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

111th Session **Judgment No. 3025**

THE ADMINISTRATIVE TRIBUNAL,

Considering the fifth complaint filed by Mr A. P. against the International Telecommunication Union (ITU) on 6 July 2009, the ITU's reply of 20 October, the complainant's rejoinder of 13 November 2009 and the ITU's surrejoinder of 15 February 2010;

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's career is reviewed in part in Judgments 1646 and 2074, dealing with his first and third complaints. At the time of the facts at issue in this case, the complainant was working in the Archives Service.

In resolution 1142, entitled "Occupational illness", adopted in June 1999, the Council of the ITU, having regard to resolution 97 of the Plenipotentiary Conference, instructed the Secretary-General "to ensure that the safety, health and environmental standards in force in the host country of the Union [Switzerland] are applied at ITU".

In anticipation of the removal of the Archives Service to the sixth floor of the "Montbrillant" building in Geneva, the complainant asked his supervisor to enquire whether the new premises complied with those standards, which she did by e-mail on 3 September 2008. The complainant, having been notified by her that an affirmative reply had been received from the ITU, asked her to request the intervention of the *Office cantonal de l'inspection et des relations du travail* (OCIRT) (Cantonal Office for Employment Inspection and Labour Relations). The removal was planned to take place on 2 October. On 1 October the complainant sent the Secretary-General a memorandum stating that he had twice "almost fainted" after hitting his head on the beams on the sixth floor, and asking him to "review [his] decision" and agree to his moving temporarily to another office "pending certification by the OCIRT". The next day, the Chief of the Administration and Finance Department sent the complainant a memorandum informing him that the Montbrillant building had been constructed in accordance with the standards set by the *Société suisse des ingénieurs et des architectes* (Swiss Association of Engineers and Architects), and that in 2003 the ITU had received a "licence to occupy the premises, issued by the buildings inspectorate of the Department of Planning, Equipment and Housing [*Département de l'aménagement, de l'équipement et du logement*] of the Republic and Canton of Geneva", which meant that the building complied with the standards applicable in Switzerland. The author of the memorandum concluded from this that no check by the OCIRT was needed, and asked the complainant to move to the sixth floor on 3 October, no later than 6 p.m., which he did.

On 12 November 2008 the complainant lodged an internal appeal. In its report to the Secretary-General, dated 10 February 2009, the Appeal Board made three recommendations. By a letter of 14 April 2009, which constitutes the impugned decision, the Secretary-General told the complainant that he was adopting only one of these recommendations, namely, that he should "take steps to ensure that environmental health and safety standards are complied with, in line with the decisions of the Plenipotentiary Conference and the Council". He explained that he had decided, for that purpose, to instruct the

Security and Safety Service, in conjunction with the Buildings and Logistics Service, "to carry out an assessment in order to ensure that the fixtures and fittings in the ITU meet the basic requirements of Swiss law". This assessment was to be preceded by "a prior inspection of the office premises" located on the sixth floor of the Montbrillant building.

B. The complainant explains that having to move his office caused a deterioration in his working conditions and had a "negative impact" on his "moral and physical integrity". He takes the view that in his memorandum of 2 October 2008, the Chief of the Administration and Finance Department had confused a licence to occupy the premises with certification by the OCIRT. As the sixth floor of the Montbrillant building had been designated as a "public space" in 1999, he argues that it was not in principle intended to be used for offices. He emphasises that the layout of the metal structures on this floor is dangerous, and that this is proved by the fact that several people have been injured by hitting their heads on the beams. He states that no checks have been carried out to ensure that the building complies with Swiss safety, health and environmental standards, and that in Geneva the only body authorised to do this is the OCIRT. He disagrees with the Secretary-General's decision to entrust a check of this kind to the Security and Safety Service because, in his view, the staff of that service are not equipped to take the place of the experienced inspectors of the OCIRT. In this regard, he points out that the vacancy announcement which was published in 2007 in order to fill the post of Head of that service did not mention the need to hold a diploma in the safety, health and environmental standards in force in Geneva. Lastly, he states that the Chief of the Administration and Finance Department, to which the Security and Safety Service is answerable, has already formed a view hostile to his request, and that he cannot be both judge and jury "yet again".

The complainant asks the Tribunal to set aside the impugned decision insofar as it did not call for the intervention of the OCIRT to verify that the safety, health and environmental standards in force in Geneva are being complied with at the ITU, especially on the sixth

floor of the Montbrillant building, and to report on whether those standards were being complied with. He also claims compensation for moral and material damages, and costs.

C. In its reply the ITU contends that the complaint is irreceivable because the complainant has no cause of action, as the removal of his office did not adversely affect him.

As to the merits, the Union argues that the issuance of a licence for the occupation of premises for the Montbrillant building shows that the applicable safety, health and environmental standards were complied with. In that connection, it adds that the issuance of such a licence is preceded by an OCIRT inspection.

The defendant also explains that the move was decided in the interest of the service, and was intended partly to bring the Library and Archives Service together in one place. It adds that the complainant's new office is not at all dangerous, steps have been taken to protect visitors in the space used for the library, and so far there have been no accidents.

According to the ITU, there is no evidence to support the allegations made by the complainant against the Chief of the Administration and Finance Department, to whom he seeks to attribute non-existent motives. In sending the memorandum of 2 October 2008, he had merely notified the complainant, in the usual way, of a decision taken by the Secretary-General. Moreover, it is evident from the description of responsibilities in the vacancy notice for the post of Head of the Security and Safety Service that the latter "coordinates […] and monitors the implementation of occupational safety regulation and training in accordance with Council Resolution R-1142". The complainant's arguments on this score are therefore "false and specious".

D. In his rejoinder the complainant reiterates his contentions. While admitting that a licence was issued for the occupation of the premises, he states that no check by the OCIRT has yet taken place, and that the ITU has in fact "resorted to strategies" to avoid this. He produces

documents to show that the ITU, in installing the Library and Archives Service on the sixth floor of the Montbrillant building, "wholly disregarded the physical integrity of the users and staff of the library".

E. In its surrejoinder the defendant maintains its position. It states that the question of monitoring the premises on the sixth floor of the building in question is one of the objectives given to the Head of the Security and Safety Service for 2010.

CONSIDERATIONS

1. At the material time the complainant was employed in the Archives Service of the ITU. Consequent upon the decision to transfer the offices of his service to the sixth floor of the "Montbrillant" building in order to bring some of the services together, on 1 October 2008 he sent a memorandum to the Secretary-General requesting that the OCIRT carry out a check to verify that the premises on the sixth floor complied with Swiss legal standards governing the health and safety of employees at their place of work. He also sought permission to move temporarily into another office "pending certification by the OCIRT". As his request was not granted, he applied to the ITU's Appeal Board. The Board made a recommendation to the Secretary-General to "take steps to ensure that environmental health and safety standards" were met. It also recommended the setting up of a statutory health and safety committee, and that all necessary measures be taken to amend the Staff Regulations and Rules accordingly.

On 14 April 2009 the Secretary-General adopted the first of these recommendations and informed the complainant that he was instructing the competent internal services "to carry out an assessment in order to ensure that the fixtures and fittings in the ITU meet the basic requirements" of Swiss law, explaining that this assessment would begin with "a prior inspection of the office premises" located on the sixth floor of the Montbrillant building. However, he dismissed the

two other recommendations of the Appeal Board. That is the decision impugned before the Tribunal.

2. The Tribunal recalls that an international organisation has a duty to provide a safe and adequate environment for its staff, and they in turn have the right to insist on appropriate measures to protect their health and safety (see Judgment 2706, under 5).

3. In recommending that the Secretary-General should "take steps to ensure that environmental health and safety standards" were met, the Appeal Board did not suggest that the OCIRT should be involved. The Secretary-General was within the bounds of this recommendation in stating that resolution 1142 of the ITU Council, on which the complainant relied, left it to him to decide what methods to choose to ensure that the applicable Swiss law was respected, "without, in the first instance, necessarily having recourse to the institutions of the host State". This was why he entrusted the necessary checks to the Security and Safety Service, in conjunction with the Buildings and Logistics Service, the two services being attached to the Administration and Finance Department.

The question which arises in this case is whether that decision conflicts with resolution 1142.

4. By this resolution, adopted in June 1999, the Council of the ITU required the Secretary-General, among other things, "to ensure that the safety, health and environmental standards" in force in Switzerland are applied at the ITU. In view of the accident risk posed, in his view, by the metal structures on the sixth floor of the Montbrillant building, the complainant relies on that resolution in requesting that the OCIRT carry out the necessary checks.

It is appropriate to describe briefly the legal framework within which that body operates.

(a) In Switzerland, worker protection is governed primarily by the Federal Employment Act of 13 March 1964, which applies to all public and private enterprises, with certain reservations. It does not

however apply to the staff members of an international organisation who are domiciled in Switzerland. An implementing order, adopted on 10 May 2000 by the Federal Council, explains that this exception relates to the staff of international organisations with which Switzerland has concluded a headquarters agreement, the ITU being one of these.

(b) At the cantonal level, on 12 March 2004 the *Grand Conseil de la République et canton de Genève* (Grand Council of the Republic and Canton of Geneva) adopted the Labour Inspections and Employment Relations Act, which became the subject of an implementing regulation adopted on 23 February 2005 by the *Conseil d'Etat* (Council of State). According to these statutes, the OCIRT is responsible, in conjunction with other authorities and organisations, for carrying out checks on equipment installed and measures taken to ensure protection of the health and safety of workers. It may also prescribe any measures which experience has shown to be necessary and applicable given the state of the art, and which are appropriate to the operating conditions of the enterprise.

(c) The buildings inspectorate, a cantonal authority, is governed by the Geneva law of 14 April 1988 on buildings and installations of various kinds, which is the subject of an implementing regulation adopted on 27 February 1978 by the *Conseil d'Etat*. This law provides that applications for building permits must be submitted for a prior opinion to a number of administrative agencies and organisations, including the OCIRT, which has to approve any plan for the construction, conversion or fitting out of a building belonging to an enterprise subject to the Federal Employment Act. In the case of international organisations which have a headquarters agreement, the procedure to be followed is laid down in Article 9 of the above-mentioned law of 14 April 1988.

5. It follows that, although the Geneva cantonal standards for the buildings inspectorate apply to international organisations, this is not true of Federal legislation governing the protection of workers at their place of work. Insofar as Federal law takes precedence over any cantonal law which is contrary to it, under the principle of primacy of

laws enshrined in Article 49 of the Federal Constitution of the Swiss Confederation of 18 April 1999, it is largely irrelevant whether cantonal law has reproduced the Federal law rule which excludes these organisations from being subject to Swiss employment law.

The complaint must be dismissed for that sole reason insofar as it seeks to bring about a compulsory visit by the OCIRT to the offices of the staff of the Archives Service of the ITU, in order to verify compliance with the rules of Swiss law for the protection of workers' health and safety at their place of work.

6. Moreover, the impugned decision testifies to the firm intention of the defendant organisation to comply with resolution 1142. The Secretary-General did not misuse the discretion he enjoys under that resolution in deciding that the problems raised by the complainant's request did not require him immediately to call in an external organisation, whether private or public, to help him apply the resolution properly.

(a) The complainant submits that the staff of the services called upon by the Secretary-General lack the requisite skills and knowledge to carry out the necessary checks. However, he offers no evidence in support of this assertion. The vacancy notice which he has produced points rather to the contrary. In the section dealing with the duties and responsibilities of the Head of the Security and Safety Service, it states that this official "coordinates […] and monitors the implementation of occupational safety regulation and training" in accordance with Council resolution 1142. There is no indication in the file that the Head and staff of this service lack the knowledge and experience required to carry out this task, with the assistance of outside experts or specialists where necessary.

(b) The complainant also casts doubt on the impartiality of the Chief of the Administration and Finance Department, who has overall responsibility for the two services entrusted, in the impugned decision, with checking the premises on the sixth floor of the Montbrillant building, arguing that he has already adopted a hostile attitude towards his claim.

The defendant argues that this criticism is an attempt to pin non-existent motives on the Chief of the Administration and Finance Department, who merely notified the complainant, in the usual way, of the Secretary-General's decision. That statement is incorrect. In the memorandum sent to the complainant on 2 October 2008, the Chief of that department is expressing his own opinion, not that of the Secretary-General.

However, it should be noted that this memorandum is only a review of the construction and installation procedures which were followed and which resulted in a licence being obtained to occupy the premises in which the complainant works. It does not attempt to show that these procedures complied with the rules applying to the safety of employees. The memorandum does not therefore prejudge the outcome of the checks which have to be made, in consequence of the impugned decision, by the two services answering to the Administration and Finance Department.

(c) The criticism concerning the supposed inability of the staff of the designated services to carry out the tasks entrusted to them by the Secretary-General, and the supposed lack of impartiality of the Chief of the above-mentioned department, must therefore be rejected.

7. It follows from the foregoing that the complaint must be dismissed, without there being any need for the Tribunal to rule upon the objection to receivability raised by the ITU on the basis that the complainant has no cause of action.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 12 May 2011, Mr Seydou Ba, Vice-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 6 July 2011.

Seydou Ba
Claude Rouiller
Patrick Frydman
Catherine Comtet