

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**C. (No. 3)**

**v.**

**ITU**

**137th Session**

**Judgment No. 4778**

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Mr L. C. against the International Telecommunication Union (ITU) on 15 November 2021 and corrected on 16 December, ITU's reply of 2 March 2022, corrected on 9 March, the complainant's rejoinder of 8 April 2022 and ITU's surrejoinder of 11 May 2022;

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, who was promoted from grade G.6 to grade P.3, challenges what he regards as the withdrawal of the decision to take his family allowance into account when determining his step in his new grade P.3.

Facts relevant to the present case are set out in Judgment 4777, also delivered in public this day, which related to the complainant's second complaint, in which he impugned the decision of 22 December 2020 concerning the calculation of his remuneration and the determination of his step following his promotion in November 2019 from grade G.6 to grade P.3, including "to the extent that it ignore[d] the decision to take

into account family allowances when determining his step within grade P3”.

Suffice it to recall that the complainant joined ITU in 1999. In 2019, although he held grade G.6, he applied for a grade P.3 post. By a decision of 28 October 2019, the Secretary-General decided to appoint him to that post with effect from 1 November 2019.

On 11 November 2019 the Human Resources Management Department (HRMD) forwarded to the complainant a simulation of his payslip for November 2019 reflecting his promotion from grade G.6, step 11, to grade P.3, step 6. On 9 March 2020 the complainant submitted to the Secretary-General a request for reconsideration entitled “Effect of promotion”, in which he stated that he was “very surprised by the effect of [his] promotion on the level of [his] remuneration” and claimed that his pay should be “at least equal to what it [would have been] [if he had] been promoted to the grade immediately above”, that is grade G.7, and that the amount of his family allowance should remain as it was before his appointment to grade P.3. On 14 April 2020 the head of HRMD informed the complainant that the Secretary-General had decided to dismiss his request for reconsideration.

On 4 June 2020 the complainant lodged an appeal with the Appeal Board, in which he asked for his remuneration to be reviewed. In its reply of 3 August 2020 to the complainant’s appeal, ITU indicated that the complainant’s remuneration and step had been determined as follows:

“From 2012, the Union decided to take voluntary action to compensate for the reduction in the number of staff members promoted from category G to posts classified in category P. [...] To this end, the staff members affected have since seen an adjustment in the guaranteed amount (or personal transitional allowance (‘PTA’)) equivalent to two steps in their original grade, calculated at the date of promotion from G to P. [...]

[The complainant] has benefited from this practice which does not derive from the rules but from a voluntary action by the Union [...]

Child allowances were added, both in relation to his past (originating) G.6 remuneration and to his (post-promotion) P.3 remuneration, in order [...] to compare the two amounts and thus identify the step on the P.3 annual salary scale which would be at least equal to the amount of the G.6 remuneration increased by two steps.

[...]

As a result, [the complainant] was assigned a step that was far higher than if the family allowances had not been taken into account. This is how he was assigned to step 6 [...]"

On 21 October 2020 the Appeal Board delivered an opinion in which it recommended, inter alia, that the complainant's claim to have his remuneration reviewed should be rejected. The complainant was then informed, on 22 December 2020, that the Secretary-General had decided to reject all his claims. That is the impugned decision in the second complaint filed by the complainant against ITU on 22 March 2021 and corrected on 22 April 2021.

On 23 April 2021 the complainant submitted a claim for "backpay" to the head of HRMD, in which he maintained that, on his promotion to grade P.3, "it had been decided [...] to take family allowances into account when determining [his] step within grade P3", but that this had never been implemented because "[his] remuneration ha[d] always been calculated on the basis of step 6 which does not take family allowances into account" and that "if they are taken into account, this leads [...] to step 10". He asked for this "shortcoming", which had "obviously escaped the Appeal Board's notice", to be remedied.

On 11 May 2021 the head of HRMD replied to the complainant as follows:

"We have realised that the explanations provided last year were in fact partly inaccurate, for which we apologise. In particular, it is correct that family allowances were not taken into account when determining your step in your new P.3 grade. They were, however, taken into account when applying our practice of granting you an allowance (PTA) equal to the value of two steps in your previous grade.

[...]

In light of the above, it is appropriate for your remuneration to remain as calculated following your acceptance of the promotion."

In an email of 12 May 2021, the complainant stated that he "underst[ood] that the decision to take family allowances into account when determining [his] step and therefore [his] grade P3 salary [had been] withdrawn and that [his] claim for backpay [had been] rejected" and asked for those decisions to be re-examined. On 13 May 2021 the

head of HRMD replied that “the calculation of [his] salary after promotion to P.3 ha[d] been made at the end of 2019” and that no new decision to take his family allowance into account when determining his step had been taken and, therefore, there was no decision to withdraw.

On 13 May 2021 the complainant lodged another appeal with the Appeal Board.

The Appeal Board delivered its opinion on 11 August 2021 and concluded that the complainant’s appeal of 13 May 2021 was irreceivable because the matters raised therein had already been dealt with in the context of the complainant’s previous appeal lodged on 4 June 2020 and were the subject of his second complaint before the Tribunal.

On 16 August 2021 the complainant was informed that the Secretary-General had decided to reject his appeal of 13 May 2021 as irreceivable. That is the impugned decision in the complainant’s third complaint.

The complainant seeks the setting aside of the impugned decision of 16 August 2021 and of the decisions of 11 and 13 May 2021. He claims the payment of arrears of salary and pension contributions based on step 10 with effect from the date of his promotion, together with interest, and damages for the moral injury he considers he has suffered, which he assesses in his rejoinder as at least 10,000 euros. Lastly, he seeks the award of 6,000 euros in costs. In his rejoinder, he asks the Tribunal to order ITU to produce new payslips.

ITU asks the Tribunal to dismiss the complaint as irreceivable and unfounded.

## CONSIDERATIONS

1. In his third complaint, the complainant impugns ITU’s decision of 16 August 2021 which rejected his appeal of 13 May 2021 as irreceivable, as the Appeal Board had also found in its opinion of 11 August 2021. According to ITU, the complainant’s appeal raised

matters identical to those that were already the subject of his second complaint pending before the Tribunal.

2. ITU asked for the present complaint to be joined to the complainant's second complaint, which gave rise to Judgment 4777, also delivered in public this day. It is true that the factual contexts behind the two complaints converge in many respects and that, as set out below, the object of each one is redundant. However, given that the complaints involve different impugned decisions, different opinions of the Appeal Board, and provisions of the Staff Rules that are not entirely the same, and that they are based on arguments that differ in content, the Tribunal considers it appropriate to deal with the two cases separately and to render a separate judgment for each of them. Accordingly, the complaints will not be joined.

3. The Tribunal notes that the complainant states in his third complaint that he relies on Staff Regulation 3.16.1 to justify his claim for back-payments of the salary to which he was entitled following his promotion to grade P.3 on 1 November 2019. It is apparent from the submissions that the complainant identifies the source of this entitlement as the "decision" of which ITU is said to have notified him in its reply of 3 August 2020, lodged in the context of the complainant's appeal with the Appeal Board which formed the object of his second complaint, "to take family allowances into account when determining his step within grade P3".

The Tribunal also notes that, in his second complaint, the complainant submits that the decision of 22 December 2020 impugned in those proceedings should be set aside, including "to the extent that it ignores the decision [communicated in the reply of 3 August 2020] to take into account family allowances when determining [his] step within grade P3", and seeks compensation for the whole of the injury he alleges he has suffered, in other words payment by ITU of "all salary it owes [him]", together with interest, and damages for the moral injury allegedly suffered.

4. While the complainant recognises that the two cases are connected, he maintains that the object of the two appeals was not identical and that, contrary to ITU's contention, the appeal that led to his third complaint could not, in his view, be regarded as irreceivable by the Appeal Board and the organisation.

5. The Tribunal has already recalled that, in accordance with a recognised general principle of law, a person cannot submit the same matter for decision in two separate proceedings (see, for example, Judgments 4530, consideration 7, 4085, consideration 7, 3291, consideration 6, and 2742, consideration 16).

6. In the present case, the object of the dispute in the complainant's third complaint is the remuneration to which he contends he is entitled based on what he regards as the decision by the Administration to take into account the family allowances that he previously received when determining his step within grade P.3, by claiming back-payments of salary with effect from each due date since the date of his promotion. The Tribunal notes that this object is identical, to that extent, to one of the claims specifically mentioned in his second complaint, that is a claim for compensation for the whole of the material injury allegedly suffered, which corresponds, according to the complainant's submissions, to all salary owed to him, together with interest with effect from each due date.

7. In this context, the Tribunal considers that ITU was right to follow the Appeal Board's recommendation in rejecting the complainant's appeal in the present case because the matters raised had already been examined in the complainant's other appeal, which formed the basis of his second complaint before the Tribunal. The fact that, in the present case, the complainant relies on different staff rules in support of his claim for back-pay does not render the object of his claim any different from that in his second complaint in terms of the injury suffered. From this point of view, the complainant's plea that his right to an effective internal appeal was breached by the organisation's refusal to address the same question for a second time is unfounded.

8. Moreover, in Judgment 4777 delivered in public this day on the complainant's second complaint, the Tribunal dismissed the complainant's arguments in relation to ITU's reply of 3 August 2020 lodged in the context of the appeal which led to the Appeal Board's first opinion. The – ultimately identical – argument relied on by the complainant in the present case, relating to the alleged error of law stemming from what he regards as a withdrawal by the organisation of its “decision” contained in that reply, is therefore also unfounded.

9. As a result of the foregoing, the complaint is both irreceivable and unfounded, and must be dismissed in its entirety.

10. In the circumstances, there is, in any event, no need to grant the request for the production of documents contained in the rejoinder.

#### DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 2 November 2023, Mr Patrick Frydman, President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Mirka Dreger, Registrar.

Delivered on 31 January 2024 by video recording posted on the Tribunal's Internet page.

*(Signed)*

PATRICK FRYDMAN    JACQUES JAUMOTTE    CLÉMENT GASCON

MIRKA DREGER