

NINETY-THIRD SESSION

Judgment No. 2160

The Administrative Tribunal,

Considering the fourth complaint filed by Mrs M. P. against the International Telecommunication Union (ITU) on 11 December 2000, the ITU's reply of 15 March 2001, the complainant's rejoinder of 11 April, and the Union's surrejoinder of 1 June 2001; the complainant's further submissions of 9 June and the Union's further comments of 27 September 2001.

Considering the fifth complaint filed by the complainant against the ITU on 29 March 2001, the ITU's reply of 28 September, the complainant's rejoinder of 15 November, and the Union's surrejoinder of 21 December 2001;

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

Having examined the written submissions and decided not to allow the complainant's application for hearings;

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

A. Facts relevant to these cases are to be found in Judgment 1976 on the complainant's first complaint and also in Judgment 2070 on her third complaint, which was delivered on 12 July 2001. At the request of the ITU

the President of the Tribunal ordered a stay of proceedings of the complainant's fourth and fifth complaints pending the outcome of her third one.

The complainant sustained a foot injury on 20 August 1992, which has been recognised as service-incurred. She experienced ongoing health problems and on 6 April 2000 sent in a form headed "professional illness-accident report" to have the illness that she was suffering from recognised as service-incurred. A specialist in psychiatry that she had consulted, Dr B., sent the ITU a confidential illness-accident medical report on her case on 26 April 2000. In the report he remarked that her depressive syndrome was directly linked to professional harassment at the ITU. He made the same comment in a more detailed report dated 27 July 2000.

The Chief of the Personnel and Social Protection Department wrote to the complainant on 20 July 2000 indicating that he had received the form dated 6 April. He enclosed a breakdown of her sick leave over the four years from 1 August 1996 and informed her that as from 21 June 2000 she had exhausted her right to sick leave on full pay. Her absence from 22 June to 18 July 2000 was to be deducted half from sick leave paid at 50 per cent and half from her annual leave credit, which would allow her to stay on full pay for that period. From 19 to 31 July, however, she would be on half pay and would have to reimburse part of her July salary. From 1 August she would again receive her salary in full and would have the right to carry forward annual leave. He made no mention of Dr B.'s report.

The complainant wrote to the Secretary-General on 28 July 2000 asking for confirmation that a copy of Dr B.'s report had reached the Personnel Department and that it would take appropriate action. She asked for a medical board to be convened to take a decision on her service-incurred illness and related absences in the light of Dr B.'s report. She wanted all absences obtained through that specialist from 1 April 2000 onwards to be treated as "special sick leave following a service-incurred illness", rather than being deducted from her ordinary sick leave entitlement. Having received no reply from the Secretary-General, on 30 September 2000 she filed an appeal - No. 10 - with the Appeal Board.

On 5 October 2000 the Chief of the Personnel Department informed the complainant that on 27 September 2000 she had once more exhausted her entitlement to sick leave on full pay. Again her absences would be deducted partly from sick leave and partly from accrued annual leave, but as from 14 October she would be on half pay. He

told her that her contributions to the United Nations Joint Staff Pension Fund would also be reduced by half.

The complainant wrote to the Secretary-General on 1 November 2000, contesting the letter of 5 October, noting that it too made no reference to Dr B.'s medical report stating that her depressive syndrome had arisen from professional harassment. She objected to being put on half pay when her illness should be considered job-related and asked to be placed on full pay. She sought recognition that her illness was service-incurred. Not having received a reply from the Secretary-General, she filed an appeal - No. 11 - with the Appeal Board on 28 December 2000.

As was mentioned under A in Judgment 2070, the ad hoc Compensation Board examined the complainant's case; it recognised that the complainant was suffering from a 10 per cent impairment of the whole person as a result of her 1992 foot injury. The Board submitted its recommendations to the Secretary-General in a report of 10 October 2000. The Secretary-General endorsed its conclusions and so informed the complainant in a letter of 26 October 2000. The complainant subsequently claimed that she was suffering from a 25 per cent loss of function.

At the request of the ITU, the complainant submitted to a further psychiatric assessment, carried out by Dr A. He drew up a medical report on her case on 13 January 2001.

The Secretary-General informed the complainant in a letter of 25 May 2001 that because she was no longer able to carry out her duties and had exhausted her entitlement to sick leave her contract would be terminated on 29 May. She was granted an invalidity pension, payable as from 30 May 2001.

In a further letter of 28 May the Secretary-General informed her that he would appoint an ad hoc compensation board with a view to establishing on the basis of the medical report drawn up in January 2001 by Dr A., whether her state of health was job-related.

The Appeal Board has not heard either of the two appeals mentioned above, and the complainant has filed her fourth and fifth complaints challenging the implied rejection of her appeals under Article VII, paragraph 3, of the Tribunal's Statute.

B. The complainant, in her fourth complaint, contests the letter of 20 July 2000 relating to the calculation of her sick leave. She submits that although the Administration has never made any reference to the confidential report sent in by Dr B. on 26 April 2000, it is clear from his remarks that the depression she is suffering from was the result of psychological harassment at the ITU. She cites examples of "mobbing activities" which she says the ITU did nothing to stop. Given that her illness has arisen from psychological harassment she wants her sick leave calculated differently, so that her absences are not deducted from her ordinary sick leave entitlement. She objects to not being given prior warning of the changes affecting her sick leave. She considers it "most unfair and inappropriate" to receive a letter - dated 20 July 2000 - announcing changes that had been introduced retroactively.

In her fifth complaint she contends that in the letter of 5 October 2000 the Administration was still not taking into consideration that her illness had arisen from psychological harassment. That letter too made no mention of the report sent in by Dr B. She objects to having her absences deducted from ordinary sick leave and her salary reduced by 50 per cent when her illness is clearly job-related.

In her fourth complaint she seeks the convening of a medical board in respect of her foot condition and her mental state. In both her fourth and fifth complaints she seeks the following redress: recognition by the ITU of Dr B.'s declaration of 26 April 2000; reinstatement of all 'ordinary' sick leave deducted from the four-year statements in respect of her service-incurred injury and illness; reinstatement of her full annual leave credit for the year 2000; the refund of salary lost on account of her sick leave - with interest; reimbursement of any salary deductions from December 2000 (fourth complaint); an instruction that no such deductions are to be made after 1 April 2001 (fifth complaint); full reimbursement by the ITU against all medical bills submitted or yet to be submitted in connection with her service-incurred injury and service-incurred illness; financial compensation under the rules governing compensation contained in Appendix D to the United Nations Staff Rules, for both her foot condition and mental state; an award of damages for moral injury and "bad health"; a full permanent invalidity pension; an order that the ITU will comply with its Staff Regulations and Rules; and costs.

In her fifth complaint she also claims: the quashing of the letter of 5 October 2000 informing her about her sick leave situation; recognition by the organisation of Dr A.'s assessment of 13 January 2001; compensation under ITU

Staff Rule 6.2.4 relating to disability attributable to service; an order by the Tribunal that her contributions to the pension fund must be based on a full rather than a reduced salary; damages for psychological harassment; two years' salary in compensation for working 25 per cent more than she should have done considering her foot condition; any other relief deemed appropriate by the Tribunal; disciplinary proceedings and sanctions against certain senior officials; and compliance by the organisation with rules governing rights to privacy.

C. The Union replies that the complainant's fourth complaint is redundant for two reasons. The first is that it covers the same four subjects as her third complaint; namely, the financial liability of the 1992 accident, the administrative treatment of her absences from work; the compensation procedure; and the allegations of mobbing. The second is that the complaint is premature, since it anticipates administrative procedures that were currently being undertaken.

Moreover, following receipt of Dr B.'s report of 26 April 2000, the ITU adopted the view that no legal conclusion could be drawn from it until an additional report could be obtained from an independent specialist psychiatrist. The complainant was accordingly asked to consult Dr A., a psychiatric specialist. In his report of 13 January 2001, Dr A. concluded that the complainant's symptomatology had resulted in full and permanent disability. The ITU therefore took two actions. It decided to submit the report to another compensation board to determine if her disability was work-related. Depending on the outcome, the ITU was to make a decision with regard to her sick leave. It also submitted her case to the pension fund to determine her eligibility for disability benefit.

In replying to her fifth complaint the Union submits that even though the complainant based her fourth and fifth complaints on different decisions taken by the organisation the complaints are still related to the same facts as those challenged in her third complaint. Moreover, by dismissing that third case, the Tribunal clearly validated actions taken by the ITU with regard to its administrative treatment of her service-incurred accident as well as the decisions subsequently taken to obtain compensation for her.

It contests the receivability of her fifth complaint. Citing the case law, it says that it is *res judicata*: the parties, the purpose of the suit and the cause of action being the same as in her third complaint. Furthermore, certain of her claims are identical to claims submitted in her third case, on which the Tribunal has now ruled.

D. The complainant argues, in her rejoinder on her fourth complaint, that she was justified in filing her fourth case because when her salary was reduced on 21 June 2000 she had a new cause of action. Moreover, the decisions at issue in that complaint were taken after she lodged her third one on 19 June 2000. In holding her complaint to be premature the Union was showing bad faith.

She wants the Tribunal to hear as a witness the official who was mandated by the ITU to investigate her administrative situation, and claims damages and written apologies from the ITU because the investigation infringed on her right to privacy. In further claims she seeks the setting aside of the decisions contained in the letter of 20 July, relating to her sick leave situation. She wants the Tribunal to declare the fourth complaint receivable and award her compensation for the Union's long delay in taking administrative decisions. She wants it to order the ITU to pay her salaries in full up to 31 March 2001 and adjust her pension fund contributions accordingly; reinstate her annual leave credit from June 2000; and pay her additional compensation for health reasons and another two years' salary. She claims additional costs.

In her rejoinder on her fifth complaint the complainant says she had good reason to file a new complaint. The parties, she concedes, may be the same, but the other conditions of the *res judicata* rule are not met. She impugns a decision dated 5 October 2000 and in no way could she have anticipated that decision when she filed the corrected version of her third complaint in July 2000.

E. In its surrejoinder on her fourth complaint the Union does not agree that the communications sent to the complainant by the Chief of the Personnel Department constituted new decisions. Each of the communications she received related to one of the four subject areas considered by the Tribunal in the context of her third complaint. It holds the complainant responsible for delays in settling her administrative situation. It argues that a number of the claims included in her rejoinder on her fourth complaint are not receivable; they were not part of the brief filed with the Tribunal on 11 December 2000 and therefore constitute new claims.

Again, in its surrejoinder on her fifth complaint, the Union rejects the complainant's argument that the letter she is challenging constitutes a new administrative action. It regards her fifth complaint to be irreceivable since the cause of action identified therein is the same as in her third case, and the redress sought is identical; the principle of

res judicata thus fully applies.

F. In further submissions, filed in connection with her fourth complaint, the complainant points out that she was given written notice only twenty-four hours before the ITU terminated her contract. It had made no provision for further medical coverage, and terminated her contract before taking a final decision on her whole case.

G. In further comments the Union states that the decision to terminate the complainant's appointment was taken on the basis of a recommendation from the United Nations Joint Medical Service and was due to her state of health as evaluated by Dr A. in his medical report of 13 January 2001. Before the final decision was made the case was submitted to the ITU's Joint Advisory Committee. She received an indemnity in lieu of three months' notice. An ad hoc compensation board has yet to meet to determine on the basis of Dr A.'s report whether the complainant's state of health is work-related.

CONSIDERATIONS

1. The fourth complaint filed by the complainant arises from a letter dated 20 July 2000 that she received from the Chief of the Personnel and Social Protection Department. It informed her that as from 21 June she had exhausted her entitlement to sick leave on full pay calculated over a four-year period. Up to 18 July deductions would be made partly from her accrued annual leave and partly from her sick-leave entitlement so that she could continue to receive her pay in full until that date. From 19 to 31 July 2000 she would be on half pay and would have to pay back part of her July salary. From 1 August she would again be entitled to sick leave on full salary. From an enclosure accompanying the letter it appeared that the Medical Service had agreed to the reimbursement, at 50 per cent, of bills for medical appointments that had taken place in February and March 2000 and were connected with her 1992 accident.

2. The complainant then wrote to the Secretary-General on 28 July 2000 contesting the letter from the Chief of the Personnel Department. She drew attention to the fact that while his letter acknowledged receipt of her declaration of a service-incurred illness dated 6 April 2000 no reference was made to the illness-accident medical report signed on 26 April 2000 by Dr B. stating that she is suffering from a major depressive syndrome as a result of psychological harassment at the ITU. She requested that all her absences signed by Dr B. as from 1 April 2000 be considered as special sick leave "following a service-incurred illness" and not be deducted from ordinary sick leave entitlement. She also requested that a medical board be convened to give an opinion on Dr B.'s declaration.

The complainant deemed it "most unfair and inappropriate" that without any prior notice, she should receive a letter stating that retroactively as from 21 June 2000, her "sick-leave credit had been exhausted", that, consequently, her annual leave entitlement was being absorbed and that she was required to refund part of her July salary.

3. The Secretary-General did not reply to the complainant's letter of 28 July 2000 within the six-week period referred to in Staff Rule 11.1.1.2 b), and the Appeal Board did not take up the internal appeal that she filed on 30 September or comply with the rules relating to internal appeals. The complainant thus received no reply within sixty days from 28 July 2000.

4. Upon the expiration of those sixty days - on 26 September - the ninety-day period within which a complaint must be filed with the Tribunal started running. So when the complainant filed her fourth complaint on 11 December 2000, she was acting within her rights based on Article VII(3) of the Statute of the Tribunal which provides:

"Where the Administration fails to take a decision upon any claim of an official within sixty days from the notification of the claim to it, the person concerned may have recourse to the Tribunal and his complaint shall be receivable in the same manner as a complaint against a final decision. The period of ninety days provided for [in Article VII(2)] shall run from the expiration of the sixty days allowed for the taking of the decision by the Administration."

5. In her fifth complaint the complainant impugns another letter from the Chief of the Personnel Department, dated 5 October 2000, informing her of similar decisions involving her sick leave and annual leave for the months immediately following the period at issue in the letter of 20 July 2000. As in the previous case, her internal

complaint appears to have been simply ignored by the administration of the Union and she has once again had recourse to the Tribunal under the above-quoted provisions of its Statute.

6. Both complaints are receivable and since the issues raised are identical the Tribunal joins them.

7. In both her fourth and fifth cases the complainant claims the following relief:

(a) That Dr B.'s declaration of 26 April 2000 to the effect that she is suffering from a major depressive syndrome as a result of psychological harassment at the ITU "be confirmed".

(b) That the ITU convene a medical board in respect of her foot condition and mental state (fourth complaint).

(c) That all ordinary sick leave deducted from the four-year statements in respect of the service-incurred injury and service-incurred illness be reinstated.

(d) That deductions made from her annual-leave credit for the year 2000 be credited back to her.

(e) That the ITU is to refund 1,756.10 Swiss francs deducted from her salary over the period from 19 to 31 July 2000; reimburse an amount of 2,233.25 francs deducted from her October salary and 3,853.40 francs deducted from her November 2000 salary, with interest; and reimburse any future deductions in salary from December 2000 onwards.

(f) That it will refund fully all medical bills submitted in connection with the service-incurred injury and service-incurred illness, with interest.

(g) That it will refund any future medical bills submitted in connection with her injury and illness.

(h) Full financial compensation, under Appendix D of the United Nations Staff Rules, for her foot condition.

(i) Full financial compensation under Appendix D for her mental state.

(j) An order that the ITU will pay the complainant by way of compensation "an amount for damages, moral injury, bad health, costs and for all the prejudice sustained".

(k) A full permanent invalidity pension for her foot condition and also for her current "major depressive syndrome" as well as compensation under Article 11.2(d) of Appendix D.

(l) An order that the ITU is to "comply with its Regulations and Rules as well as with the International Bill of Human Rights".

8. In her fifth complaint she also claims the following relief:

(a) That the letter of 5 October 2000 concerning her sick leave be quashed.

(b) That Dr A.'s assessment of 13 January 2001 be recognised.

(c) Full financial compensation as per Appendix D for her 25 per cent loss of function since 1992, with a compound rate of interest of 10 per cent equivalent to 90,000 dollars.

(d) Financial compensation under Staff Rule 6.2.4 for her foot condition and mental state.

(e) An order that the ITU will refund the 3,853.40 francs deducted each month from her salaries between December 2000 and March 2001, with interest, and that such deductions will cease from 1 April 2001 onwards.

(f) That her contributions to the pension fund "must be based on a 100% salary and paid to the fund retroactively (June 2000 to date)".

(g) An order that the ITU will pay her damages for psychological harassment.

(h) That the ITU is to bear full coverage of medical expenses for her foot injury "for an unlimited duration".

(i) Payment of two years' salary to compensate for her working 25 per cent more than she should have done, given her foot condition, between 1992 and 2000.

(j) Any other relief deemed appropriate by the Tribunal.

(k) Disciplinary proceedings against certain senior officials.

(l) Compliance by the organisation with "rules governing rights to privacy".

9. Clearly, most of the relief claimed is not within the power of the Tribunal to grant at this stage for it depends upon a finding by a competent body (a medical board) that the complainant in fact suffers from the psychological condition mentioned and a finding by another competent body (a compensation board) that such condition is service-related. Equally clearly, however, she is entirely within her rights to demand that such bodies be constituted without delay.

10. The Union's pleas of *res judicata* are manifestly ill-founded. Judgment 2070, on the complainant's third case, did not deal with the question of her psychological condition. There is no doubt, of course, that in her third case, as in the present cases, the complainant included in her submissions vast quantities of irrelevant material which simply did not arise from the administrative decision originally challenged. While the Tribunal mentioned some of those matters it was for the purpose of indicating that they could not be considered and its comments are in no way a final disposition of the claims in question.

11. However, the ITU has arranged for the complainant to be examined by a psychiatrist of its own choosing and appears to have taken steps to set up both the medical and compensation boards. That being so, other than for what follows immediately hereafter the complainant has obtained the only satisfaction which she could reasonably have expected at this stage.

12. The Tribunal considers that the complainant has suffered moral damage from the unseemly and arrogant attitude taken by the ITU towards her claims. It failed to acknowledge the medical report by which she claimed to be suffering from a service-related psychological injury and it failed to acknowledge or even reply to her internal appeals. That is unacceptable. The Tribunal emphasises to the Union the importance of dealing rapidly and efficiently with any claims by staff members relating to their medical condition. The Tribunal will order that it pay the complainant the sum of 2,000 Swiss francs as moral damages and 1,000 francs in costs.

13. All other claims are dismissed.

DECISION

For the above reasons,

1. The ITU shall pay the complainant 2,000 Swiss francs in moral damages.

2. It shall pay her 1,000 francs in costs.

3. All other claims are dismissed.

In witness of this judgment, adopted on 9 May 2002, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Judge, and Mrs Flerida Ruth P. Romero, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 15 July 2002.

Michel Gentot

James K. Hugessen

Florida Ruth P. Romero

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 22 July 2002.