests with his own. In the impugned decision of 23 October 2006 the Secretary-General stated that the decision had been taken with a view to ensuring the smooth running of the work of the Board. He further explained that by virtue of Staff Regulation 4.9 he had the authority to designate the members of the Appointment and Promotion Board, including the two staff representatives who are chosen from a list of names proposed by the Staff Council. However, the Secretary-General should have respected the Staff Council's position to restate its full confidence in the complainant instead of insisting on her replacement. The fact that the Secretary-General designates the staff representatives on the Appointment and Promotion Board from a list of names proposed by the Staff Council should be enough to support the view that the Administration should hold consultations with the Staff Council and seek an agreement prior to removing a staff representative from the Board. It should also be noted that, as there is a specific procedure to be followed in the appointment of a staff representative, so it is to be implied that there is a corresponding procedure for the removal of a staff representative. This means that a duly-appointed staff representative should not be dismissed by the Secretary-General without his inviting the participation of the Staff Council in the procedure. There was no such procedure in this case. It follows that the impugned decision must be set aside.

6. The complainant claims compensation for the moral injury, distress and anxiety suffered. The Tribunal awards her 20,000 Swiss francs in damages. In awarding that amount the Tribunal points out that the complainant's withdrawal from an official meeting because she did not agree with the majority opinion was inappropriate behaviour. As an appointed staff representative, she had a duty to attend and participate fully in the meetings of the Appointment and Promotion Board, regardless of whether she was in complete agreement or not. The Tribunal states that the complainant is not entitled to any other compensation. The complainant's request for an apology from Mr S. must be dismissed. It is not for the Tribunal to issue such an injunction, especially considering that the claim involves someone not party to the complaint. Having succeeded in part the complainant is entitled to costs

which the Tribunal sets at 5,000 francs.

## DECISION

For the above reasons,

1. The impugned decision is set aside.
2. The ITU shall pay the complainant 20,000 Swiss francs in moral damages.
3. It shall also pay her 5,000 francs in costs.
4. All other claims are dismissed.

In witness of this judgment, adopted on 8 November 2007, Ms Mary G. Gaudron, Vice-President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 6 February 2008.

Mary G. Gaudron

Giuseppe Barbagallo

Patrick Frydman

Catherine Comtet