Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

D. (No. 2)

v.

ITU

120th Session **Judgment No. 3504**

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr H.-L. D. against the International Telecommunication Union (ITU) on 11 February 2013 and corrected on 4 June, the ITU's reply of 10 September, the complainant's rejoinder of 15 November 2013 and the ITU's surrejoinder of 25 February 2014;

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 neither party has applied;

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

The complainant challenges the decision not to authorise his participation, in his capacity as a staff representative, in a workshop and training course organised by the Federation of International Civil Servants' Associations (FICSA).

At the material time, the complainant, who works at the ITU's Headquarters in Geneva (Switzerland), held a post at grade P.3 in the Information Services Department and was also a member of the ITU Staff Union and Staff Council.

By an e-mail of 15 May 2012 FICSA informed the President of the Staff Union that a training course on job classification would be held in Vienna (Austria) on 18 and 19 June, followed by a workshop on General Service salary survey methodology on 20 and 22 June. Three members of the Staff Union, including its President and the complainant, expressed a wish to participate and were asked to fill out a "paper leave form" in order to obtain leave of absence.

On 5 June the complainant asked his first and second level supervisors for leave of absence from 18 to 22 June. In the course of that day he was told that the Chief of the Information Services Department was unable to approve absence for the purposes of staff representation activities, because only the Secretary-General was competent to do so. After receiving this e-mail the complainant sent a leave request to the Chief of the Human Resources Planning and Policies Division, in which he gave the reason for his absence as "staff representation". The chief of the Division replied that he would sign the form, but that "[his] supervisor should […] endorse it simply in order to take note of the fact" that he would be absent from 18 until 22 June.

On 6 June the Chief of the Information Services Department explained to the Deputy Secretary-General that, as the department was understaffed and had to cope with an increased workload, he could not grant the complainant's request. On 14 June the complainant was informed that the Deputy Secretary-General had decided not to "overrule the decision of the supervisors" and that, owing to exigencies of service, he was not authorised to attend the course and workshop organised by FICSA.

On 15 June the complainant sent the Secretary-General a memorandum in which he asked him to review that decision. The Secretary-General replied on the same date that he upheld the "decision" of the Deputy Secretary-General and the Chief of the Information Services Department. The complainant was informed by a memorandum of 22 June that the Secretary-General had decided to dismiss his request for review on the grounds that his non-participation in the course and workshop did not impinge on the mission of ITU staff

representatives and that the interests of the service justified the decision taken in his case.

On 14 September 2012 the complainant lodged an appeal with the Appeal Board, seeking the cancellation of the decision of 22 June 2012 and compensation for the injury suffered. He also asked the Board to hear his immediate supervisor, the Chief of the Information Services Department, the Chairman of the Staff Council and the President of the Staff Union in order to establish the "real reasons" behind the refusal of his leave request. Having received no reply, on 11 February 2013 he filed his complaint, in which he specifies that he is impugning the implied decision to dismiss his appeal of 14 September 2012.

The complainant asks the Tribunal to set aside the impugned decision as well as the decisions of 14 and 15 June 2012. He also claims 20,000 euros in compensation for the injury suffered and costs in the amount of 6,000 euros.

The ITU argues that the complaint is groundless.

CONSIDERATIONS

1. In his complaint, the complainant submits that, whereas the Secretary-General alone would have been competent to refuse his request for leave in order to participate, in his capacity as a staff representative, in two training courses on job classification and salary survey methodology run by FICSA in Vienna from 18 to 22 June 2012, in this case the decision was taken by the Deputy Secretary-General who, moreover, merely endorsed a decision which had in fact been taken by the Chief of the Information Services Department, to which the complainant is assigned. He contends that the refusal to grant his leave request was therefore unlawful, and that this was not remedied by the fact that it was the Secretary-General who, on being asked to review the decision, ultimately rejected the request.

2. This criticism is groundless. On 22 August 2003 the ITU published Service Order No. 03/17, which was in force at the material time.

It is plain from this service order that Secretary-General is responsible for deciding only *special cases of leave* requested by staff in grades P.5 to D.2 and *normal leave* requested by some chiefs of departments or units and officials elected by the Plenipotentiary Conference. The complainant holds grade P.3 and does not therefore belong to either of these categories.

It is true that, according to this service order, the decision to grant or refuse normal leave requested by a staff member at grade P.3 lies with the chief of department or unit concerned, while special cases of leave requested by staff in that grade are dealt with the Chief of the Human Resources Management Department. Indeed, in his rejoinder, the complainant, relying on this service order which the ITU appended to its reply, holds that it was in fact the latter person who was competent to decide on his request.

However, in accordance with a practice which has been explained in detail by the ITU and which was followed in the case of the three members of the Staff Union – including the complainant – who planned to go to Vienna in June 2012, the aforementioned service order is always construed as meaning that requests for leave of absence for staff representation activities must be treated as normal leave applications. There is nothing in the complainant's submissions or the documents presented to the Tribunal to show that this practice is inconsistent with the Staff Regulations or Service Order No. 03/17, or that reasons related to the smooth operation of the organisation or the interests of the officials concerned would require any departure from it. On the contrary, it appears reasonable that in normal circumstances such as those of the instant case, where leave was requested for a stay of no more than four days in a European capital for training connected with the ordinary duties of staff representatives, the decision whether or not to authorise such leave should be taken not by the Secretary-General himself or by the Chief of the Human Resources Management Department, but by the supervisors of the person concerned, as occurred here.

3. The complainant alleges two procedural flaws: he contends that the refusal to grant him the leave which he requested was based on a biased opinion and that insufficient reasons were stated for the decision on his request for review.

As formulated, the first of these pleas is subsumed in that of intrinsic unlawfulness which will be discussed below.

The second plea is misplaced. The memorandum of 22 June 2012 notifying the complainant of the Secretary-General's decision to uphold his supervisors' refusal to grant him leave clearly sets out the reasons for this refusal, namely the exigencies of the service in which he worked. This account was sufficient for the complainant to be able to contest the decision in full knowledge of the facts in both his appeal of 14 September 2012 and his complaint before the Tribunal.

4. In the complainant's opinion, the memorandum of 22 June 2012 contained two errors of fact. This criticism is devoid of merit.

First, it is impossible to see how the fact that the memorandum did not make it clear that only one of the members of the Staff Union who went to Vienna would attend all the training activities there could have had any real impact on that decision.

Secondly, the decision to refuse leave was in fact taken in consultation with the complainant's first and second level supervisors. While it appears that they did not initially object to the complainant's request for leave of absence, it is plain from their declarations in the file that they ultimately refused to endorse it after they had looked more closely at the needs of the service.

5. The complainant submits that he would have been granted the leave which he requested but for the bias of the Chief of the Information Services Department, who had been put under unlawful pressure designed to harm the Staff Union. A person alleging bias or personal prejudice bears the burden of proving these allegations, but in this case the complainant offers no firm and plausible evidence of the internal manoeuvring which he denounces.

Nor is there any reason for the Tribunal to find that the refusal to authorise the complainant to go to Vienna to attend training courses organised by FICSA breached his right to freedom of association. There is no cogent evidence in the file showing that the needs of the service which the ITU invoked in refusing leave were grossly overestimated or deliberately assessed in an incorrect manner in order to restrict the number of participants on that journey.

This argument must therefore be rejected.

6. The complainant claims compensation for the injury which he allegedly suffered on account of being denied his right to an internal appeal. Although the Tribunal notes that, owing to some malfunctioning ascribable to the Union and to which it admits, the complainant's appeal could not be heard in accordance with the provisions of Chapter XI of the Staff Regulations, it considers that the complainant did not do all that he could to have the matter resolved, since he did not even enquire as to the progress of the proceedings before he filed his complaint with the Tribunal. He therefore shares some of the responsibility for the situation to which he objects and in these circumstances he cannot complain of the breach of the guarantee on which he relies.

7. It follows from the foregoing that the complaint must be dismissed, without there being any need to examine its receivability.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 4 May 2015, Mr Giuseppe Barbagallo, President of the Tribunal, Mr Claude Rouiller, Vice-President, and Mr Patrick Frydman, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 30 June 2015.

(Signed)

GIUSEPPE BARBAGALLO CLAUDE ROUILLER PATRICK FRYDMAN

DRAŽEN PETROVIĆ