

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**117th Session**

**Judgment No. 3323**

THE ADMINISTRATIVE TRIBUNAL,

Considering the seventh complaint filed by Mr A. P. against the International Telecommunication Union (ITU) on 20 August 2010 and the ITU's reply of 3 December 2010;

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

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

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

A. Facts relevant to the complainant's career are to be found in Judgments 1646, 1743, 2074, 2075, 3025 and 3210, delivered on his six previous complaints.

On 22 December 2004 the Secretary-General of the ITU published Service Order No. 04/19, informing the personnel that the personal promotion scheme, the implementation of which had been announced in Service Order No. 99 of 17 September 1998, was "temporarily suspended" with immediate effect. It was explained that the reason for this measure was the organisation's severe financial situation, that it had been adopted pending a decision on the matter by

the ITU Council at its 2005 session and that personal promotions which had been recommended by the Appointment and Promotion Board for staff members eligible for promotion on 1 January 2003 and 1 January 2004 were being reviewed. The personnel was advised by Service Order No. 05/12 of 11 October 2005 that, at its 2005 session, the Council had decided to maintain the above-mentioned suspension measure until further notice.

In a memorandum of 31 July 2009, the complainant, who considered that he had met the conditions for receiving personal promotion before the scheme was suspended in December 2004 and who was therefore surprised that his case had not been examined, asked the Secretary-General, whom he claimed to have informed of this during two meetings with him in 2008 and 2009, to remedy this “anomaly”. When this request was denied, he asked the Secretary-General to review his decision. As this request was likewise rejected on 17 November 2009, he referred the matter to the Appeal Board on 18 December 2009. The Administration submitted the Secretary-General’s reply to the complainant’s appeal on 27 January 2010, after the Chairman of the Board had granted it a ten-day extension of the time limit for doing so, owing to the office closure during the holiday at the end of the year. In a report dated 25 March 2010, the majority of the Board’s members recommended the upholding of the decision of 17 November 2009. By a memorandum of 21 May 2010, which constitutes the impugned decision, the complainant was informed that the Secretary-General had decided to endorse the opinion of the majority of the Board’s members. The complainant retired on 30 June 2010.

B. The complainant draws attention to the fact that under Staff Rule 11.1.1(4)f) the time limits applicable to the internal appeal procedure may be extended only “in a case of *force majeure*” and that, when an extension is granted, “both parties shall be informed accordingly”. He submits that this subparagraph was breached because he was not informed at the same time as the Administration of the extension of the time limit for the Secretary-General’s reply to his appeal.

On the merits, the complainant contends that, since the personal promotion scheme had been implemented in consequence of an ITU Council resolution, its suspension should have been decided by the same body. In his view, the measure is illegal, since it is in fact retroactive, having become effective as of 1 January 2004. He argues that this measure also breached the principle of equal treatment since, unlike staff members who were eligible for such promotion on 1 January 2004, the case of those who, like him, became eligible between that date and 22 December 2004 was not examined. The complainant endorses what he considers to be the particularly pertinent reasoning of the Appeal Board member who expressed a dissenting opinion and who, after studying the cases of several staff members who received personal promotion in the wake of Judgments 2606 and 2607, reached the conclusion that “the application of the personal promotion scheme was flawed”. Lastly, the complainant contends that his career prospects vanished after he filed his first complaint in 1996, as when he retired he still held the grade at which he had been recruited 26 years earlier. The ITU therefore breached Staff Regulation 4.3 stipulating that staff “shall be given reasonable promotion possibilities”.

In substance the complainant asks the Tribunal to set aside the impugned decision, to rule on the protracted nature of the suspension of the personal promotion scheme and to award him compensation for the injury suffered, as well as costs.

C. In its reply the ITU objects that the complainant filed his request for personal promotion almost five years after the measure suspending it was put in place and thus failed to exhaust the internal means of redress.

As regards procedure, it emphasises that the complainant has not explained how the ten-day extension of the time limit available to the Secretary-General for submitting his reply to his appeal caused him injury, especially as the internal appeal procedure was completed within the time limit of 14 weeks laid down in the Staff Rules.

On the merits, the ITU explains that the personal promotion scheme was implemented following the publication of Service Order No. 99, this being an “administrative act within the authority and competence of the Secretary-General”, and that the Secretary-General therefore had the power to suspend the application of the scheme in accordance with the principle that similar acts require similar procedures. It adds that the suspension of the aforementioned scheme was a management measure adopted in its own interests against a background of budgetary constraint. The ITU also explains that the scheme was suspended before the complainant became eligible to benefit from it. In accordance with Service Order No. 99, which provides that eligibility is determined as at 1 January of the year following the date on which the staff member meets all the criteria regarding length of service, the complainant did not become eligible until 1 January 2005, because it was only on 1 October 2004 that he met these criteria. It infers from the foregoing that the suspension measure was not retroactive and that the complainant’s submission that his first complaint ruined his career is groundless. In addition, the ITU argues that the dissenting opinion of one member of the Appeal Board is irrelevant in this case. It stresses that no staff member who would have been eligible to benefit from the personal promotion scheme after 1 January 2004, had it not been suspended, has been promoted.

#### CONSIDERATIONS

1. The complainant entered the service of the ITU on 6 June 1984. He was given a fixed-term contract from 1 October 1984 until 30 September 1987. On 1 October 1987 he obtained a permanent appointment. He retained his initial grade, G.5, until he retired on 30 June 2010.

2. On 17 September 1998 the Secretary-General of the ITU adopted Service Order No. 99 concerning the implementation of a personal promotion scheme. This service order referred to Resolution

1106, in which the ITU Council had decided to introduce such a scheme “in order to give staff in occupational groups with limited career opportunities the possibility of being treated on an equal footing with staff members having more frequent promotion opportunities”. The service order was accompanied by a set of rules, which were approved by the Joint Advisory Committee, setting out the separate criteria for granting personal promotion that had to be met by staff members in the Professional category and the General Service category, in order to avoid “widely differing results”.

Under these rules, General Service staff members, the category to which the complainant belonged, had to meet three cumulative conditions related to length of service: they had to have completed at least 20 years of continuous service in the ITU under a fixed-term or permanent contract; they had to have not been promoted in the previous 15 years, and they had to have spent more than three years in the top step of their grade. Those who satisfied all these conditions also had to meet three other criteria, including that of having no promotion prospects in their occupational area for a period of two years following the date on which they met the aforementioned conditions. It is not disputed the fact that the complainant fulfilled all these conditions on 1 October 2004 and that his promotion on 1 January 2005 could have been considered.

3. On 22 December 2004, however, “in view of the present severe financial situation”, the Secretary-General adopted Service Order No. 04/19, which temporarily suspended this personal promotion scheme pending a decision by the ITU Council at its 2005 session. This service order was applicable as from its publication on that same date, save in the cases of personal promotions recommended by the Appointment and Promotion Board for staff eligible for promotion as at 1 January 2003 and 1 January 2004.

The suspension by the Secretary-General of the personal promotion scheme was endorsed by the Council in a decision of which the staff was informed by Service Order No. 05/12 of 11 October 2005.

The measure suspending personal promotion adopted on 22 December 2004 was still in force when this complaint was filed.

4. In the memorandum which the complainant wrote to the Secretary-General on 31 July 2009, he referred to the two meetings he had had with him in 2008 and 2009 and he expressed surprise that his personal promotion had not yet “been dealt with, although [he had] fulfilled all the criteria for eligibility for such promotion [...] before the personal promotion scheme was suspended”. As this “anomaly” was not remedied, he submitted a request for a review, which was rejected on 17 November 2009 on the grounds that he would not have been eligible to benefit from that scheme until 1 January 2005, in other words after the entry into force of the measure suspending the personal promotion scheme.

On 18 December 2009 the complainant lodged an appeal against that decision with the Appeal Board. In its report of 25 March 2010 the Appeal Board recommended that the Secretary-General should dismiss the complainant’s appeal, but the staff representative on the Board issued a dissenting opinion.

On 21 May 2010 the complainant was informed that the Secretary-General had rejected his request and confirmed the decision of 17 November 2009. That is the impugned decision.

5. The complainant first pleads that the internal appeal procedure was not properly followed.

He taxes the Chairman of the Appeal Board with having “breached its own rules and principles” by not informing him immediately of his decision to extend by ten days the four-week time limit established by Staff rule 11.1.1 for the Secretary-General’s reply to his appeal.

The evidence in the file shows that not only did the complainant not receive a copy of the memorandum of 22 December 2009 in which the Administration requested an extension of the time limit for replying, owing to the office closure during the holiday at the end of the year, but that, in breach of the second sentence of Staff Rule 11.1.1(4)f), he was not informed of the e-mail of 5 January 2010 in which the Chairman

of the Appeal Board granted this request by extending the time limit for replying until 27 January 2010.

The complainant, who does not dispute the fact that there was good reason to extend the time limit, does not, however, contend that the procedural flaw to which he objects caused him any particular injury. His plea therefore fails.

6. The complainant then submits that only the ITU Council was competent to suspend the personal promotion scheme instituted on 17 September 1998. Its temporary suspension was ordered with immediate effect by the Secretary-General on 22 December 2004, but it became final only after it had been approved by the Council at its session in July 2005, in other words after 1 January 2005, the date on which the complainant in principle became eligible to benefit from the personal promotion scheme.

In Service Order No. 04/19 the Secretary-General stressed the immediate and temporary nature of the measure pending the final decision which would be taken on it by the Council at its following session. The Tribunal, which has had occasion to examine the real scope of this temporary measure, implicitly accepted that the Secretary-General was competent to adopt it (see Judgments 2606, under 7 *et seq.*, and 2607, under 6 *et seq.*). There is no reason to reconsider this finding, especially as the complainant ought to have challenged the Secretary-General's competence without delay, since it was obvious from the text of the service order in question that he, the complainant, was among the persons concerned by its application.

This plea is therefore unfounded.

7. In submitting that Service Order No. 04/19 was applied to him in breach of the principle of non-retroactivity, the complainant loses sight of the fact that under the personal promotion scheme instituted on 17 September 1998, the decisive date for inclusion on the list of candidates for personal promotion is 1 January of the year following the date on which the above-mentioned conditions and criteria have been met. The complainant himself acknowledges that

this date lay between 1 January and 22 December 2004. His personal promotion could not therefore be contemplated until 1 January 2005, in other words after the entry into force of the suspension of all personal promotions.

8. The allegation of unequal treatment must also be dismissed, since the Tribunal has no objective reason to doubt the explanations furnished by the ITU in its reply to the complaint, from which it is clear that the case cited by the complainant concerns a situation different from his own. He supplies no evidence to show that staff members who, like him, in 2004 met the criteria for personal promotion unduly benefited from an exemption from Service Order No. 04/19. The same applies to the cases mentioned in the dissenting opinion annexed to the Appeal Board's report, the reasoning of which the complainant says he endorses.

Nor has the complainant proved that he was the victim of any kind of reprisal after he filed his first complaint with the Tribunal in 1996.

9. The complaint must therefore be dismissed, without there being any need to rule on the merits of the ITU's objection to receivability based on the failure to exhaust internal means of redress.

#### DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 20 February 2014, Mr Giuseppe Barbagallo, President of the Tribunal, Mr Claude Rouiller, Vice-President, and Mr Seydou Ba, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 28 April 2014.

GIUSEPPE BARBAGALLO

CLAUDE ROUILLER

SEYDOU BA

DRAŽEN PETROVIĆ