

SEVENTY-NINTH SESSION

In re SAUNDERS (No. 11)

Judgment 1423

THE ADMINISTRATIVE TRIBUNAL,

Considering the eleventh complaint filed by Mr. Yann Harris Saunders against the International Telecommunication Union (ITU) on 3 September 1994, the ITU's reply of 10 October, the complainant's rejoinder of 25 October and the Union's letter of 28 November 1994 informing the Registrar of the Tribunal that it did not wish to enter a surrejoinder;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

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. Information on the complainant's career at the ITU appears under A in Judgments 970, 989 and 1018. This dispute, like those which led to earlier complaints, is about his loss of earnings and potential loss of pension entitlements due to the promotion he got on 1 January 1986 from grade G.5 to P.2.

By service order No. 24 of 15 December 1993 the Secretary-General amended the salary scales of staff in the General Service category as from 1 January 1991.

In a memorandum of 13 January 1994 the complainant asked the Secretary-General to review the new scales on the grounds that they aggravated the loss of pay and pension entitlements he had suffered on account of his promotion to P.2. He sought financial compensation as from 1 January 1991 and, failing that, leave to put his case directly to the Tribunal.

By a memorandum of 25 February 1994 the Secretary-General told him that the service order had no effect on the terms of his employment as a member of the Professional category of staff. The Secretary-General accordingly rejected the request for review and for waiver of the obligation to go through the internal appeal procedure.

On 4 May the complainant put the matter to the Appeal Board, which, though it did not regard his appeal as receivable, recommended in a report dated 5 July 1994 that the Administration should do its utmost to find a "practical solution".

By a memorandum of 20 July 1994 the Secretary-General upheld his earlier decision and said he had asked everyone concerned to try to find a practical solution. That is the decision under challenge.

B. The complainant submits that the impugned measure impairs his acquired rights under Staff Regulations 3.15 and 12.1, which read:

"Regulation 3.15 - Pensionable Remuneration:

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 Pensions Fund."

"Regulation 12.1 - General Provisions:

These Regulations may be supplemented or amended by the Administrative Council, without prejudice to any conditions of service quoted in the letter of appointment or contract of individual staff members ..."

The acquired right he is asserting is to a pension no lower than what he would have got at G.5, his former grade. Though he accepted promotion to P.2 on the understanding that his pension would decline no further the amount of it has fallen despite Rule 3.4.2, which is supposed to safeguard pension rights on promotion from the General

Service to the Professional category. By applying the new scales of pay and pensionable remuneration to all General Service staff but not to him the Secretary-General has acted in breach of equality of treatment and good faith.

He puts his present losses at about 2,000 Swiss francs a month. By overlooking such essential facts the Secretary-General failed to discharge his duty of care.

The complainant wants the Tribunal to quash the Secretary-General's decision of 20 July 1994; to alter his salary and pensionable remuneration as from 1 January 1991 to the figures he would have been entitled to at G.5; either to order the Union to reckon his pay at a "fictitious step" so that it squares with successive promotions from G.4 to P.2 or, failing that, ensure that his take-home pay is 50 per cent greater than the figure corresponding to step 12 of grade G.4; compensate him for the loss of any amounts he should draw in pension below the G.5 level; order the ITU to reckon his and its own contributions to the pension fund as from 1 January 1994 at step 12 of grade G.5 or at step 12 of P.2, whichever carries the higher pensionable remuneration; order an "undertaking in principle" from the ITU on his claim to financial redress "but leave open the option to have what would have been his pension entitlements at G.5 converted into compensation if the impugned decision does ... cause him the suspected injury"; order the ITU to pay him on retirement the difference between his pension as a P.2 official and what he would have got at G.5; let him come back to the Tribunal in due course "to have his entitlements determined and his rights enforced"; and order the Secretary-General to "put an end to the penalty" he has suffered since 1987.

C. In its reply the Union contends that the complaint is irreceivable. Since, as the Tribunal has held, the complainant belongs to the Professional category, the change in the conditions of employment of General Service staff has caused him no injury. So he has no cause of action.

The issues which he raises, and which he has indeed argued in his ten earlier complaints, are *res judicata*. For example, the Tribunal has already held that the ITU properly determined his entitlements upon promotion from G.5 to P.2 without allowing for "hypothetical" grades in between. His alleged loss of earnings and pension rights is based on "unwarranted extrapolation" and "pure conjecture".

D. In his rejoinder the complainant denies that his complaint is *res judicata*: the Tribunal has yet to entertain a plea from him that the General Service pay scales caused him "additional" injury. For advancement by six grades to entitle him to a figure of pay 13 per cent lower and to pensionable remuneration 41 per cent lower offends against the principles of equal and fair treatment and good faith; his pay should have been 70 and his pensionable remuneration 114 per cent greater.

CONSIDERATIONS:

1. The complainant is impugning the Secretary-General's final decision of 20 July 1994. It confirms the Secretary-General's refusal of 25 February 1994 to review his decision of 15 December 1993 introducing revised salary scales for the General Service category of staff of the ITU. The complainant's substantive grievance is that if he had not been promoted in 1986 from that category to a grade P.2 post he would have had better pay and pension entitlements under the revised scales than he has at P.2. He asks that his salary and pension entitlements be retroactively increased.

2. The complainant is not a member of the General Service category of staff but holds a post in the Professional category. He submits that the Secretary-General's decision aggravates the deterioration of his pensionable remuneration and that "the injury sustained by the complainant on application of the new pensionable remuneration for G staff might increase because of ulterior decisions". He explains that his case does not rest on breach of any term of his contract or of any provision of the ITU's Staff Regulations and Rules. He contends that the impugned decision impairs his acquired rights to a pension at least equal to the one he would have received at G.5, the grade he held at the time of promotion to P.2. He observes that Staff Regulation 3.15 provides that "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". He maintains that his "conditions of engagement" were those of the General Service category and that Rule 3.4.2 was supposed to prevent deterioration of his pensionable remuneration.

3. As the Tribunal observed under 3 in Judgment 1303, by which it dismissed Mr. Saunders' eighth complaint, Article II, paragraph 5, of its Statute confers on it competence to hear complaints alleging non-observance, in

substance or in form, of the terms of appointment of officials and of such provisions of the Staff Regulations as are applicable to the case. Moreover, as the Tribunal affirmed in Judgment 764 (in re Berte No. 2) under 4, "A decision by an international organisation is challengeable before the Tribunal only if it causes the complainant injury".

4. In Judgments 1093, on Mr. Saunders' third complaint, and 1171, on his sixth, the Tribunal ruled on the issue of his pay and pension entitlements on promotion and held that the figures corresponded to his grade, P.2. He therefore has no locus standi in challenging any new salary scales applicable to the General Service category of staff. Because he belongs to another category of staff the revision of those scales cannot cause him injury. His claim to compensation is unfounded because he has suffered no injury on account of the Secretary-General's decision.

5. By his pointless repetition of arguments on claims which the Tribunal has rejected in previous complaints the complainant has refused to accept that the decisions of the Tribunal are res judicata. His conduct in reverting to issues which the Tribunal has already ruled on amounts to an abuse of process. His complaint is devoid of merit and will be dismissed.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Sir William Douglas, President of the Tribunal, Mr. Pierre Pescatore, Judge, and Mr. Mark Fernando, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 6 July 1995.

William Douglas
P. Pescatore
Mark Fernando
A.B. Gardner