

## SEVENTY-FIFTH SESSION

### *In re SAUNDERS (No. 7)*

#### **Judgment 1281**

THE ADMINISTRATIVE TRIBUNAL,

Considering the seventh complaint filed by Mr. Yann Harris Saunders against the International Telecommunication Union (ITU) on 18 December 1992 and corrected on 12 January 1993, the ITU's reply of 17 February, the complainant's rejoinder of 11 March and the Union's letter of 16 April 1993 stating that it did not wish to file a surrejoinder;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal and Rule 11.1.1.4 of the ITU Staff Rules;

Having examined the written submissions and decided not to order hearings, which neither party has applied for;

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

A. The complainant's career at the ITU has been set out under A in Judgments 970, 988, 989, 1018, 1093 and 1171. This dispute arises out of a decision that the Secretary-General of the Union took on 8 October 1985 to regrade his post to P.2 from G.5 on 1 January 1986. He has time and again objected to that decision in a string of memoranda to his supervisors and the Personnel Department deploring loss in his current earnings and in the value of his future pension.

He appealed on 10 March to the Appeal Board. In its report of 7 August 1992 the Board held that the appeal was irreceivable. On 29 September the Chief of the Personnel Department sent him a copy of the Board's report without comment from the Secretary-General. In a memorandum dated 11 December he asked the Secretary-General to take a final decision by 18 December 1992. Having got no reply, he inferred rejection, and therefore filed his complaint.

B. The complainant objects to the Union's having held up the appeal proceedings in breach of Staff Rule 11.1.1.4. Although that rule requires the Secretary-General to reply within four weeks to an appeal he took seven. The Board ought to have taken up his case by 28 April but did not do so until 26 July and 7 August. It should have reported to the Secretary-General within ten weeks of the filing of his appeal but took until 7 August. The Secretary-General should have sent him a copy of its report the same day but took until 29 September. The Secretary-General had 60 days after receiving the Board's report to reach his decision but he failed to take one.

The complainant objects to the decision to regrade his post from G.5 to P.2. In January 1992 his salary was a fifth lower and his pensionable remuneration 77 per cent lower than the figures would have been had his post continued to be graded G.7. In 1984 the ITU transferred him to a new permanent post at G.7. When it regraded the post P.2 in 1985 his supervisors duped him into thinking that he would later get promotion to P.3. He then went on collecting a special post allowance corresponding to the top step in P.2 - which he had reached four years earlier - pending the outcome of the grading review. But the Administration recommended upgrading the post to P.2, not P.3. Instead of giving him new responsibilities it merely revived a G.7 post it had frozen some time before transferring him.

He wants the Tribunal to (1) quash the Secretary-General's decision to maintain his former post at P.2 on the grounds that it is tainted by analogy with the same flaws as the one of 8 October 1985; (2) quash the Secretary-General's prior decision of 8 October 1985; (3) quash a prior decision of 31 October 1985 promoting him to P.2 as a consequence of the one of 8 October 1985; (4) declare unacceptable the ITU's delay in dealing with his request of 25 February 1986 for an enquiry into the grading of his post; (5) grant him compensation as from 1 January 1986 for injury caused by the decision of 29 September 1992; (6) order "a full enquiry into the grading of [his] former post" in the light of all material evidence and invite the Secretary-General to set out and explain the substantive changes in his duties after 1 January 1986 and to produce the former and definitive job descriptions of his post showing how the changes affected the duties and responsibilities of his immediate supervisors and subordinates; (7) order the Secretary-General to recalculate his pay and pension entitlements as from 1 January 1986 to 24 January 1989 at the appropriate steps in G.7; (8) let him choose between promotion to the Professional category and

remaining in the General Service category with a special post allowance; (9) grant him the special post allowance as from 25 January 1989 on condition that the amount of the allowance yields higher pay and pension and family-allowance entitlements than he would get if he kept grade G.7; (10) reassign him at G.7 with two extra steps beyond the maximum if the special post allowance does not suffice to ensure a normal differential between his new pay in the Professional category and what he would have got in the General Service category; (11) or, by way of alternative to (7) to (10), grant him a lump-sum award of one month's salary and allowances for each year from the date when he asked for the enquiry - 25 February 1986 - and the date of the final decision - 30 September 1992 - and restore his former status in the General Service at G.7 with continuance of the special post allowance; (12) in that event restore him to the top of G.7 and grant him as from July 1990 one additional step for 20 years' service; and (13) award him costs.

C. In its reply the Union fully acknowledges an official's right to appeal but submits that here the complainant's exercise of it is abusive: he has appealed to the Appeal Board thirteen times and lodged seven complaints with the Tribunal. Every time he wants to make good financial loss due to his promotion from G.5 to P.2.

The Union rejects yet again the charge he has levelled in every complaint that he is the victim of "intrigue" by successive chiefs of the Personnel Department, the members of the Classification Review Board and the last two Secretaries- General.

In the ITU's submission his complaint is devoid of merit. His former post was properly graded P.2 as one grading officer recommended in 1985 and as two others also concluded in 1990. The Classification Review Board too, which is a joint body, approved the grade unanimously. The Union acknowledges that the involvement of many people in the grading exercise held it up: if his post had not been correctly graded P.2 the ITU would have made the necessary changes retroactive. But since there was no call for any the delay cannot have caused him "any real damage".

D. In his rejoinder the complainant develops his earlier pleas and presses his claims.

In the year following the change in his status his net pay fell by 6,000 Swiss francs and his pensionable remuneration by some 10,000. Seven years later the gap had widened to 19,000 francs a year in pay and 66,000 in pensionable remuneration. Is it right that after "promotion" someone should still have the same salary as in the previous eleven years and that his earnings should actually be lower and his financial outlook worse?

Vacancy notices the Union issued in 1992 for posts at grade P.2 bear out his case since they expressly allow candidates at G.6 and G.7 to keep their grade. At long last the Union seems to realise what an absurd pass things have reached.

The complainant alleges flaws in the grading procedure and submits that the Union had no good reason to regrade his post and grant him the promotion.

#### CONSIDERATIONS:

1. The ITU recruited the complainant in 1967 at grade G.4 and was granted a permanent appointment at grade G.5 in 1969. By a decision of 8 October 1985 it upgraded his post to P.2 and it later put him at that grade as from 1 January 1986. He constantly sought review of the grading of his post and in the end filed an internal appeal against that decision. On 7 August 1992 the Appeal Board held his appeal to be irreceivable. Its report was notified to him on 29 September 1992 and he gives that as the date of the decision he is impugning in the complaint form. The Secretary-General has taken no decision on the Appeal Board's recommendation and the ITU is not objecting to the receivability of the complaint. Although it submits that the complainant is abusing his right of appeal the Tribunal will go into the merits.

2. According to the case law the grading of posts is a matter within the discretion of the executive head of an international organisation. So the Tribunal will not interfere with the decision impugned in this case unless it was taken without authority or shows some procedural or formal flaw or a mistake of fact or of law, or overlooks some material fact, or is an abuse of authority, or draws a clearly mistaken conclusion from the facts. Moreover, the Tribunal will not substitute its own assessment of the facts for the Secretary-General's.

3. Of the complainant's thirteen claims, which are set out under B above, claim (1) is to the quashing of the decision to maintain his grade at P.2 on the grounds that it shows the same fatal flaws as the prior decision of 8

October 1985.

According to Article VII of the Tribunal's Statute what must be challenged is a final decision taken after exhaustion of the internal means of redress, and it must be challenged within the time limits set in the article. All that the complainant may challenge now is the decision to confirm his grading at P.2: he may not challenge the decision of 8 October 1985 because the time limits for appeal to the Tribunal passed years ago.

4. As to the confirmation of the grading of his post, the Classification Review Board said in its report of 6 December 1991 that it "based its examination of the request on the [International Civil Service Commission] form dated 22 August 1985 which had been prepared by Mr. Saunders' supervisor and to which Mr. Saunders had agreed". It "had before it Report No. 10 to the Classification Review Board dated 3 December 1990".

That report was made by two grading officers and the Chief of the Personnel Department after a "desk audit" of the complainant's post and in response to a request he had made on 22 September 1988 for review of the grading of his post. The report reviewed the job description and made a comparison of the complainant's post with similar posts in other organisations in the United Nations system.

The Board concluded:

"Having considered the knowledge and experience required for the job, the degree of complexity of the work involved, the availability of guidelines and control of the post, the extent of the contacts involved both inside and outside the ITU, the supervisory functions to be carried out and the possible consequences of errors on the part of the incumbent, the Board reached the conclusion that the post was correctly graded at the P.2 level."

The Board's conclusions afford the basis of the impugned decision. Since the complainant has not shown that they are tainted with any of the fatal flaws set out in 2 above, his first claim must fail.

5. Claims (2) and (3), to the quashing of the Secretary-General's decisions of 8 and 31 October 1985, are irreceivable for the reasons stated in 3 above.

6. Claim (4) is to a declaration that the delay in dealing with his request for review of the grading of his post was unacceptable. Although the ITU acknowledges the delay and the Tribunal reaffirms that any time limits in the rules must be strictly adhered to, the delay is immaterial to the lawfulness of the impugned decision and the claim therefore fails.

7. Claim (5) is to compensation as from 1 January 1986 for injury caused by the decision of 29 September 1992, and claim (6) to "a full enquiry into the grading of the complainant's former post". Such matters are not covered by the impugned decision and are not properly at issue in this complaint. The pleas therefore fail.

8. Being consequent upon the claims dismissed above, the remaining claims, (7) to (13), cannot succeed either.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Sir William Douglas, Vice-President of the Tribunal, Mr. Edilbert Razafindralambo, Judge, and Mr. Michel Gentot, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 14 July 1993.

(Signed)

William Douglas  
E. Razafindralambo  
Michel Gentot  
A.B. Gardner

