Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

116th Session **Judgment No. 3258**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaints filed by Ms M. C.-B., Ms N. C., Ms C. D., Ms C. D.-D., Ms R. G. and Messrs C. G., G. G. and F. L. against the International Telecommunication Union (ITU) on 15 July 2011 and corrected on 1 September, the ITU's reply of 20 December 2011, the complainants' rejoinder of 10 April 2012 and the ITU's surrejoinder of 16 July 2012;

Considering the letter of 22 August 2012 in which the complainants' legal counsel informed the Registrar of the Tribunal of the death of Ms R. G. on 11 July 2012 and of the fact that the latter's daughters had decided to pursue her complaint;

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

Having examined the written submissions and decided not to hold oral proceedings, for which none of the parties has applied;

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

A. Six of the complainants were elected to the ITU Staff Council in 2009.

Facts relevant to this dispute are to be found under A in Judgment 3156, delivered on 6 February 2013. Suffice it to recall that on 15 September 2009 the Council published a communiqué, known as a "Flash", informing the personnel that a grade G.5 staff member had just been suspended from duty with immediate effect. The authors of the "Flash" criticised the attitude of that person's grade P.5 supervisor and of the assistant to the Director concerned, inter alia. On 25 September the Chief of the Administration and Finance Department sent a memorandum to the Staff Council's Chairman in which he pointed out that the publication of the "Flash" had seriously violated "certain fundamental principles underlying the right to freedom of expression" and that, until further notice, all communications from the Staff Council for general distribution (on paper or by e-mail) should be submitted to him prior to their sending or distribution. The Chairman of the Council requested the Secretary-General to withdraw the decision of 25 September and on 13 October 2009 the Chief of the above-mentioned department wrote to the Chairman to tell him that, following their discussion that day, the ban on sending or distributing communications to all staff members without prior authorisation was lifted with immediate effect.

On 5 May 2010 the Staff Council circulated by e-mail another "Flash" informing the personnel that the contract of the above-mentioned grade G.5 staff member had not been renewed. In an e-mail of 7 May the Chief of the Administration and Finance Department explained to the personnel that he had "no option but to again suspend the ability [of the Council] to send Emails to all staff". Several members of that body resigned at that point. By an e-mail of 21 May the Chief of the above-mentioned department informed the staff that he was going to reinstate the e-mail "privilege" in order that the remaining Council members might communicate with ITU staff.

In a letter of 18 June 2010 13 staff members, including the complainants, explained to the Secretary-General that, in their opinion, the decisions of 25 September 2009 and 7 May 2010 had

breached the Council's freedom of communication and expression and each claimed compensation in the amount of 30,000 Swiss francs. As they received no reply, they wrote to the Secretary-General again on 6 September to ask him to review his implied decision to reject their claim of 18 June. On the same day they received a memorandum, dated 3 September 2010, in which the Secretary-General stated that any action against the decision of 25 September 2009 was time-barred and that, as that decision had been withdrawn, any claim for compensation relating to it was groundless. In his opinion, the decision of 7 May 2010 had not injured them in any way, because the suspension applied only to electronic means of mass communication and that measure had been lifted after 15 working days. In addition, the Secretary-General considered that the claim of 18 June was completely unfounded. On 18 October the complainants asked him to consider their request for review of 6 September henceforth to be directed against his decision of 3 September. By letters dated 25 November, the Secretary-General informed them that their request for review had been rejected.

The complainants then referred the matter to the Appeal Board and asked it to recommend that they be awarded damages.

In its report issued on 7 March 2011 the Appeal Board concluded that, in the absence of clear provisions governing the use by the Staff Council of means of communication, in particular e-mail, it was not in a position to issue a recommendation concerning the award of damages. It did, however, recommend that a regulatory framework for the use of those means of communication should be established, taking into due consideration the freedom of expression which the Council must enjoy and the relevant judgments of the Tribunal on the subject. By memorandums of 4 May 2011, which constitute the impugned decisions, the Chief of the Human Resources Management Department informed the complainants that the Secretary-General had decided, firstly, to maintain the position set out in his memorandum of 11 January 2011 and consequently his decision of 25 November 2010 and, secondly, not to grant their request for damages or to put in place the regulatory framework recommended by the Appeal Board, since

an internal oversight mechanism already existed within the Staff Council.

B. The complainants first submit that their complaints are receivable, since they merely seek compensation and do not constitute disguised appeals seeking the setting aside of the decisions of 25 September 2009 and 7 May 2010.

They then denounce several procedural flaws, beginning with the failure to observe the time limits in the internal appeal procedure. They also contend that their right to an effective internal appeal was breached owing to the fact that the Board – whose members considered themselves as lacking the requisite legal expertise – refused to issue an opinion on the merits of their claim for damages. They criticise the Secretary-General for having not only failed to take the necessary steps to remedy the situation, for example by referring the case back to a Board comprising different members, but also for having exacerbated it by not appointing a Secretary to the Board. They also criticise him for having based the impugned decisions on objections to receivability to which they were not given an opportunity to respond, and for having thus disregarded the adversarial principle.

On the merits, the complainants repeat the reasoning set forth in the two complaints giving rise to Judgment 3156.

The complainants ask the Tribunal to set aside the impugned decisions and to award each of them compensation in the amount of 30,000 Swiss francs, plus interest at an annual rate of 8 per cent as from 18 June 2010 and the product of the capitalisation of that interest, as well as costs in the amount of 3,000 euros. They also ask the Tribunal to rule that, should these sums be subject to national taxation, they would be entitled to a refund of the tax paid from the ITU.

C. In its reply the ITU asks the Tribunal to join the complaints presently before the Tribunal with the two above-mentioned complaints.

The ITU maintains that any action against the decision of 25 September 2009, and consequently any claim for compensation for the injuries allegedly caused by it, is time-barred. It also contends that the complaint is irreceivable because it is groundless, inasmuch as the aforementioned decision and the measure adopted on 7 May 2010 have not caused the complainants any injury entitling them to compensation. It points out that the decision in question was replaced by that of 13 October 2009 and that the above-mentioned measure, which suspended access only to electronic means of mass communication, was lifted on 28 May 2010.

The ITU draws attention to the fact that the complainants did not challenge the lawfulness of the extended time limits which were granted and submits that they caused no injury to the complainants. It denies that the complainants' right to an effective internal appeal was breached, given that the Appeal Board examined their case and issued a report. For this reason, in its view, the Secretary-General had no need to refer the case back to a Board comprising different members. The Board's Secretary was appointed by the Secretary-General on 16 August 2010 and she assisted the Board when it considered the complainants' appeal. It emphasises that, in his memorandum of 3 September 2010, the Secretary-General had already set out the objections to receivability which he raised in his reply to the aforementioned appeal, so that it cannot be held responsible for the fact that the complainants chose not to address this issue either in their request of 18 October 2010 or in their appeal.

On the merits, the ITU reiterates the position which it expressed in its reply to the complaints giving rise to Judgment 3156. It points out that in Judgment 3032 the Tribunal dismissed the claim for the reimbursement of any tax which might be levied on the sums awarded by the Tribunal, because it was not based on an established fact.

D. In their rejoinder the complainants enlarge on their pleas. They take the members of the Appeal Board to task for not hearing them and cast doubt on their impartiality.

E. In its surrejoinder the ITU reiterates its position. In its view, the fact that the members of the Appeal Board did not hold oral proceedings does not constitute proof that they were biased.

CONSIDERATIONS

1. The facts giving rise to this dispute are set out in detail in Judgment 3156, delivered on 6 February 2013.

2. As the eight complaints seek the same redress and are based on identical submissions, they shall be joined to form the subject of a single ruling.

3. The ITU asks for the joinder of these complaints with another case. This request has, however, become moot because the Tribunal has already ruled on that other case in the above-mentioned Judgment 3156, where the same request for joinder was refused.

4. In the instant case the complainants challenge the final decisions of 4 May 2011 in which the Secretary-General of the ITU maintained his decisions of 25 November 2010 and those of 3 September 2010 not to grant the compensation claims submitted on 18 June 2010 by the complainants, who considered that they had suffered injury on account of violations of the rights of staff representatives.

5. By their very nature, such violations of the rights of staff representatives cannot, under any circumstances, give rise to any right to financial compensation in favour of an individual staff member or his or her successors in title.

The complaints must therefore be dismissed without there being any need to rule on the objections to receivability raised by the ITU.

DECISION

For the above reasons,

The complaints are dismissed.

In witness of this judgment, adopted on 14 November 2013, Mr Claude Rouiller, Vice-President of the Tribunal, Mr Seydou Ba, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 5 February 2014.

Claude Rouiller
Seydou Ba
Patrick Frydman
Catherine Comtet