

The Administrative Tribunal,

Considering the complaint filed by Mrs D. K. against the International Telecommunication Union (ITU) on 4 August 2006, the ITU's reply of 9 October, the complainant's rejoinder of 10 November and the Union's surrejoinder of 21 December 2006;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions;

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

A. The complainant, a Mauritian national born in 1956, joined the ITU in 1988 as a Training and Support Programmer at grade P.2 in the Computer Department. Upon the completion of a two-year probationary period, her appointment became permanent. In 1991 she was promoted to grade P.3 and occupied thereafter various positions in the Personnel and Social Protection Department prior to being seconded in October 2003 to the World Meteorological Organization for two years where she held grade P.4. In April 2003 she was granted a special post allowance at grade P.4 with retroactive effect from 1 February 2003 on account of additional responsibilities.

Before the end of her secondment, which was due to terminate on 30 September 2005, the complainant contacted the ITU to discuss her return to the Union.

On 4 July she met with the ad interim Chief of the Personnel and Social Protection Department. According to his note to file of 8 July 2005 concerning the meeting, he told her that, in his view, she would be qualified to lead the implementation of a comprehensive human resources system and decision support system, known as the SAP project. The complainant indicated that she was not interested in a technical function related to information services and that given her training and experience in personnel line management functions, she expected to be offered a senior line management position within the Personnel and Social Protection Department, which meant a P.4 position. The ad interim Chief of Personnel also stated that he had informally heard that she had had some "relational issues" in the Union and in the organisation to which she had been seconded; he referred to e-mails contained in her personnel file to support his allegations. The complainant denied that there were any "relational issues" and asked for details so that she could refute the allegations. The ad interim Chief of Personnel replied that he would seek further information and either provide her with specific incidents or consider that he had been misinformed or had misunderstood. During a second meeting that took place on 26 August, the ad interim Chief of Personnel stated that upon her return from secondment she would join the Information Services (IS) Department. In the note to file concerning the meeting, the ad interim Chief of Personnel indicated that prior to meeting the complainant, he had informed the Chief of the IS Department that, as discussed with him in early July, the Secretary-General considered that it would be in the interests of the ITU to assign the complainant to the IS Department upon her return. The Chief of the aforementioned department refused and asked that the complainant not be given any feedback concerning the "relational issues" that had been identified. By a letter of 3 October the Secretary-General informed her that she was assigned, as from 1 October, to the post of Project Officer, at grade P.3, in the IS Department.

On 1 November 2005 the complainant requested the Secretary-General to reconsider his decision of 3 October. The latter replied on 12 December 2005 that he had decided to maintain his decision, stressing that, "in light of a serious and in-depth consideration of [her] personal skills and experience", it was in the best interests of the Union. On 21 February 2006 she filed an appeal against that decision. In its report of 26 April 2006, the Appeal Board recommended that the Secretary-General's decision of 3 October 2005, as confirmed on 12 December 2005, be maintained. It considered that, in the case of secondment to another organisation, a staff member has no right of return to a specific post. It also held that the decision to assign the complainant to the IS Department was not flawed since she had the competencies required to work there. It emphasised that such a decision is the prerogative of the Secretary-General; in its view, the decision was well founded and involved no breach of due process.

By a memorandum of 15 May 2006, the Chief of the Personnel and Social Protection Department informed the complainant that the Secretary-General had decided to uphold the Board's recommendation. That is the impugned decision.

B. The complainant alleges that she was sanctioned because she went on secondment. According to her, the "obvious thing" to do would have been to place her, upon her return from secondment, in one of the vacant positions in the Personnel and Social Protection Department, her area of expertise; it is indeed highly irregular that a staff member is not returned to the same functional area. She asserts that the Chief of the IS Department did not want her in his department as he considered her to be inappropriately qualified to work there. Furthermore, her dignity was harmed due to the fact that she was placed in a position where staff of lower grades were giving her instructions for work because she did not have the required competencies in the technical area to which she was assigned.

The complainant submits that the Secretary-General's decision to assign her to the IS Department was taken for an improper purpose, in particular because it was based on false allegations of interpersonal difficulties. In this respect, she points out that, contrary to what was said by the ad interim Chief of Personnel during the meeting of 4 July 2005, she is not difficult to work with and there is no evidence to the contrary. She also contends that she was deprived of an opportunity to respond to these allegations. In addition, the ITU has failed to give her any real or plausible reason for her "abrupt transfer" to the IS Department, which shows, in her view, that the impugned transfer decision was not based on objective grounds and is consequently tainted with bias and personal prejudice.

She further asserts that in taking his decision the Secretary-General failed to consider the long-term needs of the ITU. Indeed, he effected a permanent transfer solely with regard to temporary considerations, i.e. the implementation of a comprehensive human resources system and decision support system, which "would be an asset to current projects".

Lastly, the complainant explains that had she been allowed to return to work in the Personnel and Social Protection Department after her secondment she would soon have qualified for a personal promotion. She argues that, as a result of her transfer to the IS Department, she will no longer qualify for such promotion and that her chances of advancement in that department are virtually nil due to her lack of expertise in that area; she therefore alleges that she has also suffered prejudice on that account.

The complainant requests hearings and asks the Tribunal to order the ITU to produce original records, in whatever form, concerning her performance, her conduct and the basis for the Union's decision to assign her to the IS Department. She also asks that the impugned decision be quashed and that she be assigned to a P.3 post within "the [Personnel and Social Protection] Department, being a post which is appropriate having regard to her experience and qualifications and her dignity as a Human Resources officer and taking account of her entitlement under Service Order No. 01/12 to enjoy the special post allowance in accordance with regulation 3.8 of the ITU staff regulations". In addition, she seeks the removal of the "adverse material kept without her knowledge on her files" and claims 50,000 Swiss francs in moral damages as well as costs.

C. In its reply the ITU submits that the "Inter-organization agreement concerning transfer, secondment or loan of staff among the organizations applying the United Nations common system of salaries and allowances" does not directly address the question of the link between seconded staff members and the assignment that they leave in the releasing organisation. Moreover, according to the Tribunal's case law, international civil servants have no acquired right as regards their assignment and are therefore liable at any time to be reassigned in the interests of the organisation.

In its view the decision to assign the complainant to the IS Department was lawful inasmuch as all the legal conditions pertaining to assignment were fulfilled. It points out that in October 2005, when the complainant returned to the ITU, no line management position was available within the Personnel and Social Protection Department; that is to say there was no line management position that was funded and that the Secretary-General had decided to fill, in particular because the Personnel and Social Protection Department was due to be reorganised. It further emphasises that the complainant had met twice with the ad interim Chief of Personnel and was thus consulted prior to reassignment.

Referring to the complainant's curriculum vitae, it asserts that she was perfectly qualified for the assignment in question since she had performed essentially the same tasks in the recent past. Therefore her assignment to the

“highly visible and strategic” SAP project in no way undermined her reputation or dignity. In addition, it draws attention to Staff Regulation 1.2, according to which “[s]taff members shall be assigned to their posts at the Headquarters and in the offices away from the Headquarters according to the needs of the Union and, as far as possible, in accordance with their qualifications”.

Regarding the issue of rumours concerning the complainant’s alleged relational difficulties while employed in the Personnel and Social Protection Department, the defendant explains that since the ad interim Chief of Personnel did not know the complainant personally and believed that she had the ideal profile to contribute to the SAP project, he asked various colleagues their opinion. He was told that she was extremely competent but could, at times, be difficult to work with. He subsequently met with the complainant and further investigated the allegations of relational difficulties. Considering that the matter was immaterial and could not have any bearing on the complainant’s return to the Union, he did not bring that issue to the attention of the Secretary-General.

The ITU also rejects the complainant’s allegation that it has effected a permanent transfer solely with regard to temporary considerations and has consequently failed to take into consideration the long-term needs of the Union. It explains that the complainant’s assignment to the SAP project is indeed of a temporary nature, as is any assignment to any project, and that all assignments are subject to change in the interests of the Union.

Contrary to the complainant’s allegation that her new assignment could damage her career possibilities, it asserts that it has improved them by enabling her to acquire an advantage over colleagues in the Personnel and Social Protection Department who have not developed comparable expertise in the field of process re-engineering and automation.

D. In her rejoinder the complainant presses her pleas. To support her allegation that her assignment to the IS Department constituted a sanction, she points out that the Union decided to extend the short-term appointment of a staff member who was hired to take over her duties while she was on secondment. She maintains that her new assignment constitutes an obstacle to her career development and brings forward two new arguments, namely that the “report” provided about her “psychological diseases” has been placed in her personnel file, to the detriment of her career progression, and that she was not even shortlisted for a P.3 post for which she applied, whereas a G.7 staff member was appointed.

E. In its surrejoinder the Union maintains its position. It denies that the recruitment of a staff member on a short-term contract has prevented the complainant’s reinstatement in the Personnel and Social Protection Department. It explains that, following her departure in October 2003, her duties were redistributed and that the tasks carried out by the short-term staff member did not fall within her duties or area of competence. It also denies that the so-called “report” concerning the “psychological diseases” suffered by the complainant, which was merely an e-mail from the ad interim Chief of the IS Department, was placed in her personnel file. With regard to her application for a P.3 post, it indicates that she was in fact shortlisted, as was another P.3 staff member, whose application was likewise unsuccessful.

CONSIDERATIONS

1. This case concerns the Secretary-General’s decision to reassign the complainant upon her return to the ITU following a two-year secondment to another international organisation. She was informed, on 26 August 2005, of the decision to assign her to the IS Department. Although she accepted the post she stated that it did not meet her expectations and expressed concern that colleagues would view this assignment as a move to get rid of her. She also detailed her reasons for being uncomfortable with the assignment.

2. By a letter of 3 October 2005 the Secretary-General informed the complainant that she was assigned as from 1 October to the post of Project Officer, at grade P.3, in the IS Department. The complainant requested a reconsideration of the decision. On 12 December 2005 she was informed that the Secretary-General had decided to maintain his earlier decision. She appealed the decision to the Appeal Board. In its report of 26 April 2006 the Board recommended that the Secretary-General maintain his decision of 3 October 2005 as confirmed on 12 December 2005. By a memorandum dated 15 May 2006, the Chief of the Personnel and Social Protection Department informed the complainant that the Secretary-General had decided to maintain his decision.

3. The complainant challenges the decision to assign her to the IS Department on the basis that it was

improperly motivated and based on reasons to which she had no opportunity to respond, that it violated her dignity and constituted a breach of her right to be given work in accordance with her skills, training and expertise. She alleges that the transfer was, in effect, a hidden disciplinary measure.

4. The Tribunal finds that the determinative issue centres on the complainant's assertion that the transfer was based on reasons to which she had no opportunity to respond. In particular, she submits that she was never given specific information regarding the allegations of "relational issues" nor was she given copies of documents allegedly supporting the existence of relational difficulties. As a result, she maintains that she was deprived of an opportunity to respond to the adverse material prior to the impugned decision being made.

5. Before turning to the submissions, a reiteration of certain well-established principles by the Tribunal is useful. Decisions to transfer are at the discretion of the executive head of an organisation and are subject to limited review. As stated in Judgment 1556, under 5:

"Like appointment and promotion, transfer is at the discretion of the executive head of the international organisation and subject to only limited review. The Tribunal may interfere only if the decision was taken ultra vires or shows formal or procedural flaw or mistake of fact or law, or if some material fact was overlooked, or if there was misuse of authority or an obviously wrong inference from the evidence. And the Tribunal will be especially wary in reviewing a transfer since it may not replace the employer's rating of the official with its own."

6. While the head of an organisation must take into account the organisation's interests and the staff member's abilities and interests in the exercise of the discretion to transfer a staff member, in cases where the two are at odds, greater weight may be accorded by the decision-maker to the interests of the organisation (see Judgment 883).

7. It is also well established in the case law that the preservation of harmony and good relations in a working environment are legitimate interests. A decision to transfer a staff member will not be invalid if taken for that purpose. Accordingly, in the present case, even if the decision to transfer the complainant was motivated by a desire to resolve relational difficulties, provided the new position accorded reasonably with her qualifications and respected her dignity, there would be no basis on which to interfere with the decision.

8. The ITU's reply to the complainant's argument concerning the failure to provide her with an opportunity to respond to allegations regarding relational difficulties is based on a number of assertions and inferences the Union seeks to draw from those allegations. As will be seen, the record before the Tribunal does not reveal a factual foundation for all these allegations.

9. At the outset it should be noted that according to the note to file of 8 July 2005, i.e. the first note to file, concerning the meeting of 4 July there appear to be two sources for the allegations of relational difficulties. At that first meeting with the complainant, the ad interim Chief of Personnel referred to having "heard" informally about relational difficulties. He told the complainant that he would seek further information and either get back to her with the specific details of the allegations or consider that he had either misunderstood or been misinformed. The first note does not indicate what, if any, inquiries were made regarding the allegations he had "heard". The two e-mails referred to in the first note are the second source.

10. The ITU maintains that the ad interim Chief of Personnel informed the complainant about the allegations of relational difficulties in response to her request for a promotion to a P.4 position to allow her an opportunity to react to those allegations; that he was acting in the interests of full transparency; and that the comments were nothing more than the normal sort of fact-finding dialogue that takes place between a supervisor and a staff member, particularly, in those circumstances where the supervisor does not know the staff member personally.

11. The Union states that the complainant satisfactorily refuted the allegations. Additionally, based on the follow-up investigation conducted shortly after the first meeting of 4 July 2005, the ad interim Chief of Personnel determined that the relational problems were not material, that is, they would not have a bearing on the complainant's return and were not worth pursuing. It maintains that the matter was resolved and closed in favour of the complainant shortly after the first meeting of 4 July 2005 and was not brought to the attention of the Secretary-General. As further support for the assertion that the matter was closed shortly after the first meeting, the Union points out that the ad interim Chief of Personnel did not raise the matter with the complainant at the second meeting in August 2005 nor did the complainant ask for further feedback on the rumours.

12. Thus, the defendant submits that the remarks made by the ad interim Chief of Personnel have no impact on the lawfulness of the decision since they were not brought to the attention of the only official having the authority to transfer a staff member, namely, the Secretary-General.

13. With regard to the complainant's submission that she has been deprived of an opportunity to respond to adverse material in her personnel file, in particular the e-mails, the Union argues that since she was the author of the e-mails, she cannot claim to have been unaware of them or their content.

14. Turning first to the assertion that the ad interim Chief of Personnel determined that the relational problems were not material, the Tribunal observes that in the first note to file following his review of the two e-mails at issue, the ad interim Chief of Personnel stated that "[a]s a consequence, [he] [could not] at that time recommend a line management position in the personnel department for [the complainant] and could not envisage granting her a promotion to P4 level". He also stated that "[a]t [that] time, the most appropriate solution [...] appear[ed] to [him] to recommend that [the complainant] be given a position within the IS department". It is evident from these statements that in the mind of the ad interim Chief of Personnel the issue of relational difficulties was material with regard to the complainant's assignment within the Union as well as the possibility of promotion.

15. In the same note to file, under the heading "[t]he next steps are", the ad interim Chief of Personnel wrote that he wished to hold another meeting with the complainant to cover a number of points, and in particular to "[c]larify the situation with respect to the alleged relational issues". This statement makes it abundantly clear that at least for the ad interim Chief of Personnel, the issue was not resolved.

16. During the week prior to his second meeting with the complainant in August 2005, the ad interim Chief of Personnel reported that when he had contacted the Chief of the IS Department about the decision taken on 14 August 2005 to assign the complainant to the IS Department, the latter had reiterated his earlier concern, expressed to him on 7 July 2005, that the complainant would be likely to create "relational issues" within the department.

17. It is evident that the decision to assign the complainant to that department was made at a time when the "relational issues" were still alive and at a point when the ad interim Chief of Personnel had not yet had an opportunity to clarify the issue with the complainant. As an aside, the Tribunal appreciates that the complainant has filed material that directly contradicts the ad interim Chief of Personnel's account of his conversation with the Chief of the IS Department. However, the point being made here is that the Union's assertions are not supported by the record.

18. In support of the assertion that the allegations concerning relational difficulties were no longer material, the ITU also points out that at the meeting of 26 August 2005 with the complainant the ad interim Chief of Personnel did not raise the matter with the complainant nor did the complainant herself raise the issue. Given the ad interim Chief of Personnel's undertaking that he would inform the complainant about any details concerning the allegations and would give her an opportunity to respond or would consider that he had misunderstood or been misinformed, and in light of the fact that he did not raise the matter, the complainant could reasonably infer that the matter had indeed died and, therefore, that there was no need to raise the issue again. Similarly, since at the time of the meeting a decision had already been made regarding the complainant's new assignment, there would have been no reason for the ad interim Chief of Personnel to raise the issue.

19. The ITU also maintains that the Secretary-General was never informed of the relational difficulties issue. There is nothing in the file that either supports or contradicts this assertion. However, assuming that the Secretary-General was never informed, those responsible for making the recommendation regarding the complainant's future assignment were well aware of the issue. Further, in light of the foregoing, it is clear that up until the time the decision was taken around 14 August 2005 it was still a live issue and the complainant had not had an opportunity to respond.

20. The Union's submission that the complainant was well aware of the content of the e-mails is flawed. The issue is not whether she was aware of the content of the e-mails, instead, it is the fact that she was not informed they were even being considered as evidencing a problem. Since she was not made aware of the concern, she was denied the opportunity to respond.

21. The Secretary-General's decision being based on the recommendation coming from staff members and the recommendation being, in part, based on information adverse to the complainant to which she had no opportunity

to respond, the decision of 3 October 2005 itself is flawed and cannot be sustained. The decision of 15 May 2006 rejecting her appeal must therefore be set aside.

22. The complainant has requested oral hearings. The Tribunal is of the view that the material does not support an arguable case of a hidden disciplinary sanction. Consequently, there is no reason to entertain oral hearings. Given the findings of the Tribunal on the issue of due process a consideration of the other issues raised by the complainant is unnecessary.

23. The complainant is awarded 10,000 Swiss francs as moral damages. She is also entitled to an award of costs which the Tribunal fixes at 5,000 francs. All other claims are dismissed.

DECISION

For the above reasons,

1. The decision of 15 May 2006 is set aside.
2. The ITU shall pay the complainant 10,000 Swiss francs in moral damages.
3. It shall also pay her 5,000 francs in costs.
4. All other claims are dismissed.

In witness of this judgment, adopted on 4 May 2007, Mr Michel Gentot, President of the Tribunal, Ms Mary G. Gaudron, Judge, and Ms Dolores M. Hansen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 11 July 2007.

Michel Gentot

Mary G. Gaudron

Dolores M. Hansen

Catherine Comtet