

## SEVENTY-THIRD SESSION

### *In re SAUNDERS (No. 6)*

#### **Judgment 1171**

THE ADMINISTRATIVE TRIBUNAL,

Considering the sixth complaint filed by Mr. Yann Harris Saunders against the International Telecommunication Union (ITU) on 7 January 1992, the Union's reply of 16 March and the complainant's rejoinder of 10 April 1992;

Considering Articles II, paragraph 5, and VII, paragraph 3, of the Statute of the Tribunal and Regulations 3.8 and 3.15 and Rules 3.4.2 and 11.1.1 of the ITU Staff Regulations and Staff Rules;

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

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

A. As was stated in Judgments 970, 988, 989, 1018 and 1093, the complainant joined the Union in 1967 at grade G.4 and in 1969 got a permanent appointment at grade G.5 in the Technical Co-operation Department. In January 1974 he was appointed to a post in the Professional category, at grade P.1, and paid the corresponding special post allowance. In September 1974 he was put on a P.2 post under another fixed-term appointment and with the corresponding special post allowance. On 15 May 1984 the Secretary-General decided to "transfer" him to post No. S39/G7/157 in the Conferences and Common Services Department as from 1 May 1984, still with his special post allowance at P.2. On 22 May the Secretary-General, reversing the decision of 15 May, decided to "second" him to the same post with the same allowance. After upgrading the post by a decision of 8 October 1985 the Union promoted him to P.2 on 31 October 1985 as from 1 January 1986.

Regulation 3.15 of the ITU Staff Regulations reads:

"Pensionable remuneration shall, without prejudice to the conditions of engagement of the staff member, consist of the amount calculated in accordance with the provisions of the Regulations of the United Nations Joint Staff Pension Fund."

Rule 3.4.2c) of the ITU Staff Rules provides:

"Where promotion from the General Service category to the professional category results in decrease of an official's pensionable remuneration, he shall keep his pensionable remuneration at the level which it had reached immediately prior to the promotion until that level is exceeded as a result of advancement or further promotion."

By a memorandum of 15 August 1980 the Chief of the Personnel Department told him that his pensionable remuneration was dependent on the terms of his appointment and could be based either on grade G.5 or P.2. The Pension and Insurance Section of the Personnel Department accordingly confirmed by a memorandum to him of 15 September 1981 that his pensionable remuneration would be "the greater of either G.5/11 or P.2/11".

On receipt of his pay slip for June 1991 he worked out the amount of his contribution to the United Nations Joint Staff Pension Fund and found it wrong. Regarding his pensionable remuneration as over a quarter short of the figure corresponding to G.5, step 7, he asked the Secretary-General to review the decision in pursuance of Rule 11.1.1. Having got no answer within the prescribed time limit, he made an appeal to the Appeal Board. Having had no answer to that appeal either, he is challenging the implied rejection of it under Article VII, paragraph 3, of the Tribunal's Statute.

B. The complainant submits that the Union unlawfully lowered the amount of his pensionable remuneration. Rule 3.4.2c) entitles him to the level it reached just before promotion to P.2. Written statements from the Secretary-General, the Chief of the Personnel Department and the Pension and Insurance Section confirmed that it would be based on one or the other of the two grades he had been paid at - G.5 or P.2 - whichever was the higher.

He contends that the comparison of pensionable remuneration should be between P.2 and G.7, not G.5. As the Tribunal said under A in Judgment 1018, he was "transferred as from 1 May 1984 to a G.7 post". His transfer constituted a "permanent appointment" since decisions of that kind are considered "definitive" and not limited in time.

The yearly pensionable remuneration of a staff member with two language allowances at G.5, step 12, in June 1991 was 123,661 Swiss francs (84,699 United States dollars according to the United Nations rate of exchange). As before, the Union has picked the lower of two possible levels and so made savings at his expense.

He asks the Tribunal to quash the decision of 19 June 1991 (his pay slip for that month), to set his own and the Union's contributions to the Fund since June 1991 "at the higher of the two possible levels of pensionable remuneration", to put his current pensionable remuneration at G.5, step 12, "the level it would have reached in June 1991", and to maintain that level "except when the amount corresponding to grade P.2, step 12, is higher". But should the Tribunal hold that he was unlawfully denied the right to contribute to the Fund at grade G.7, he asks it subsidiarily to order the Union to determine his current pensionable remuneration at G.7, step 12, "the level it would have reached in June 1991", and to maintain that level "except when the amount corresponding to grade P.2, step 12, is higher", to make up its contributions in arrears to the Fund on that basis and to allow him enough time in which to pay his own contributions in arrears. He seeks costs.

C. In reply the ITU points out that it reversed the decision of 15 May 1984 "transferring" him to post S39/G7/157 and decided instead on 22 May to "second" him to it. So his transfer to a P.2 post as from 1 January 1986 was from a permanent G.5 appointment.

Since he was paid special post allowances corresponding to grades in the Professional category up to January 1986, when his transfer to the P.2 post took effect, he was free to choose between the figures for the General Service and the Professional categories, taking whichever yielded the higher pensionable remuneration. After his promotion as from 1 January 1986 that choice was no longer open to him, and the Union applied Rule 3.4.2c), which required it to compare the level of his pensionable remuneration immediately before promotion to what it would have been after promotion and to keep the former, if higher, until it was exceeded "as a result of advancement or further promotion". The ITU submits that it would have been "absurd" for it to go on after 1 January 1986 comparing levels of pensionable remuneration for the General Service and Professional categories.

D. In his rejoinder the complainant gives further background information, develops his pleas and challenges points made by the Union in its reply. He presses his claims.

In his submission he has been on the same post - for all the renaming, regrading, transfer and secondment - ever since May 1974. To save money by having it graded in the Professional category, the Union misled the Administrative Council into thinking that his responsibilities had increased. Inasmuch as the original grade of the post was G.7 he is entitled to the corresponding figures of pension and pay under Regulation 3.8, which says that special post allowance shall be pensionable if granted for more than a year, and under Rule 3.4.2c). Had his post been kept at G.7, his pay would have been a fifth higher and his pensionable remuneration nearly 77 per cent higher than they actually were in January 1992.

Rule 3.4.2c) entitles him to keep his pensionable remuneration at the level of the post in which he was serving at the time of his promotion until that level was exceeded "as a result of advancement or further promotion". But he has had neither advancement nor promotion since 1 January 1986, when he reached the top step of P.2. The level of his pensionable remuneration over the past six years has been below that of G.5, step 11, and even came close to that of G.1, step 10, by January 1992. How can such a drastic fall square with Rule 3.4.2c)?

#### CONSIDERATIONS:

1. This dispute, in which the complainant objects to the reckoning of his pensionable remuneration by the International Telecommunication Union, turns on whether before his promotion to a grade P.2 post he held a grade G.5 one, as the Union maintains, or a G.7 one, as he does.

When he joined the staff of the Union in 1967 he was put on a post at grade G.4. In 1969 he got a permanent appointment at G.5 in the Technical Co-operation Department. In January 1974 he was transferred to a P.1 post and, although he continued to hold his G.5 permanent appointment, he was paid a special post allowance

corresponding to P.1. In September 1974 he was put on a post at P.2, while still on his G.5 appointment, and again was paid the corresponding allowance.

By a decision of 15 May 1984 the Secretary-General of the Union transferred him as from 1 May to a G.7 post, No. S39/G7/157, in the Supplies and Stores Section of the Conferences and Common Services Department. In that post he continued to get the P.2 allowance. By a decision of 22 May, however, the Secretary-General reversed the one of 15 May and instead seconded him as from the same date, 1 May, to the same post, No. S39/G7/157, in the Supplies and Stores Section, again with payment of the P.2 allowance.

2. The fact that the complainant continued to receive the P.2 allowance shows that he was merely to discharge the duties of the P.2 post and was not promoted to P.2.

That is borne out by a note on both the decision of 15 May and the one of 22 May to the effect that they were made in pursuance of the Secretary-General's memorandum of 8 May 1984 and that the complainant held a post previously graded G.5.

3. By a decision of 8 October 1985 the grade of the post he held, No. S39/G7/157, was changed from G.7 to P.2 and the post was renumbered S26. By a decision of 31 October 1985 he was put on that post as from 1 January 1986. A note on this decision again confirmed that he had been promoted not from G.7, the former grade of his post, but from G.5, the grade of his permanent appointment, which he had held in the meantime so that he could fall back on it if need be.

4. Rule 3.4.2c), which is set out in full in A above, says that on promotion from the General Service to the Professional category an official shall keep his pensionable remuneration at the level which it had reached immediately before promotion "until that level is exceeded as a result of advancement or further promotion".

Since the complainant's promotion as from 1 January 1986 resulted in a decrease in his pensionable remuneration the Union was right to grant him the benefit of that rule. He was accordingly entitled to keep his pensionable remuneration at the level it had reached immediately prior to promotion until that level was exceeded as a result of advancement or further promotion. He may not properly object if since 1 January 1986 his pensionable remuneration has not increased, because he was appointed to P.2 at the highest step and has not received any advancement or further promotion since then.

5. Since his pleas fail, the impugned decision is upheld and his claims are rejected in their entirety.

DECISION:

For the above reasons,

The complainant is dismissed. In witness of this judgment Tun Mohamed Suffian, Vice-President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Edilbert Razafindralambo, Deputy Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 15 July 1992.

Mohamed Suffian  
Mella Carroll  
E. Razafindralambo  
A.B. Gardner