

EIGHTY-SECOND SESSION

In re Elotu

Judgment 1594

The Administrative Tribunal,

Considering the complaint filed by Mr. Joseph Elotu against the International Telecommunication Union (ITU) on 20 June 1996, the ITU's reply of 24 July, the complainant's rejoinder of 29 August and the Union's surrejoinder of 1 October 1996;

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. The complainant, a Ugandan born in 1942, joined the staff of the ITU in 1978 under a fixed-term appointment as a telecommunication administrator at grade P.4 in the Technical Cooperation Department. In 1985 the Union transferred him to a post at the same grade in its External Relations Department and in 1989 it gave him a permanent appointment.

On 1 January 1992 it assigned him to its Telecommunication Development Bureau. In a memorandum of 30 January 1992 he asked its Secretary-General to upgrade his post in the Bureau. On 14 July 1995 the ITU did so and promoted him as from 1 June 1995 to grade P.5 as the Bureau's "coordinator for least developed countries' and international organizations' matters".

In a memorandum of 28 August 1995 he asked the Secretary-General to reconsider the decision of 14 July so as to promote him as from 1 November 1994. Having got no reply he went to the Appeal Board on 13 November 1995. In its report of 13 March 1996 the Board recommended backdating his promotion to 1 November 1994 but refusing him payment of a special post allowance from 1 March 1993 to 31 October 1994.

In a memorandum dated 23 April 1996 the Secretary-General told him of the rejection of the recommendation about the date of his promotion. That is the decision he is impugning.

B. The complainant submits that his promotion should be backdated on account of undue administrative delay. He says that the Union's failure to upgrade his post any sooner was "probably" discriminatory. Whereas it reclassified other posts in under six months, it left him with a "temporary" job description for some eight years during which his responsibilities went on growing.

He seeks the quashing of the impugned decision, promotion to P.5 as from 1 November 1994, the grant of a special post allowance from 1 March 1993 to 31 October 1994 and "castigation" of the Union for mishandling his case.

C. In its reply the ITU contends that it abided by all the rules on reclassification. The upgrading of his post turned on the broad issues of policy that arose from the establishment of a new unit and its effect on the structure of the Bureau as a whole. So things took time.

In any event the Union had no valid reason to backdate the complainant's promotion. As for the grant of a special post allowance, he met none of the conditions laid down in the Staff Regulations.

D. In his rejoinder the complainant rebuts the arguments in the ITU's reply and enlarges on his pleas. He points out that in breach of the material rules some have been getting special post allowances for over six years. Having performed the same duties since March 1993, he too was entitled to such an allowance. He adds a claim to costs.

E. In its surrejoinder the Union says that the complainant's arguments are a subjective interpretation of facts that is unsupported by any evidence.

CONSIDERATIONS

1. The complainant is on the staff of the International Telecommunication Union (ITU), which on 1 January 1992 assigned him to its Telecommunication Development Bureau. He at once set about getting a more explicit description and an upgrading of his post, his promotion from grade P.4 to P.5, and payment of a special post allowance. Not until 20 June 1995 did the competent body, the Coordination Committee, approve a proposal from the Chief of Personnel to upgrade his post to P.5. On 6 July 1995 the Committee approved his promotion with effect from 1 June 1995. On 14 July the Chief of Personnel wrote to tell him of the decision by the Secretary-General of the Union to promote him, and he had notice of that decision on 17 July. Objecting to the delay in taking the decision, he asked the Secretary-General to give effect to it as from 1 November 1994 instead. He got no answer, inferred rejection and went to the Appeal Board. The Board found no breach of procedure but because of the long delay recommended backdating his promotion to 1 November 1994. It did not recommend granting him the special post allowance. By a decision dated 23 April 1996 the Secretary-General rejected the Board's recommendation for backdating of the promotion to 1 November 1994 and confirmed the backdating of it to 1 June 1995.

2. The complaint is receivable. The complainant asks the Tribunal to order that his promotion date as from 1 November 1994, that he be paid the special post allowance from 1 March 1993 to 31 October 1994 and that the Union be "castigated" for keeping him for years on duties that were not covered by a proper post description. He claims costs.

3. As the Appeal Board observed, correspondence between the Union and the complainant about the description and grading of his post dragged on for three-and-a-half years, and that was too long. As the Board held, "the Administration has a duty to process promptly any claim to upgrading or to payment of special post allowance so that the official will not be left to suffer or to wonder what is going on".

4. Yet, understandably enough, the Union had difficulty in determining the content of the complainant's post and the new structure of the Bureau. His duties had changed, especially in March 1993, and it was reasonable for the Secretary-General to put off his final decision until he knew just what sort of unit the Union was to set up to serve the least developed countries and how the complainant would fit into it. Only in October 1994 did the Plenipotentiary Conference of the Union give the Secretary-General explicit instructions "within existing resources, to provide the necessary administrative and operational structure for proper administration of the resources appropriated for the Least Developed Countries". The procedure for grading the post could then go ahead, and the upshot was the submission of a report of 7 June 1995 by the Chief of Personnel.

5. Regrettably slow though the process may have been, the Union's assessment of the complainant's duties and qualifications was not the cause. Nor does he adduce evidence to suggest any breach of the rules on grading and promotion. Soon after getting the report the Coordination Committee endorsed the proposal in it for upgrading his post and promoting him to P.5. The Administration was under no duty to backdate any of its decisions and its doing so in one case in 1992 conferred no right on the complainant. So there are no grounds in law for allowing his claim to promotion as from 1 November 1994.

6. His claim to the payment of special post allowance cannot succeed either. Under Staff Regulation 3.8 such allowance is payable to someone who is "temporarily required to assume the responsibilities and duties of an existing post in a higher grade" or has to do "additional temporary work of at least four weeks' duration". There is no evidence to suggest that the complainant met either of those conditions.

7. The conclusion is that the Union committed no unlawful act; that the delay was due to difficulties that unavoidably arose in reforming the Bureau; and that the complainant's claims must fail in their entirety.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment Sir William Douglas, President of the Tribunal, Mr. Michel Gentot, Vice-President, and Mr. Edilbert Razafindralambo, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 30 January 1997.

(Signed)

William Douglas
Michel Gentot
E. Razafindralambo
A.B. Gardner

Updated by PFR. Approved by CC. Last update: 7 July 2000.