

**G. (No. 6)**

**v.**

**UPU**

**136th Session**

**Judgment No. 4672**

THE ADMINISTRATIVE TRIBUNAL,

Considering the sixth complaint filed by Mr D. G. against the Universal Postal Union (UPU) on 5 June 2020 and corrected on 7 July, the UPU's reply of 15 October 2020, the complainant's rejoinder of 18 January 2021 and the UPU's surrejoinder of 31 March 2021, corrected on 9 April 2021;

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

Having examined the written submissions;

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

The complainant challenges the title of his post following his reinstatement.

By an internal memorandum of 17 June 2019, entitled "Internal Memorandum No. 21/2019 on staff changes from 1 December 2018 to 1 September 2019 at the UPU", it was announced that the complainant was reinstated as "Expert Translator" within the French Translation Service. The complainant's reinstatement was ordered by the Tribunal in Judgment 3928, delivered in public on 6 December 2017, in which the Tribunal set aside the decisions to abolish the complainant's post and to terminate his appointment and ordered UPU to reinstate him in the post he occupied prior to its unlawful abolition.

Upon his return, the complainant requested in a letter of 18 July 2019 to the Director General that the title of his post be corrected from “Expert Translator” to that of “Reviser/Expert Translator”.

By a letter of 12 September 2019, the Deputy Director General replied that the complainant had been appointed to the post of “French Translator” in 1997, that this title had been modified to “Expert Translator” in 2008 during a restructuring process and that his request during the restructuring to have the title of his post modified to that of “Translator/Revisor” had been declined, as the proposed title would not have been consistent with the titles and associated functions of other posts within the translation services. Therefore, Internal Memorandum No. 21/2019 had correctly identified the title of his post as “Expert Translator”. He further noted that the title “Reviser” was not applied to any post within UPU’s translation services.

On 27 September 2019, the complainant requested the review of that decision.

On 25 November 2019, the complainant lodged an internal appeal with the Appeals Committee against the implied decision to reject his request for review of 27 September 2019.

On 2 December 2019, the Deputy Director General rejected his request for the reasons set out in the letter of 12 September 2019. He noted that, contrary to the complainant’s allegations, his post had never been reclassified as “Reviser”. Pursuant to Administrative Instruction No. 17/Rev 3 on post classification and Article 127.2.1 of the UPU General Regulations, it is the Director General who is solely responsible for classifying posts within the secretariat and determining their associated titles and descriptions. The complainant’s request for revision of the title in 2008 and the request of his supervisor to that effect during the same timeframe, which were both declined, could not in any way be equated with a decision of the Director General to revise the title of the post in question. As stated in the letter of 12 September 2019, his request for modification of the title of his post had been declined precisely because the proposed title of “Translator/Revisor” was not consistent with the titles and associated functions of the post in question or other posts within the translation services. Specifically, the title of

“Reviser” was not applied to any post within UPU’s translation services. The Deputy Director General emphasized that there had never been a decision of the Director General to adjust the title or description of the post occupied by the complainant and that past actions seeking to revise the concerned job title without the authorization of the Director General could not be taken into consideration as such actions were not consistent with the requirements of the Administrative Instruction on post classification.

In its report of 19 December 2019, the Appeals Committee found that the titles had undergone several changes in line with changing needs of the work undertaken, but that there had been no substantive change in the job assigned to the complainant and that, therefore, he had no cause for grievance. It accordingly recommended to dismiss the complainant’s appeal.

On 6 March 2020, the complainant was informed that the Director General had decided to follow the Appeals Committee’s recommendation to dismiss his appeal. That is the impugned decision.

The complainant asks the Tribunal to quash the impugned decision and order the UPU to retroactively modify his official title in all documents to “Reviser/Expert Translator” so as to accurately reflect his functions. He further asks that the UPU issue a corrigendum of Internal Memorandum No. 21/2019 with the correct title. He claims moral damages, exemplary damages, as well as costs, with interest on all sums awarded.

The UPU submits that the complaint is irreceivable and, subsidiarily, entirely unfounded.

#### CONSIDERATIONS

1. The complainant requests that oral proceedings be held. However, the Tribunal is satisfied that the parties have presented sufficiently extensive and detailed submissions and documents to allow the Tribunal to decide the matter without recourse to oral proceedings. That application is therefore dismissed.

2. The immediate origin of this complaint is a letter of 18 July 2019 from the complainant to the Director General of the International Bureau, Universal Postal Union (IB UPU). The letter recounted that in Internal Memorandum No. 21/2019 of 17 June 2019 from the Director General addressing staff changes within the organisation, the memorandum noted the reinstatement of the complainant to a position described as “P3 Expert Translator”. The circumstances of the reinstatement will be discussed shortly. The 18 July 2019 letter also recounted that in a 17 June 2019 organisational chart, the complainant’s position was described as an “Expert Translator” as it was in a contemporary directory containing contact details of certain staff including the complainant. The complainant sought a correction of the title of his post in the organisational chart and in the list of addressees in the directory. While he did not say so explicitly in the 18 July 2019 letter, it appears the complainant was requesting his position be described in those last two mentioned documents as “Reviser/Expert Translator”.

3. This request was refused by letter dated 12 September 2019 from the Deputy Director General. This refusal led to an internal appeal which was addressed by the Appeals Committee in a report of 19 December 2019. The Committee said that: “over the years the structure and titles of the officials at IB UPU had undergone several changes in line with changing needs of the work being undertaken by IB UPU. Further, the [Appeals Committee] did not find any substantive change in the job assigned to [the complainant]. In view of this the [Appeals Committee] feels that there is no cause of grievance on the part of [the complainant].” The Director General “fully endorse[d] the recommendation of the Appeals Committee” in a letter dated 6 March 2020 and which can be taken to have dismissed the appeal. This is the impugned decision.

4. The Tribunal’s jurisdiction centres on whether there has been a reviewable administrative decision which, in turn, implies any act by an officer of an organisation which has a legal effect (see Judgments 4499, consideration 8, 3141, consideration 21, and 532, consideration 3). In the present case, the decision of 12 September 2019 and the subsequent

decision of 6 March 2020 had a legal effect on the complainant potentially for two reasons. The first is that he held a position with a title and a decision was made to change that title. If that was so then possibly, his status, reflected in the original title, was diminished and there was a derogation from his right to the title, as discussed in Judgment 1407, considerations 5 and 7.

5. The second reason flows from an earlier judgment of the Tribunal, namely Judgment 3928 delivered in public on 6 December 2017, in which the complainant successfully challenged the abolition of the post he then held and the subsequent termination of his contract. In that case the Tribunal made an order that the organisation “reinstates the complainant as indicated in consideration 20”. That consideration spoke of the organisation reinstating the complainant “in the post he occupied prior to its unlawful abolition, as from the date on which the termination of his contract took effect”. In the account of the facts at the beginning of the judgment it was said that: “at the material time, [the complainant] was ‘Reviser/Expert Translator’” and in consideration 2, the Tribunal spoke of “the abolition of [the complainant’s] P3 post as Reviser/Expert Translator”.

6. The Tribunal deals firstly with the effect of Judgment 3928. It is true that on one view, the reinstatement order may have been intended to require reinstatement into a position entitled, as said in this judgment, of “Reviser/Expert Translator”. However, the description of the position was never an issue raised by the parties for the Tribunal to address in those proceedings. In evidence in the present proceedings and in those leading to Judgment 3928 are organisational charts current for the period during which the complainant’s position was abolished, his employment terminated, and the reinstatement order made. In these organizational charts, the job description for the complainant’s position is “Expert Translator”. Moreover, in the letter informing the complainant of the abolition of his post in evidence in the earlier proceedings, the abolished post was described as “Reviser (French Translation Service)”. The job description of the position then held by the complainant at the time of termination was “Reviser”. In these circumstances it cannot be

inferred that the Tribunal intended, by the reinstatement order, that the complainant be reinstated into a post which had to have the title of “Reviser/Expert Translator” and thereby created, by operation of the order, a legal right to have the position described using that title. The Tribunal had in mind its order operating in relation to the substance of the post having regard to duties, salary and other emoluments and not the title. Thus, by operation of the reinstatement order, the complainant did not derive a legal right obliging the organisation to entitle the position to which he was reinstated “Reviser/Expert Translator”. Accordingly, any decision to use some other description or not use that one, did not violate a right conferred by the order made by the Tribunal.

7. On a similar basis, the first reason referred to above, namely that he held a position with a title and a decision was made to change that title, thereby affecting his status, is unfounded. In Judgment 1407, which was an unusual case and is central to the complainant’s argument on this point, the change to the title was deliberate, clear and not justified by organisational or related reasons. The change was from a title containing the word “assistant” to a title containing the word “secretary”. There was no scope to argue in that case, as it can be in this case, that the title of the position occupied by the complainant initially, was unclear or uncertain. Moreover, in those proceedings there was persuasive evidence accepted by the Tribunal that the adoption of the new title diminished the standing of the post occupied by the complainant. While this is asserted by the complainant in the present case, even assuming there was a clear alteration of a title (which there was not), there is no persuasive evidence this is so.

8. The refusal to meet the complainant’s request in the letter of 18 July 2019 had no legal effect on the complainant. As neither the impugned decision nor the decision of 12 September 2019 had a legal effect on the complainant, there was no challengeable administrative decision in this case. Accordingly, the complaint is irreceivable and should be dismissed.

DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 16 May 2023, Mr Michael F. Moore, President of the Tribunal, Ms Rosanna De Nictolis, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 7 July 2023 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

ROSANNA DE NICTOLIS

HONGYU SHEN

DRAŽEN PETROVIĆ