

THIRTY-FIRST ORDINARY SESSION

In re MISRA

Judgment No. 213

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the International Telecommunication Union (ITU) drawn up by Mr. Madan Mohan Misra on 17 January 1973, the ITU's reply of 22 April 1973 and the complainant's rejoinder of 14 August 1973;

Considering Article II, paragraph 5, of the Statute of the Tribunal and ITU Staff Regulation 10.1 and Staff Rule 6.2.4;

Having examined the documents in the dossier, the oral proceedings requested by the complainant having been disallowed by the Tribunal;

Considering that the material facts of the case are as follows:

A. On 8 December 1968 the complainant was appointed by the ITU for one year to a technical assistance mission as a telecommunication expert in outside network plant. He was appointed at grade P.4, step 5, and sent to Syria, with Damascus as his official duty station. Throughout his appointment he was a participant in the United Nations Joint Staff Pension Fund. He was also covered by two insurance policies, one for life insurance and the other for sickness and accident insurance. The sum of eight dollars a month was deducted from his salary as contribution to the former. His letter of appointment stated that appointments to technical assistance missions were made in accordance with the terms and conditions set out in such letters and subject to the provisions of the ITU Staff Rules governing Technical Assistance Project Personnel and any amendments thereto.

B. The complainant worked normally until 30 July 1969, when he was knocked down on a pedestrian crossing by a cyclist who had disregarded the traffic lights. According to the medical report signed on 5 September 1969 by the doctor who gave him first aid, the effects of his accident were slight: treatment would take a month, the patient was not suffering from total incapacity, and he could walk, travel, write and do normal work. These findings were made immediately after the accident, on 31 July, and again on 12 and 20 August 1969. No house visits were required.

C. Some time before his contract expired the complainant asked for one month's extension. By letter of 9 October 1969 the ITU refused his request, since the letter of appointment had stated that it gave rise to no expectancy of renewal or of conversion to any other type of appointment or work in the ITU, and gave him full instructions for returning to Geneva to complete the end-of-contract formalities. He went to Geneva as instructed. The end-of-contract medical examination was normal and the Director of the Joint Medical Service wrote to the ITU on 20 January 1970 to report that the complainant had undergone his end-of-contract examination and had also been examined by a specialist because he had complained of disorders due to his accident. The conclusion drawn from these two examinations was that he was fully fit for work but should probably undergo physiotherapeutic treatment.

D. On 26 August 1970, i.e. eight-and-a-half months after his end-of-contract medical examination, the complainant wrote to the Director of the Joint Medical Service to say that he was receiving treatment and to ask whether he could claim under the two insurance policies taken out in his name. After a lengthy correspondence between him and the ITU and many consultations between the ITU, the insurance companies and the medical experts, in a letter to the complainant of 5 July 1972 the ITU confirmed its earlier decisions: it would pay for forty-five sessions of physiotherapeutic treatment provided the complainant produced the vouchers. Mr. Misra, it seems, never explicitly claimed reimbursement of the cost of his treatment.

E. Meanwhile, in June 1972, the complainant visited Geneva of his own accord and called on the Secretary-General and Deputy Secretary-General of the ITU. He claims to have then been promised a second mission. On 14 December 1972 he wrote to the ITU referring to these alleged promises and to his application for a post a regional

expert for the Central African Republic or any other similar appointment. On 11 January 1973 the competent ITU department told him there were no vacancies suited to his qualifications and experience.

F. In this complaint Mr. Misra asks the Tribunal to order the ITU to honour the assurances given to him by the Secretary-General and the Deputy Secretary-General of the ITU of re-employment in lieu of compensation for permanent injuries sustained by him during his mission in Syria.

G. The ITU maintains that the complaint is irreceivable since the complainant has not exhausted all means of redress available under the ITU's Staff Rules governing Technical Assistance Project Personnel. It points out that he has failed to seek redress from the Appeals Committee, which is required to make a recommendation to the Secretary-General on any appeal lodged by a staff member or expert against the ITU. Subsidiarily, the organisation contends that the complainant's claims should be dismissed as ill-founded on the merits. It utterly rejects his contention that the executive heads of the ITU promised him a new appointment. Finally, it asks the Tribunal to take note of its firm offer to pay for the proposed forty-five sessions of physiotherapeutic treatment provided it has proof that such treatment has been given and the complainant produces vouchers to cover the amounts paid or payable.

H. In his rejoinder the complainant maintains his original claims on the same grounds and asks for the payment of additional compensation under various heads.

CONSIDERATIONS:

If Mr. Misra intends to impugn the letter dated 5 July 1972 by which the Secretary-General of the ITU finally rejected the claim for compensation made by the complainant on 20 May 1972, his complaint filed with the Administrative Tribunal on 14 January 1973 was not submitted within the time limits laid down by Article VII, paragraph 2, of the Statute of the Tribunal and is therefore not receivable.

If Mr. Misra intends to impugn the refusal to give him a new appointment which he alleges in his complaint had been promised to him, he is not impugning any decision embodying such a refusal, and in any event he ought not to have addressed himself directly to the Tribunal before submitting an appeal to the administrative appeals body provided for under Regulation 10.1 of Chapter X of the Staff Regulations and Staff Rules. The fact that he was received by the Secretary-General and the Deputy Secretary-General cannot be regarded as an alternative to such an appeal.

It follows that the complainant's claims as set out above are not receivable.

In consequence, the complaint, whatever its merits, is not receivable.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Morellet, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 22 October 1973.

(Signed)

M. Letourneur
André Grisel
Devlin

Roland Morellet

