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

FORTY-THIRD ORDINARY SESSION

In re ARNOLD

Judgment No. 397

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the International Telecommunication Union (ITU) by Mrs. Berthe Arnold on 17 November 1978, the ITU's reply of 6 February 1979, the complainant's rejoinder of 6 April and the ITU's surrejoinder of 24 May 1979;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Regulations 1.2, 4.8 and 11.1 and Rule 11.1.1 of the Staff Regulations and Staff Rules of the ITU and ITU Service Order No. 66;

Having examined the documents in the dossier, oral proceedings having been neither applied for by the parties nor ordered by the Tribunal;

Considering that the material facts of the case are as follows:

A. The complainant joined the staff of the ITU on 1 November 1946 and was granted a permanent appointment in 1949. She worked on the staff of the International Frequency Registration Board (IFRB) and was promoted to G.5 in 1953, to G.6 in 1958, to G.7 in 1960 and to P.2 in 1968. In the second half of 1977 the ITU carried out a review of the classification of all posts and at the same time reorganised the IFRB. On 8 August 1977 the complainant was given the new description of her post, which bore the number 478 and was graded P.2 and was informed that, in accordance with the procedure set out in Service Order No. 66 of 8 July 1977 she might ask for review of the post description and classification up to 1 November 1977.

B. On 26 October 1977 the complainant appealed to the Review Committee provided for in Service Order No. 66, contending that post No. 478 did not correspond to her actual duties and that those duties pertained to another post, which was graded P.3. On 16 February 1978 the "post classification specialist" informed her that her post was indeed No. 478, but, that until the reorganisation of the Board had been carried out she would be asked to perform "other temporary duties more nearly like your duties before reorganisation". The complainant answered expressing her disagreement and asking the classification specialist to pass on her claim to the Review Committee. On 9 June she appealed to the Appeal Board in accordance with Regulation 11.1 of the Staff Regulations ani Staff Rules, which relates to appeals against administrative decisions. On 21 June she was informed that the Review Committee had dismissed her claim. The Appeal Board took the view that the decision which she was challenging was that notification of 21 June and recommended the Secretary-General to grant her, with retroactive effect, from 1 January 1977, a special post allowance equivalent to the salary of a step in P.3 higher than that of the highest step in P.2, which she had reached in December 1976. The Secretary-General rejected the Board's recommendation on the grounds that she had appealed to the Board several days before the Review Committee had reported on her claim and that she had not exhausted the internal means of redress. (Rule 11.1.1, paragraphs 2 a) and b), stipulates that a staff member shall as a first step address a letter to the Secretary-General within six weeks from the time he received notification of the decision and shall submit his appeal to the Appeal Board within three months from the date of receipt of the Secretary-General's answer.) That decision was notified to the complainant on 17 August 1978 and it is the one she impugns.

C. The complainant rejects the ITU's contention that it abolished all posts and replaced them with new ones. What in fact it did was reclassify all the former posts. Had it not done so, it would have had to fill the new posts under the selection procedure laid down in Regulation 4.8. The ITU acted improperly in carrying out the reclassification. It invoked the authority conferred on the Secretary-General under Regulation 1.2, which states that "Staff members are assigned to their duties according to the needs of the Union and, as far as possible, in accordance with their qualifications". Purportedly in exercise of that authority it relieved her of duties which she had always performed to the full satisfaction of her supervisors - thereby overlooking essential facts - and reclassified those duties at P.3. What was more, it had her continue to perform those duties in practice without changing her grade from P.2, its

intention being to replace her eventually with someone inexperienced and to relegate her to less responsible work. She therefore asks the Tribunal: (1) to declare the decision null and void; (2) to order the ITU to reinstate her in the duties and responsibilities which she held before the reorganisation of the specialised secretariat of the IFRB, at the new grade, with retroactive effect from 1 January 1977 and in accordance with the decisions of the Administrative Council of the ITU; and (3) to order the ITU to pay her damages in the light of her claims under (2) above, plus interest at a yearly rate to be set by the Tribunal.

D. In its reply the ITU explains that the classification of posts in the IFRB was accompanied by a reorganisation of the IFRB itself which consisted in merging the Administrative with the Notification Department and the Technical with the Planning Department. Because of the reorganisation the number of IFRB posts was reduced from 106 to 91. With only six exceptions, no new post description related to any former post since the new distribution of duties was basically different. The reorganisation had to be carried out by stages, and so some staff members had to accept provisionally duties which were somewhat different from those stated in their new post description. The effect of the reorganisation in the complainant's unit was to require of staff members general knowledge of the various procedures applicable to radiocommunications and frequency waves and not, as before, detailed knowledge of a single procedure. On 8 August 1977 it was decided to assign the complainant to one of the new P.2 posts (post description No. 4/8), the duties of which were similar to those of her old post, though broader in scope. She was not selected for any of the new P.3 posts. From July 1977 to July 1978, however, while the reorganisation was being carried out, the complainant temporarily performed duties which, though somewhat different from those of her new post, were nevertheless classified P.2. The ITU continues to believe that her appeal to the Appeal Board was irreceivable since she had not first written a letter to the Secretary-General, and so the complaint too is irreceivable. As to the merits, the ITU contends that, since the IFRB was reorganised and new posts were created, the complainant was not "reclassified" but reassigned" to post No. 478. Contrary to what she maintains, the procedure set out in Regulation 4.8, which relates to selection and not to the assignment of serving officials, was not applicable. In reassigning her, account was taken of her performance reports, training and qualifications. She suffered no prejudice since she was appointed to a post which bore the same grade as her previous post. Lastly, if it is compared with the standard posts, the new post, No. 478, is seen to be correctly classified P.2. The ITU therefore asks the Tribunal to dismiss the complaint as irreceivable and unfounded.

E. In her rejoinder the complainant contends that her complaint is receivable: she merely followed the procedure set out in Service Order No. 66, and that is the procedure which she was asked to follow if she wished to appeal against the letter o1 8 August 1977 notifying her new post. She still believes that she was reclassified, not reassigned: her post was reclassified P.3 and she was given an inferior, P.2 post, instead of being promoted to P.3, although she continued in practice to perform the duties which had been reclassified P.3. The reorganisation was supposed to sweep away the old order, but it did not do so. Its main purpose was to make greater use of computers, but the idea is still under study. The description of post No. 478 does not correspond and never did correspond to the complainant's duties and responsibilities, which are still connected with the Aeronautics Mobile Service. The new structure exists only in theory. Contrary to what the ITU contends, the IFRB was no exception, and the reclassification of posts applied to the whole organisation, including the IFRB. The complainant ought, in accordance with paragraph 1.3 of Service Order No. 66, to have been promoted to P.3, the grade corresponding to her former duties, which had been reclassified at that grade and which, for the most part, she is still in practice performing. Comparison of the description of her duties drawn up in 1976 with standard post description No. 59, to which the new P.3 post corresponds, shows no basic difference. That is why the Appeal Board recommended paying her a special post allowance. Lastly, to accept the ITU's argument that Regulation 4.8 does not apply to assignments would be to do away with the guarantees of impartiality provided by the Appointment and Promotion Board and open the way for all kinds of abuses.

F. In its surrejoinder the ITU again pleads that the complaint is irreeeivable. It categorically denies that the complainant's duties before the reorganisation were those which have since been classified P.3. As for the reorganisation itself, though not completed, it is being carried out and is quite genuine. Lastly, the post description of 1976 to which the complainant refers is not material evidence since she drafted it herself. Besides, it was never followed up since the Administrative Council decided in the meantime to carry out the reorganisation.

CONSIDERATIONS:

As to the procedure followed:

1. The organisation points out that before filing her appeal with the Appeal Board on 9 June 1978 the complainant

had failed to address a letter to the Secretary-General, in accordance with Rule 11.1.1 2.a), requesting review of the decision. It concludes that the Appeal Board ought not to have heard the appeal, that the internal means of redress were not duly exhausted, and that the complaint filed with the Tribunal is irreeeivable under Article VII, paragraph 1, of its Statute.

In its report of 3 July 1978 the Appeal Board found that in a letter dated 21 June 1978 the Secretary-General had given his decision on the matter under dispute and that he and the Chairman of the International Frequency Registration Board had therefore been informed of the complainant's wishes and claims. The Board accordingly expressed its views on the merits of the appeal on 3 July 1978.

Although the Appeal Board did not comply strictly with the letter of the rules of procedure, it did, as it states, respects their spirit. It would have been unnecessarily strict to require that after 21 June 1978 the complainant should ask the Secretary-General to give a second opinion - which would no doubt have confirmed the original one - and then file a new appeal, backed presumably with the very same arguments. The Appeal Board must be allowed some discretion in construing the internal rules of procedure and therefore cannot be taken to task for breach of those rules.

As to the review of the complaint:

2. The impugned decision, which was to assign the complainant to a new post, fell within the scope of discretionary authority. Hence the Tribunal may quash it only ir it was taken without authority, or violated a rule of form or of procedure, or was based on a mistake of fact or of law, or if essential facts were left out of account, or if the decision was tainted with abuse of authority, or if clearly mistaken conclusions were drawn from the facts. The Tribunal will be all the more cautious because the questions which the case raises are partly technical and best settled by the complainant's immediate superiors, who are most familiar with her past, present and future conditions of employment.

As to the complainant's pleas:

3. The complainant believes that the Secretary-General ought to have given reasons for his decision to take away her duties and responsibilities. It is true that, if that decision is the one contained in the letter sent on 8 August 1971 by the Secretary-General to the complainant, the reasons which it gives can at best be described as summary. In that letter the Secretary-General referred merely to a service order and to a post description and informed the complainant of her right to ask for review. There is no need, however, to consider whether a fuller explanation should be given of an assignment of a staff member to a specific post.

Be that as it may, in his letter of 21 June 1978 to the acting Chairman of` the Appeal Board, in his letter of the same date to the complainant and in the impugned decision of l7 August 1978 the Secretary-General gave the reasons which in his view justified the assignment of the complainant to new duties. Hence any procedural irregularity which may have been committed in 1977 was corrected in 1978.

Moreover, one purpose of giving reasons for a decision is to enable the staff member to defend his rights before an appeals body. The fact that on 26 October 1977 the complainant made a request for review of the decision shows that she did not need further information to be able to argue in detail against the change in her duties. Thus it would have been of little use to the complainant to elaborate on the reasons for the decision in the letter of 8 August 1977.

4. The complainant further contends that, although, as the ITU says, it did abolish the old posts and replace them with new ones, the new ones ought not to have been filled until notices of the vacancies had been published and the Appointment and Promotion Board had been consulted. In other words, the complainant is saying that, even on its own hypothesis, the ITU should have followed the procedure prescribed in Regulation 4.8.

In fact, as the organisation rightly points out, that regulation is narrower in scope than the complainant believes. It applies, as indeed its purpose requires, to posts put up for open competition both within and outside the organisation. But the organisation's purpose was merely to alter the position of serving officials by giving them new duties or higher grades.

5. The complainant also contends that the Secretary-General failed to take account of an essential fact, namely, her performance reports. That argument also fails.

The Tribunal will find that an essential fact was over-looked only if the impugned decision was really taken by over-sight. The Secretary-General was in fact quite aware of the complainant's qualifications. That is clear from the following passage of the letter of 17 August 1978 notifying his decision to her: "The Appeal Board seems to set store ... by a letter which the IFRB wrote to you ... thanking you for your services at the Aeronautical Conference: that, in my view, is immaterial since what is in dispute is not the quality of your services, but the nature and level of your duties". Hence, if the Secretary-General failed to take as full account of the complainant's merits as she would have liked, he did so wittingly and deliberately. He cannot therefore be held to have taken his decision by oversight.

6. The complainant's main contention is that according to the decision she impugns she will in future be performing, not her former duties, which she has always performed to her supervisors' full satisfaction and which now pertain to a P.3 post, but new and less responsible ones, and that she remains at grade P.2. She therefore contends that she suffered two wrongs - a downgrading of her post and a refusal to promote her to P.3. The organisation replies that with the reorganisation of the specialised secretariat of the IFRB there are no grounds for assimilating her former duties to the post which she claims. Her argument is therefore fundamentally misconceived.

Whatever its nature, the reform of which the decision formed part led to big changes. In particular, the specialised secretariat of' the IFRB now consists of two departments instead of four and is to have only 91 permanent officials instead of 106. The organisation's plea therefore carries some weight. Although the complainant's argument was endorsed by the Appeal Board and did perhaps have some truth in it, it is not borne out by sufficient evidence for the Tribunal to find that the Secretary-General crew clearly mistaken conclusions from the facts.

That finding holds good despite the fact that the complainant has continued to perform all or some of the duties of her former post. The redistribution of posts is an ambitious undertaking and one which can be carried out only in stages.

7. Lastly, the complainant alleges that the staff member appointed to the P.3 post to which she herself lays claim has no experience in the subject of his work, and that she herself does. She nevertheless refrains from saying that he does not have the qualifications required and she has therefore failed to establish any breach of the principle laid down in Regulation 1.2 whereby staff members are assigned to duties r accordance with their qualifications.

8. Since the complainant has failed to show that the decision is tainted with any flaw which entitles the Tribunal to quash it, the complaint must be dismissed.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, Vice-President, the Right Honourable Lord Devlin, P.C., Judge, and Mr. Hubert Armbruster, Deputy Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Bernard Spy, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 24 April 1980.

(Signed)

André Grisel
Devlin
H. Armbruster

Bernard Spy

Updated by PFR. Approved by CC. Last update: 7 July 2000.