

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

105th Session

Judgment No. 2749

The Administrative Tribunal,

Considering the third complaint filed by Mr A. J. against the Universal Postal Union (UPU) on 19 March 2007 and corrected on 4 June, the UPU's reply of 31 August, the complainant's rejoinder of 8 October and the Union's surrejoinder of 14 December 2007;

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. Facts relevant to this case are given in Judgment 2747 concerning the complainant's first complaint.

The complainant held the post of Manager of the Programme "Postal Economics" at grade P 5 in the Economic and Regulatory Affairs Directorate (hereinafter DER) as from 1 September 2001. In 2002 he began to deputise for the Director of the DER when the latter was unable to attend Management Board meetings. Following a decision of the Director General the complainant was transferred to another post with effect from 1 August 2006. This decision formed the subject of the first complaint.

On 22 December 2006 the complainant informed the Director General that he had noticed that the Coordinator of the Programme "Economic Affairs", Mr G., had deputised for the Director of the DER at Management Board meetings in November and December 2006. Since he thought that the decision – taken five years earlier – to designate him as the Director's substitute rested above all on his extensive knowledge of the DER, the complainant considered that inviting Mr G. to these meetings was a form of "provocation". Referring to Rule 111.3, paragraph 1, of the Staff Rules of the International Bureau of the UPU, he requested a review of the decision to invite Mr G. to attend Management Board meetings in the absence of the Director of the DER. By a letter of 11 January 2007 the Director General informed the complainant that that type of decision did not constitute an administrative decision and could not form the subject of a request for review under the Staff Rules. On 12 January the complainant filed an appeal with the Joint Appeals Committee challenging the Director General's decision. Having received no reply, the complainant filed a complaint with the Tribunal impugning the Director General's decision of 11 January 2007.

B. The complainant considers that the period of more than sixty days which has elapsed since he filed his appeal with the Joint Appeals Committee constitutes a denial of justice. In his opinion, the Director General's determination to exclude him from participating in important activities of the DER is illustrated not only by the decision to transfer him and to advertise his unchanged post, but also by the decision of 11 January 2007 to deprive him of his function as substitute for the Director of the DER on the Management Board.

He asks the Tribunal to quash the impugned decision and to order the UPU to produce his full personal file. He also claims compensation for moral injury in the amount of 10,000 Swiss francs and costs in the amount of 10,000 francs.

C. In its reply the UPU stresses that the complaint is irreceivable because the complainant has not shown that he tried in vain to expedite the proceedings or that the Joint Appeals Committee was unable to reach a decision within a reasonable period of time. He cannot therefore avail himself of the possibility of filing a complaint directly with the Tribunal. Moreover, Staff Rule 111.3 does not impose a formal deadline for the Committee's examination of an appeal, but indicates in paragraph 7 that the Committee must simply consider an appeal "with the maximum of

dispatch consistent with a fair review of the issue before it". According to the Union the complainant filed a complaint with the Tribunal without waiting for the end of the internal appeal proceedings and the Director General's final decision. The Committee has not displayed a lack of diligence; consideration of the case was suspended when the complainant informed the Committee's substitute Chairperson that he intended to file a complaint directly with the Tribunal. The Union notes that the complainant has presented a brief common to the three complaints which he filed together and it infers from this that he wishes them to be joined. It states that it objects to this, because the present complaint is irreceivable.

The UPU asserts that there has been neither an administrative decision nor a final decision by the organisation in this case. It explains that the requests from the Director of the DER to Mr G. to represent him at Management Board meetings in November and December 2006 were not administrative decisions, since they were purely organisational measures having no effect on the rights and obligations of any official. The Union further contends that whenever the complainant deputised for the Director of the DER he did so on an ad hoc basis and that this activity did not appear in any job description. Moreover, the fact that he no longer deputises for the Director has not had any impact on his salary. The Union states that it is not impossible that in the future the Director of the DER might again designate the complainant to represent him on the Management Board, if a subject particularly concerns his area of activity.

D. In his rejoinder the complainant requests the joinder of his three complaints pending before the Tribunal and explains that he is claiming an overall sum of 10,000 Swiss francs for moral injury and costs in the amount of 10,000 francs for all three complaints which, in the event that the Tribunal does not join them, works out at 3,333.30 francs in compensation and 3,333.30 in costs for each case.

He disputes the UPU's version of the facts and explains that since the Joint Appeals Committee had still not acknowledged receipt of his appeal, on 28 February 2007 he enquired in writing about the stage reached in the proceedings. On 6 March, in other words almost two months after the filing of his appeal, the Chairperson of the Committee told him that the Committee would be meeting in the near future to consider that appeal. It was not until 21 March 2007, after the usual one-month period had passed, that the complainant was informed of the composition of the Committee, i.e. shortly before the expiry of the period allowed for filing a complaint with the Tribunal in order to challenge the Director General's final decision concerning his transfer. In the complainant's opinion, it was plainly in his interest to submit to the Tribunal all the disputed decisions, all of which stem from the same determination to relieve him of the management of important matters at the UPU. It is likewise clear in his eyes that in this case the Committee was dilatory. On the other hand, the complainant admits that the decision of 11 February 2007 is not final, but he considers that his complaint is receivable.

He points out that since his transfer he has not been asked to deputise for the Director of the DER at Management Board meetings, although he had done so on a regular basis for many years, irrespective of the subject under discussion. He argues that, contrary to the UPU's assertion, in view of his "demotion to a distinctly minor post" there is practically no chance of his being invited to deputise for the Director in the future. The withdrawal of this prerogative, combined with the fact that he was forced to accept a post with clearly lesser responsibilities than those he had held in the past, only exacerbates the ostracism to which he says he is being subjected.

E. The UPU maintains its line of argument in its surrejoinder. It disputes the complainant's contention that it was plainly in his interest to submit all the challenged decisions to the Tribunal at the same time, and points out that there is no basis in law for this contention which in no way justifies the wilful, premature interruption of the internal appeal procedure. In addition, the Union rejects the complainant's allegation that the Joint Appeals Committee was dilatory and states that Staff Rule 111.3 does not mention a time limit within which the Committee must acknowledge receipt of an appeal nor the one-month time limit to which the complainant refers. Moreover, no such time limit has ever been applied. The UPU emphasises that in this case only one month and 25 days passed before the Committee acknowledged receipt of the appeal and only two months and nine days elapsed before it informed the complainant of its composition. Furthermore, the Union points out that the Chairperson of the Committee was on leave from 1 to 18 February 2007. In view of these circumstances and of the Tribunal's case law, the UPU considers that the Committee acted with due diligence.

CONSIDERATIONS

1. The complainant's career path is set out in Judgment 2747, also delivered this day, to which reference

should be made.

In the complaint form submitted on 19 March 2007 the complainant states that he impugns the decision of 11 January 2007 by which the Director General rejected his request for review of the decision not to allow him to continue to deputise for the Director of the DER on the Management Board.

2. Having noticed that another official had represented the DER at Management Board meetings on 28 November and 19 December 2006, the complainant in a letter of 22 December 2006 asked the Director General to review the decision which he or one of his subordinates had taken to invite the said official to Board meetings in the absence of the Director of the DER. The Director General replied by a letter of 11 January 2007 to the effect that the fact of asking an official to deputise for his supervisor at Management Board meetings did not constitute an administrative decision which could form the subject of a request for review under Staff Rule 111.3, paragraph 1. On 12 January 2007 the complainant filed an appeal against this decision with the Joint Appeals Committee. As he thought that no decision had been taken within sixty days, he filed a complaint with the Tribunal.

3. The complainant's claims are set out under B above. He requests the joinder of these proceedings with those concerning his two other complaints filed on the same day.

4. The Union objects to such joinder. For the reasons given in Judgment 2747, the Tribunal will not order the joinder.

5. The complainant asks the Tribunal to invite the organisation to produce his full personal file and to provide him with a copy thereof. The Tribunal recalls that it "has consistently held that it will not order the production of documents on the speculative basis that something might be found to further the complainant's case" (see Judgment 2510, under 7).

6. In its reply the Union submits that the requests made by the Director of the DER to the Economic Affairs Coordinator to represent him at the Management Board meetings in November and December 2006 were not administrative decisions and that, since the function of substitute has been abolished, these were merely organisational measures having no effect on the rights and obligations of any official. That is why the Director General did not need to examine the complainant's request for review. The complainant does not challenge the Union's allegation that the function of substitute has been abolished. He states that he leaves this matter for the Tribunal to decide and does not present any particular plea in support of his complaint.

7. The Tribunal notes that in the absence of any specific provisions governing the function of substitute for the Director of the DER, the fact that the latter asks one of his most senior colleagues to deputise for him at a meeting does not constitute an administrative decision capable of forming the subject of the review procedure provided for in Staff Rule 111.3, let alone a complaint before the Tribunal, which is "competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials and of [such] provisions of the Staff Regulations" (Article II, paragraph 5, of the Statute of the Tribunal).

8. It may be concluded from the foregoing that the complaint must be dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 8 May 2008, Mr Seydou Ba, President of the Tribunal, Mr Claude Rouiller, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 9 July 2008.

Seydou Ba

Claude Rouiller

Patrick Frydman

Catherine Comtet

Updated by SD. Approved by CC. Last update: 14 July 2008.