

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**114th Session**

**Judgment No. 3178**

THE ADMINISTRATIVE TRIBUNAL,

Considering the fifth complaint filed by Ms A.-M. B. against the International Telecommunication Union (ITU) on 14 September 2010 and corrected on 25 October 2010, the Union's reply of 4 February 2011 and the complainant's letter of 16 May 2011 informing the Registrar of the Tribunal that she did not wish to file a rejoinder;

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 dispute may be found in Judgments 3138 to 3140, delivered on 4 July 2012, concerning the complainant's four previous complaints. It may be recalled that the complainant's periodical performance appraisal report for 2008 was drawn up on 27 May 2009 while she was assigned to the Conferences and Event Organization Division of the Telecommunication Development Bureau (BDT). In that report she obtained an overall assessment rating of 2, meaning that she had partly met requirements. In December 2008 she was awarded a salary increment as of 1 January 2009 in the hope

that this would encourage her to improve her performance. However, by a memorandum of 10 June 2009 the Director of the BDT informed her that, as her performance had not improved since the beginning of the year and had even proved to be “unacceptable” in some areas, her fixed-term contract was being extended for only six months. The Director added that appraisal meetings would be held at regular intervals and he warned the complainant that, if her performance was deemed unsatisfactory, he would not recommend another extension of her appointment. At the end of that month the complainant was taxed with not having brought a number of e-mails to her supervisors’ attention and an administrative investigation was opened. The investigation report concluded that only the complainant, or someone who knew the password to her professional e-mail account, could have deleted the e-mails in question. On 4 September the complainant was informed, on the one hand, that the Secretary-General would contemplate disciplinary action against her for serious misconduct if her responsibility were definitively established, and, on the other hand, that she was immediately suspended from duty. She was advised by a letter of 17 November 2009 that her appointment was being extended “as an interim precautionary measure” until 30 April 2010, but that this decision in no way prejudged her performance, her conduct or “the outcome of the current proceedings concerning [her]”.

On 22 December 2009 the complainant received a memorandum notifying her that the step increment that was supposed to take place on 1 January 2010 was being withheld pending “the outcome of the process”. The Chief of the Administration and Finance Department informed her by a letter of 31 March 2010 that it had become apparent following a “careful examination of [her] file” that her performance had “all too often been unsatisfactory”, despite the fact that the Union had given her the means to improve. He stated that the conduct giving rise to her suspension, which constituted misconduct within the meaning of Staff Rule 10.1.1, could lead to disciplinary action but that, “in view of the circumstances”, the Secretary-General had decided not to pursue disciplinary proceedings. However, as her conduct constituted further proof that the ITU could “justifiably not rely on [her] services to carry out its important mission”, the

Secretary-General had also decided not to renew her contract when it expired on 30 April.

On 28 April 2010 the complainant submitted in writing to the Secretary-General that it was plain from the memorandum of 22 December 2009 that her step increase “depended on the absence of disciplinary action”. As the letter of 31 March 2010 had informed her that the disciplinary proceedings against her were being discontinued, she considered that the reservation to granting her that increment had been lifted and she asked the Secretary-General to order the regularisation of her situation. By a letter of 15 June 2010, which constitutes the impugned decision, the Chief of the Administration and Finance Department notified her of the Secretary-General’s decision not to grant her a step increment on 1 January 2010, since the requisite conditions had obviously not been met, her performance having been “deemed unsatisfactory during the period concerned”. He drew attention to the fact that, whereas Staff Rule 3.4.1 a) provides that “[s]atisfactory service for the purpose of awarding a salary increment shall be defined, unless otherwise decided by the Secretary-General [...] as satisfactory performance and conduct of staff members [...] as evaluated by their supervisors”, in her periodical performance appraisal report for 2008 the complainant had obtained an overall assessment rating of 2. The chief of the above-mentioned department also reminded the complainant of the contents of the memorandum of 10 June 2009 and the letter of 31 March 2010, and of the fact that she had been suspended from duty since 4 September 2009.

B. The complainant observes that, according to Staff Regulation 3.4, Staff Rule 3.4.1 and paragraph 3.6 of Service Order 08/09 concerning the performance appraisal system, the decision whether or not to grant a salary increment is related to the assessment of a staff member’s performance and conduct. Moreover, the above-mentioned paragraph 3.6 states that the granting of such an increment is subject to the “submission of the periodical appraisal report duly completed”, in other words the report “governing the appraisal period immediately preceding the date on which the increment is due”. According to paragraph 2.2 of this service order that period normally runs “from

1 January to 31 December of each calendar year”. The complainant submits that in this case the decision not to award her a step increase on 1 January 2010 was wrongly based on the assessment of her work in 2008, since the Union failed in its duty to draw up an appraisal report for 2009, although no exceptional circumstances justified this omission. In the absence of such a report, she contends that she was not informed of the factors forming the basis of the decision not to grant her salary increment and that she was therefore denied due process.

The complainant also submits that the principles of good faith and legitimate expectations have been infringed. She maintains that the memorandum of 22 December 2009 gave her “the sufficiently precise assurance” that the award of her salary increment had been suspended firstly because of her alleged misconduct – and not because of the quality of her work which, in her opinion, was “not an issue” – and, secondly, subject to the outcome of the disciplinary proceedings, “to the exclusion [...] of any other condition or circumstance”.

The complainant asks the Tribunal to set aside the impugned decision and consequently to order the ITU to draw up new payslips, to regularise her social security contributions and to pay the sums due together with interest. She claims 5,000 euros in moral damages and the same amount in costs.

C. In its reply the Union argues that it was justified in not granting the complainant a salary increment because she did not fulfil the requisite conditions. In its view, her interpretation of the memorandum of 22 December 2009 is incorrect. It points out that, according to Staff Rule 3.4.1, a salary increment is awarded only if the staff member’s supervisors have evaluated that person’s performance and conduct and attested that they are satisfactory. The ITU holds that the complainant’s performance was clearly unsatisfactory in the years 2006 to 2009. She was duly informed of this, but exhortations to her to improve were in vain. The Union considers that her suspension from duty was an exceptional circumstance preventing the holding of the regular appraisal meetings announced in the memorandum of 10 June 2009.

It adds that the complainant is interpreting the terms of Service Order 08/09 too restrictively, because paragraph 3.7 thereof indicates that, on the recommendation of a supervisor, a salary increment may be withheld if a staff member's performance has deteriorated since the drawing up of the previous periodical appraisal report.

### CONSIDERATIONS

1. At the material time the complainant, who joined the ITU in 1998, was assigned to the BDT. In December 2008 she was granted a salary increment effective on 1 January 2009.

2. In her periodical performance appraisal report for 2008, which was drawn up on 27 May 2009, the complainant was given an overall assessment rating of 2, meaning that her performance was not deemed to be fully satisfactory and that she had only partly met requirements. By a memorandum of 10 June 2009 the Director of the BDT warned her that no improvement in her performance had been noted since the beginning of the year, that it had even proved to be "unacceptable" in some areas and that her fixed-term contract was being extended for only six months, i.e. until 30 November 2009.

3. On 4 September the complainant was advised that she was being immediately suspended from duty on account of events that occurred at the end of June which are described in Judgment 3138, and that the Secretary-General was contemplating disciplinary action against her for serious misconduct. The Chief of the Administration and Finance Department informed her by a letter of 17 November 2009 that her appointment had been extended until 30 April 2010 "as an interim precautionary measure" and that that decision in no way prejudged the future assessment of her performance and her conduct or "the outcome of the current proceedings concerning [her]".

4. On 22 December 2009 the chief of the above-department notified the complainant of the decision to withhold the step increment that was supposed to take place on 1 January 2010 pending "the

outcome of the process". He advised her by a letter of 31 March 2010 that the Secretary-General had decided not to pursue disciplinary proceedings, but that in view of her inadequate performance and misconduct her contract would not be renewed when it expired. As the complainant thought that the discontinuation of the aforementioned proceedings meant that the reservation concerning the award of her increment had been withdrawn, she asked to be granted that step increase. This request was rejected on 15 June 2010 on the grounds that the conditions for awarding such an increase were not met, because her performance had been deemed unsatisfactory. That is the decision impugned before the Tribunal.

5. The Staff Regulations and Staff Rules of the ITU make no provision for internal appeals by former staff members. The complainant, who was no longer in the Union's service when the impugned decision was issued, was therefore entitled to file a complaint directly with the Tribunal (see Judgments 2840, under 21, and 3139, under 3). For this reason, the complaint is receivable under Article VII, paragraph 1, of the Statute of the Tribunal.

6. The complainant submits in substance that the decision whether to award her a salary increment on 1 January 2010 ought to have been based on the performance appraisal report for 2009 but that, as that report was non-existent, the report for 2008 was taken into consideration, in breach of the applicable texts. In her opinion, she was denied due process because that decision was taken without her being informed of the factors on which it rested and she was therefore unable to comment on them.

7. Service Order 08/09 of 19 August 2008, which applied to this case, introduced a performance appraisal system for staff members holding a permanent or fixed-term contract, in which ratings of 1 or 2 mean that the person concerned did not meet fundamental requirements or partly met requirements, 3 means that he or she fully met requirements, while 4 and 5 mean that staff members frequently or consistently exceeded requirements. Any staff member who

receives an overall assessment rating of 1 or 2 is told that his or her overall rating must increase to at least 3 in the next appraisal, which must be carried out without fail within six months of the date on which the appraisal report in question has been drawn up. If there is no improvement, the staff member may be subject to appropriate administrative measures, which can include a procedure of termination for unsatisfactory service or non-renewal of contract.

In accordance with paragraphs 3.6 and 3.7 of the aforementioned service order, a staff member is granted an annual salary increment (step increase) if his or her work and conduct have been deemed satisfactory in the performance appraisal report covering the appraisal period immediately preceding the date on which the increment is due. If this is not the case, or if the quality of the staff member's services and/or conduct has altered significantly in the period between that covered by the last periodical appraisal report and the date on which the decision on the salary increment is to be taken, the supervisor must make a recommendation, stating the reasons therefor, which must then be submitted to the Secretary-General for a decision, on whether to grant that increment. The increment is withheld pending that decision.

8. (a) Although the complainant received an overall assessment rating of 2 in her periodical performance appraisal report for 2008, she was granted a salary increment on 1 January 2009 which, according to the Director of the BDT, was meant to encourage her to improve her performance as a whole.

She was not, however, awarded such a step increase on 1 January 2010. The complainant contends that this decision is unlawful because, in breach of the terms of Service Order 08/09, it was not preceded by the drawing up of a performance appraisal report for 2009. The Tribunal disagrees with this opinion.

In his memorandum of 10 June 2009 the Director of the BDT advised the complainant that, contrary to expectations, her performance in the first five months of 2009 had not improved and had even been "unacceptable" in some areas. The Director also said that meetings would be held at the end of every month to

document any progress made by the complainant and that, if her performance were to be deemed unsatisfactory, he would not recommend the extension of her appointment. The parties ultimately agreed to hold those meetings at three-monthly intervals. However, the first meeting, which ought therefore to have been held at the beginning of September 2009, did not take place owing to the events which occurred at the end of June 2009. The complainant then virtually stopped working for the Union, either because she was on leave, or because her suspension from duty as from 4 September in the wake of the above-mentioned events was not lifted before her separation from service on 30 April 2010.

(b) It must be recognised that these exceptional circumstances would not make it feasible to draw up a performance appraisal report for 2009. In a situation such as this, to require the drafting of that report in compliance with Service Order 08/09 would be unwarrantedly or excessively formalistic.

It is true that the fact that the letter of 17 November 2009 stated that the extension of the complainant's contract until 30 April 2010 in no way prejudged her performance, her conduct or "the outcome of the current proceedings concerning [her]" suggests at first sight that the Union did not rule out the possibility of conducting an appraisal, which would have yielded information on which to base the decision to grant or refuse a salary increment. Seen in context, however, this statement undoubtedly reflects uncertainty as to the advisability of opening disciplinary proceedings and as to whether the complainant's service would end definitively on 30 April 2010.

The complainant's criticism of the failure to draw up a performance appraisal report for 2009 is therefore unfounded.

9. The complainant also contends that the Union breached the principles of good faith and legitimate expectations. In her opinion, it is clear from the memorandum of 22 December 2009 that the granting of her salary increment on 1 January 2010 depended on the outcome of the disciplinary proceedings, "to the exclusion [...] of any other condition or circumstance". As the decision was taken to discontinue



those proceedings, she considers that she should have received that step increase.

This argument is misconceived. There are no reasonable grounds to infer from that memorandum that the award of the salary increment, which had been suspended pending the outcome of disciplinary proceedings, depended on whether or not disciplinary action was taken against the complainant. It is plain from all the evidence in the file, the circumstances summarised in consideration 8 above and the reasons given for the impugned decision, that the complainant's salary increment, which was already in great jeopardy for 2009, would not be granted for 2010 unless her performance improved substantially, which was not the case.

10. The complaint must therefore be dismissed.

#### DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 6 January 2013, 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 6 February 2013.

Seydou Ba  
Claude Rouiller  
Patrick Frydman  
Catherine Comtet