

110th Session

Judgment No. 2963

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms L. L. S. against the International Telecommunication Union (ITU) on 27 February 2009 and corrected on 17 March, the Union's reply of 25 June, the complainant's rejoinder of 10 November 2009 and the ITU's surrejoinder of 4 March 2010;

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 Spanish national born in 1974, is a former staff member of the ITU. She joined the Union in April 2004 under a special service agreement. In 2005 she worked under short-term contracts and she was subsequently granted a fixed-term contract from 1 February 2006 to 31 January 2008 as a Radio Communication Engineer/Programmer at grade P.2.

On 22 September 2006 she exhausted her entitlement to sick leave with full pay and on 8 November 2006 all her entitlements to

sick and annual leave. She was thus placed on special leave without pay on 9 November 2006, initially until 8 December 2006, then until 15 January 2007 and, by a letter of 7 February, until further notice. On 2 April 2007 she was informed that under a loss of income insurance that the ITU had purchased, she would be paid an amount equal to 50 per cent of her salary for the period from 22 September 2006 to 28 February 2007, but that the Union could only make claims on her behalf in respect of additional periods of absence on the basis of medical certificates. The above-mentioned amount was paid to the complainant in May 2007.

In the period between April and September 2007 the complainant had several exchanges with the Medical Services Section of the United Nations Office at Geneva (hereinafter “the Medical Services Section”) regarding the conditions governing the approval of her claims in respect of additional periods of absence under the loss of income insurance and her entitlement to a disability benefit from the United Nations Joint Staff Pension Fund (UNJSPF). On 5 September 2007 the Medical Officer of the Medical Services Section informed her that he had sent a medical report to the ITU Staff Pension Committee, in which he recommended that she be granted a disability benefit. By a letter of 12 September the complainant requested a copy of that report and asked to be advised as to whether her medical certificates had been approved so that she could now submit further claims under the loss of income insurance. She was informed on 19 September 2007 that the ITU Staff Pension Committee had decided to grant her the disability benefit as of 9 November 2006 and subsequently, on 17 December 2007, that the UNJSPF had approved the award of a disability benefit.

In the meantime, on 13 December 2007, the complainant attempted to access the ITU intranet service but was unable to do so. She was told by the service desk that her account had been disabled because her contract had ended. She sought an explanation and by a letter of 21 December 2007 – which she received on 24 December 2007 – the Deputy Secretary-General in charge of the Administration and Finance Department informed her that, in accordance with Staff Regulation 9.2, the Secretary-General had decided to terminate her

contract for reasons of health with effect from 8 November 2006. She was also informed that she would receive an indemnity in lieu of notice and that, as she had been granted a disability benefit with effect from 9 November 2006, she would have to return the amounts she had received under the loss of income insurance for the period from 9 November 2006 to 28 February 2007. She was thus requested to reimburse the amount of 3,748.02 United States dollars.

In a letter of 3 February 2008 to the Secretary-General, the complainant requested a review of the decision of 21 December 2007. Arguing that in accordance with the ITU Staff Regulations she should have been given a 30-day notice of termination, she requested that the date of termination of her contract be set at 24 January 2008. She also requested that she be permitted access to her office, her computer and e-mail account in order to collect her personal belongings and back up her files and records, and that she be provided with a copy of the medical report submitted by the Medical Services Section to the ITU Staff Pension Committee. By a letter of 19 March 2008 the Secretary-General informed the complainant that he had decided to reject her request with regard to the date of termination of her contract, but to grant all other requests formulated in her letter of 3 February.

Under cover of a letter dated 3 April 2008 the complainant received a copy of the medical report. On 29 April it was announced through an information circular that her contract had been terminated on the grounds of invalidity. On 18 July the Chief of the Administration and Finance Department returned the complainant's *carte de légitimation* to the Permanent Mission of Switzerland to the United Nations Office and other international organizations in Geneva (hereinafter "the Permanent Mission of Switzerland"), informing it that her contract had been terminated for health reasons with retroactive effect from 8 November 2006. By a letter of 24 September 2008 the Permanent Mission of Switzerland notified the complainant of the retrospective cancellation of her *carte de légitimation*.

Prior to that, on 30 June 2008, the complainant lodged an appeal against the decision dated 19 March 2008. She requested that the ITU indemnify her in full for any taxes paid by her on amounts

received before 24 January 2008, that it reimburse all medical expenses incurred by her and that it grant her an allowance for vocational training in accordance with Appendix D to the United Nations Staff Rules. She also requested compensation and legal costs. The Administration submitted the Secretary-General's reply to the complainant's appeal on 24 July 2008 and on 10 September the complainant made additional submissions. The Appeal Board issued its report on 2 October 2008. It recommended that, in implementing his decision to terminate the complainant's contract retroactively, the Secretary-General should ensure that "no unfavourable rule is applied to her" or that "the retroactivity carries no detrimental impact". It also recommended that the complainant's requests for the award of compensation, medical expenses, a vocational training allowance and legal costs be dismissed.

Under cover of a letter of 7 October 2008 the Administration forwarded to the complainant a copy of the Appeal Board's report. In a letter of 22 October to the Secretary-General the complainant protested about the fact that the Appeal Board had not taken into account her additional submissions of 10 September and requested that he take a final decision on her appeal. By a letter dated 1 December 2008, which is the impugned decision, the Secretary-General informed her that, in line with the Appeal Board's recommendations, he had decided to maintain the decision of 19 March 2008. He also informed her that the Appeal Board had been contacted regarding her additional submissions. On 12 December 2008 she was advised that, after considering her additional submissions, the Appeal Board had confirmed, in an addendum to its report, its initial recommendations and that on that basis the Secretary-General had decided to maintain his decision of 1 December 2008. The complainant obtained her residence permit from the Swiss authorities around the same time. Having thus provided the UNJSPF with proof of residence in Switzerland, she was advised, by a letter of 15 December 2008, that her benefit under the Pension Adjustment System had been recalculated effective 1 October 2008.

B. The complainant contends that the decision to terminate her contract with retroactive effect was illegal and contrary to the case law, which establishes a rule against retroactivity, especially when a decision is taken to the detriment of a staff member. Notwithstanding the ITU's assertion, it was not based on a constant practice – no evidence was provided by the Union to that effect – and neither was it based on the applicable rules. Indeed, the ITU Staff Regulations and Staff Rules require a 30-day period of notice, while the UNJSPF Regulations stipulate that the disability benefit shall commence on separation or, if earlier, on the expiration of the paid leave. Moreover, as the Tribunal has affirmed, “[t]he grant of an invalidity pension does not empower the organisation to make the termination retroactive as from the date set for the start of payment and to disregard the requirement of notice in the rules”. In fact, it is perfectly lawful for a staff member to be retained on special leave without pay while receiving a disability benefit. She notes that the Union never specified the exact date on which the Joint Advisory Committee met to give advice on the termination of her contract for reasons of health and that she has not seen evidence that such a meeting ever took place.

The complainant argues that, as the Secretary-General had no authority to terminate her contract retroactively, his decision to do so was tainted with abuse of authority, and it effectively cancelled her special leave without pay status. She contends that, as a result of her retroactive termination, she suffered a substantial loss of entitlements. In particular, the period during which she could claim a repatriation grant and removal expenses was shortened; she could not obtain a residence permit in a timely manner and was thus unable to opt for the local track of the Pension Adjustment System, thereby incurring an approximate loss of 18,000 Swiss francs; her *carte de légitimation* was withdrawn retrospectively, leaving her in a “legal limbo” without a valid residence authorisation in the host country; and the length of service shown on her certificate of service was considerably shortened and as a result she was deprived of her status as an international civil servant and the associated privileges and immunities as from 8 November 2006 instead of 24 January 2008.

She further contends that the manner in which the ITU handled her termination was an affront to her dignity and reputation and a breach of her right to privacy. Specifically, she was denied access to her computer and e-mail account and was thus unable to back up her files and records, while all her personal effects were removed from her office without prior notification. Moreover, the Administration disclosed her invalidity condition not only to the Permanent Mission of Switzerland but also to all ITU staff and it failed properly to anonymise the medical report submitted to the ITU Staff Pension Committee, thereby breaching its duty of discretion and confidentiality and compromising her right to medical secrecy. She considers that the unauthorised disclosure of her health status was discriminatory.

The complainant submits that the internal appeal proceedings were tainted with procedural irregularities, by reason of the Administration's failure to transmit to the Appeal Board her additional submissions of 10 September 2008 and the latter's inability to consider them in due time. In addition, she asserts that, as the retroactive termination of her contract was illegal, she held the status of an international civil servant and should thus enjoy immunity from taxation up until 31 January 2008 – the date of expiry of her contract – or at the very least up until 24 January 2008 – the date on which her contract would have lawfully terminated on the basis of the notification of 24 December 2007.

She requests that the Tribunal order the ITU to indemnify her in full for any taxes, including future taxes, levied on the amounts she received by way of “pension payments” before 24 January 2008, that it reimburse her medical expenses amounting to 4,226.25 Swiss francs and that it grant her, in accordance with Appendix D to the United Nations Staff Rules, an allowance for vocational training in the amount of 5,000 francs. She also claims 40,000 francs in compensation for the injury caused to her through the ITU's actions, and legal costs.

C. In its reply the ITU submits that the complaint is irreceivable because the complainant has no cause of action, given that the effective

date of termination of her contract caused her no injury. It argues that the rule against retroactivity is not absolute and that the decision to terminate the complainant's contract with retroactive effect was neither unfavourable nor detrimental to her, as it did not in any way affect her rights under the ITU Staff Regulations and Staff Rules. It also argues that the date of termination was logical, appropriate and in line with the UNJSPF Regulations and the ITU's constant practice. In addition, it was in the best interest of the complainant, as it enabled her to receive a UNJSPF disability benefit as from 9 November 2006, thereby granting her a more favourable status than that which she held while on special leave without pay or under the loss of income insurance. Moreover, the requirement of notice was observed, given that the complainant was duly notified by a letter of 21 December 2007 of the reasons for the termination of her contract as from 8 November 2006 and was also paid compensation in lieu of notice in an amount equivalent to one month's remuneration. The Union informs the Tribunal that the members of the Joint Advisory Committee were consulted by correspondence and were invited on 4 October 2007 to submit their recommendation on the complainant's termination for health reasons by 11 October.

The Union denies that the complainant suffered a loss of entitlements by reason of the termination of her contract. It explains that she was granted the possibility to request payment of the repatriation grant and removal expenses within a period of two years – at her request that period could be extended to four – following the date of notification of the termination decision. Furthermore, she was given permission to access her former office to collect her personal effects and back up her files and records, and was in fact invited to contact the ITU's social welfare officer for that purpose. However, she did so only seven weeks after being notified. As to the calculation of the complainant's pension under the local track of the Pension

Adjustment System, the defendant notes that the UNJSPF alone is entitled to decide whether she would be able to join as from the effective date of her termination. The Union argues that the complainant's retroactive termination did not affect her residence status in Switzerland, and that she was able to reside in the country between 9 November 2006 and 21 December 2007 without encountering any difficulties in that respect.

According to the ITU, from the moment she was placed on special leave without pay, the complainant ceased to enjoy the functional privileges and immunities associated with the status of an international civil servant, and it was on an exceptional basis only that she was allowed to keep her *carte de légitimation*. Also, from that point on she ceased to perform her duties, a fact which must necessarily be reflected in an official document such as her certificate of service. With regard to the disability benefit paid by the UNJSPF, the Union explains that it is taxable and indeed automatically taxed under Swiss law, irrespective of whether the beneficiary holds the status of an international civil servant. Hence, the amounts the complainant received by way of a disability benefit would have been taxable even if the termination of her contract had taken effect on a different date.

The defendant denies any violation of the complainant's right to privacy or of its duty of discretion and confidentiality. It states that staff changes, including separation from service owing to invalidity, are announced through information circulars as a matter of administrative practice. It also denies any illegal disclosure of sensitive information on the complainant's state of health, emphasising that it was under an obligation to explain to the Swiss authorities the reason she was allowed to keep her *carte de légitimation* pending the outcome of the procedure for the grant of a disability benefit and that the members of the Staff Pension Committee are bound by confidentiality. In effect, the complainant's termination was not discriminatory and neither was it harmful to her dignity and reputation. The Union further denies the allegation of procedural irregularities in the internal appeal proceedings.

D. In her rejoinder the complainant accuses the ITU of bad faith, abuse of authority and retaliation. By terminating her contract retroactively, the Union deprived her of the possibility of having social security cover for a period of 14 months and also of having further claims made on her behalf under the loss of income insurance. Moreover, as she was unable to join the local track of the Pension Adjustment System, an unfavourable exchange rate was used for the calculation of her disability benefit and she received no interest on the arrears. In addition, she points to irregularities in the proceedings before the Joint Advisory Committee and accuses the Union of manipulation. She also submits that her correspondence and personal effects were mishandled and, in some cases, lost.

She raises the amount she seeks in compensation to 250,000 francs. She further requests that the Union be ordered to withdraw all copies of the information circular announcing her separation on invalidity grounds and to provide her with a complete copy of her files, including her medical file.

E. In its surrejoinder the ITU invites the Tribunal to dismiss as irreceivable the claims raised by the complainant in her rejoinder. It refutes the allegations made therein and maintains its position in full.

CONSIDERATIONS

1. The complainant is a former staff member of the ITU. Her employment was terminated retrospectively to coincide with the date from which she was granted a disability benefit by the UNJSPF, namely 9 November 2006. She appealed against the retrospectivity of her termination, arguing that her employment either terminated on 31 January 2008 with the expiry of her fixed-term contract, or on 24 January 2008, one month after she received notice of her retrospective termination.

2. The Appeal Board concluded that there was no evidence that the complainant suffered detriment as a result of the retroactivity

of her termination but recommended that the Secretary-General ensure that “no unfavourable rule [be] applied to her” and that “the retroactivity carr[y] no detrimental impact”. Otherwise, it recommended that the appeal be dismissed. The Secretary-General accepted that recommendation. His decision to that effect is the subject of the complaint before the Tribunal. The complainant makes claims for compensation, an indemnity against tax, payment of medical expenses, a vocational training allowance and costs. She also seeks an oral hearing.

3. The application for an oral hearing is rejected. The primary facts are not in dispute and the outcome of the complaint depends, in the main, on questions of law that are fully argued in the pleadings.

4. The complainant held a number of short-term contracts with the ITU prior to being granted a two-year fixed-term contract due to expire on 31 January 2008. She was absent from work on sick leave for various periods in 2006. Her sick leave entitlements were exhausted on 8 November 2006 when she was placed on special leave without pay. That leave was twice extended, the last extension being from 16 January 2007 until further notice. The complainant was informed on 2 April 2007 that she would receive 50 per cent of her salary for the period from 22 September 2006 – when her entitlement to sick leave with full pay came to an end – until 28 February 2007, pursuant to a loss of income insurance policy negotiated by the ITU, but that she would have to produce medical certificates for further absences before the ITU could again claim under the policy. She received a payment for that period in May 2007. No other payments were made.

5. Between April and September 2007 the complainant had various communications with the Medical Services Section. There is some confusion as to whether the Medical Services Section was concerned to approve the complainant’s medical certificates for further claims under the loss of income policy, to determine whether she was entitled to a disability benefit from the UNJSPF, or both. In any event, the Medical Officer informed her by letter of 5 September 2007 that he

had recommended to the ITU Staff Pension Committee that she “be made eligible for a disability benefit”. Later, on 19 September, the Pensions and Assurance Section of the ITU informed her that the ITU Staff Pension Committee had decided to grant her a disability benefit as of 9 November 2006 and to review her case in 2008. On 17 December 2007 it informed her by e-mail that the UNJSPF had decided to award her a disability benefit. In the meantime, the complainant had unsuccessfully attempted to gain access to the ITU intranet service and had learned from the service desk that her contract had been terminated.

6. Upon making further enquiry, the complainant was informed by letter of 21 December 2007 that the Secretary-General had decided to terminate her employment for health reasons from 8 November 2006 to coincide with the grant of a disability benefit from 9 November of that year. On 18 July 2008 the Chief of the Administration and Finance Department informed the Permanent Mission of Switzerland to the United Nations Office and other international organizations in Geneva that the complainant’s services had been terminated for health reasons with retrospective effect from 8 November 2006.

7. Before turning to the question whether the ITU lawfully terminated the complainant’s contract retrospectively, it is necessary to say something of the claims made by the complainant. The complaint contains a claim for compensation in the amount of 40,000 Swiss francs. In her rejoinder the complainant seeks to increase that claim to 250,000 francs on the basis that the ITU acted in bad faith in various ways that “caused a myriad of detrimental consequences and damages (not only material but also moral) that aggravated [her] overall condition”. Some of those “detrimental consequences and damages” are identified as the loss of payments that could have been made under the loss of income policy, if the ITU had made further claims on it, “unlawful deductions” from the loss of income policy payments, payment of the disability pension in arrears without interest and the use of an unfavourable exchange rate in the calculation of her

pension payments. These are not matters that arise out of the decision to terminate the complainant's employment retrospectively. They relate to other actions and/or decisions, including by the UNJSPF, and are, thus, outside the scope of the complaint.

8. It is well settled that an international organisation cannot retrospectively alter the rights and obligations of staff members to their detriment, whether by written rule or otherwise (see, for example, Judgments 595, under 5 and 6, 1669, under 17 and 18, and 1979, under 5(h)). The ITU contends that retrospective termination caused the complainant no detriment, pointing out that she was not in receipt of income while on special leave without pay and that the disability benefit covered that period as well as future payments. That argument might have some force if the rules of the UNJSPF provided that disability benefits could only be paid to former staff members. They do not. Rather, Article 33(b) of the UNJSPF Regulations relevantly provides that “[t]he benefit shall commence on separation or, if earlier, on the expiration of the paid leave due to the participant”. Indeed, it would appear that the UNJSPF decided in September 2007 to pay the complainant a disability benefit from the date on which her paid leave was exhausted although she was then still in the employ of the ITU. In this regard, the decision to terminate the services of the complainant retrospectively could not have been taken before October of that year. And although the ITU claims that it is its constant practice for termination to coincide with the date from which a disability benefit is granted, the ITU Staff Regulations and Staff Rules do not provide for retrospective termination, whether for illness or otherwise. ITU Staff Regulation 9.2, which allows for termination on the ground of the inability of a staff member to perform his or her duties, allows neither for retrospective termination nor for termination without notice. So far as notice is concerned, this is impliedly accepted by the ITU insofar as an attachment to the letter of 21 December informing the complainant of the termination of her employment indicated that she would be paid an indemnity in lieu of notice. The present situation is thus similar to that considered in Judgment 1669 where it was said, under 17, that “[t]he grant of an

invalidity pension does not empower the organisation to make the termination retroactive as from the date set for the start of payment and to disregard the requirement of notice in the rules”.

9. It is convenient to note two other aspects of the argument by the ITU that retrospective termination involved no detriment to the complainant. The rule against retrospectivity permits of two exceptions, namely where the decision involves no detriment to the staff member concerned and where the decision replaces an earlier provisional decision (see Judgment 1130, under 2). Where a party relies upon an exception to a general rule, it is for that party to establish that it falls within the exception. It is explicit in the recommendation of the Appeal Board that the Secretary-General ensure that no unfavourable rule be applied to the complainant and that the retroactivity carry no detrimental impact. The Administration did not establish in the course of the internal appeal proceedings that the complainant’s retroactive termination indeed fell within the exception relating to detriment. Nor has the Union established it in these proceedings. At the very least, the complainant was subject to a detriment with respect to time limits for applying for a repatriation grant, as is also impliedly recognised by the ITU’s later agreement to extend the period in which application might be made. The subsequent agreement to extend that period does not alter the fact that the decision to terminate her employment retrospectively, if valid, would have adversely impacted on the time within which the complainant could claim the repatriation grant as of right. Further, a decision to terminate a staff member’s service retrospectively involves necessarily a detriment in that it negates the possibility of notice allowing for the person concerned to make necessary arrangements during the notice period. This is so whether or not a payment is made in lieu of notice. The other matter that should be mentioned is that the ITU claims that the decision to terminate the complainant’s contract retrospectively replaced a provisional decision to place her on special leave without pay. That argument is rejected. There is nothing to indicate that the decision to place the complainant on special leave without pay was provisional in nature.

10. The decision to terminate the complainant's contract retrospectively was unlawful. It follows that the Secretary-General's decision rejecting her appeal in that respect must be set aside. Similarly, the earlier decision with respect to retrospective termination must be set aside. As there was no notice that might allow for the selection of another termination date, the complainant's contract came to an end with its expiry on 31 January 2008. The Tribunal will make a declaration to that effect. The ITU will be ordered to amend the complainant's personnel records accordingly and to provide her with a fresh certificate of service showing that she was employed until 31 January 2008.

11. The complainant's claim for compensation includes a claim for material damages based on her inability to join the local track of the Pension Adjustment System until she established Swiss residence. The claim is as follows:

“the [c]omplainant has been able to obtain a valid proof of residence in Switzerland and join the Local Track system only recently, therefore incurring an approximate total loss of 18,000 CHF [...], an amount that she would otherwise have received had she been able to join the Local Track system as from 9 November 2006.”

It appears from her pleadings that she could not establish Swiss residence and, thus, join the local track of the Pension Adjustment System until her contract was terminated. Thus, the retrospectivity of the termination of her contract had no causal relationship with her inability to join the local track and, save for one aspect, this claim must be dismissed. However, it may be assumed that the complainant's ability to join the local track would have been accelerated by one month had she actually been given one month's notice of the prospective termination of her contract. In these circumstances, she is entitled to material damages for one month's delay.

12. As earlier indicated, the complainant also seeks an indemnity against tax liability. She claims that it is likely that she is liable to pay Swiss tax on the total amount paid to her by way of disability pension subsequent to the termination of her employment. She further claims that there is no liability for tax for any period during which she was

employed by the ITU, even with respect to pension payments, and thus seeks an indemnity for tax liability for the period from 9 November 2006 until her contract would otherwise have been properly terminated. The question whether the complainant is correct in her claims with respect to her tax liability need not be considered. This judgment will have the effect that, as a matter of law, she was in the employ of the ITU until 31 January 2008 and, thus, there is no need for the indemnity sought. Additionally, the ITU will be ordered to inform the Permanent Mission of Switzerland that, contrary to the information conveyed in its letter of 18 July 2008, the complainant's contract was not terminated until 31 January 2008.

13. The complainant also seeks material and moral damages with respect to the procedures followed in relation to her termination, including the proceedings before the ITU Staff Pension Committee. In particular, she claims that she suffered an affront to her dignity and a breach of her privacy by publication on the ITU intranet on 29 April 2008 of her retrospective termination on grounds of invalidity and, again by publication of the same information to the Permanent Mission of Switzerland on 18 July. The Tribunal rejects the argument that publication of invalidity, as such, amounts to a derogatory statement or constitutes discrimination or stigmatisation. However, the publication of the retrospective date of termination had the effect of disclosing that her disability was of long standing, a matter that was of no legitimate interest to other staff members or to the Permanent Mission of Switzerland. The ITU contends that it was necessary to refer to the complainant's invalidity to explain why her termination was made with retrospective effect. However, as already pointed out, that retrospectivity was unlawful. Thus, it cannot justify the disclosure inherent in the publications. These publications will be taken into account in the award of material and moral damages.

14. So far as concerns the proceedings before the ITU Staff Pension Committee, the complainant claims that the medical report presented to the Committee involved only "rudimentary anonymisation" and that this also involved a breach of her privacy.

That argument is rejected. The Medical Services Section provided the report. Moreover, members of the ITU Staff Pension Committee are subject to a duty of confidentiality and there is no evidence of any breach of that duty.

15. There are other circumstances surrounding the retrospective termination of the complainant's employment that warrant the grant of material and moral damages. The failure to inform officially the complainant of her termination until after she learned of it from the service desk was a serious affront to her dignity. The retrospective nature of the termination also had the effect of putting the legitimacy of her residence in Switzerland after 9 November 2006 into doubt, even if she retained her *carte de légitimation*. And this is so whether or not she encountered any difficulties in that regard. Further, the retrospective termination of the complainant's employment, without notice, led to her inability to gain access to her office, her computer and e-mail account. Moreover, it is not denied that the complainant's computer and personal effects were removed from her office and relocated in circumstances whereby others could gain access to personal information. Nor is it denied that some of the complainant's personal effects were lost. These are matters entitling the complainant to material and moral damages, even if she was responsible for some delay in seeking access to her office. The complainant is also entitled to moral damages by reason of the failure of the Administration to transmit her additional submissions to the Appeal Board, with the consequence that the Board did not take them into account in its initial deliberations. However, the Tribunal rejects the allegation of "machinations" by the Appeal Board.

16. The complainant has provided no evidence that her medical condition was aggravated by the decision to terminate her employment retrospectively. Nor has she established that she is entitled to a vocational training grant. Accordingly, her claims in this regard are rejected. Further, the complainant has not established bad faith or other improper purpose as claimed in her rejoinder. In particular, she has not established any irregularity in the proceedings

before the Joint Advisory Committee or impropriety on the part of the ITU in relation to the loss of income policy or the payments made thereunder. Nor has she established impropriety on the part of the ITU in relation to the Medical Services Section or the UNJSPF.

17. There will be a global award of material and moral damages in the sum of 17,500 Swiss francs in respect of the matters referred to in considerations 11, 13 and 15 above. The complainant is also entitled to costs in the sum of 5,000 francs.

DECISION

For the above reasons,

1. The Secretary-General's decision of 1 December 2008 is set aside, as is his earlier decision of 21 December 2007 to terminate the complainant's contract retrospectively from 8 December 2006.
2. It is declared that the complainant's contract came to an end with its expiry on 31 January 2008. The ITU will amend the complainant's personnel file accordingly, will issue her with a certificate of service showing that she was employed until that date and will notify the Permanent Mission of Switzerland to the United Nations Office and other international organizations in Geneva to the same effect.
3. The ITU shall pay the complainant material and moral damages in the sum of 17,500 Swiss francs and costs in the sum of 5,000 francs.
4. The complaint is otherwise dismissed.

In witness of this judgment, adopted on 4 November 2010, Ms Mary G. Gaudron, President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Ms Dolores M. Hansen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 2 February 2011.

Mary G. Gaudron
Giuseppe Barbagallo
Dolores M. Hansen
Catherine Comtet