

THIRTY-FOURTH ORDINARY SESSION

***In re* REDING**

Judgment No. 250

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the Universal Postal Union (UPU) drawn up by Mr. Jean-Marie Reding on 19 April 1974 and brought into conformity with the Rules of Court on 16 May 1974, the Organisation's reply of 24 September 1974, the complainant's rejoinder of 26 October 1974 and the Organisation's surrejoinder of 19 December 1974;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal, articles 200.1 to 212.7 and Appendix D of the United Nations Staff Rules, article 11.2 of the Staff Regulations of the International Bureau of the Universal Postal Union and Staff Rule 111.3 of the Bureau;

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 31 March 1971 the UPU sent a circular to several national postal departments inviting nominations for a post as an expert in postal organisation required by the Brazilian Government. The General Postal Administration of France nominated the complainant. The UPU selected him and sent him a letter of appointment on 23 July 1971. According to that letter his appointment was to be subject to the conditions set out in the letter itself and otherwise to be governed by articles 200.1 to 212.7 of the United Nations Staff Rules. One of the stated conditions was that if he fell ill during the period of his appointment the expert was entitled to the compensation prescribed under the special insurance scheme applied by the UPU to experts on technical assistance projects. On 26 July 1971 the complainant accepted the offer of appointment on the stated conditions.

B. This appointment took effect on 27 July 1971 and expired on 26 January 1972. By mutual agreement it was extended from 27 January to 26 May 1972. He was then offered, and he accepted, an appointment as manager of the project in Brazil from May to 31 December 1972. His appointment in Brazil was finally extended to 31 December 1973.

C. By letter of 17 May 1973 the complainant informed the UPU that because of a myocardial infarction he had had to stop work and that medical opinion estimated his absence from work at some four to six weeks. Meanwhile the project was running into difficulties because of bad feeling between the project manager and his team. A senior UPU official, Mr. Bäckström, was sent to Brazil to investigate and came to the conclusion that the complainant should be withdrawn. The complainant was invited to resign for reasons of health and was told that if he did not do so his mission would be terminated. The complainant sent in a letter, albeit reluctantly, announcing his resignation with effect from 30 September 1973.

D. On 1 October 1973 the complainant wrote to the UPU to claim reimbursement of certain expenses and inform it of his address in France, of which the UPU says it had until then been unaware. It wrote to him on 18 October 1973 asking for information on the results of the medical check-up he had undergone on the termination of his mission. By letter of 20 November 1973 the Postal Services Administration of Paris sent the medical adviser of the UPU several medical certificates, including notification of consultation of a heart specialist. In a letter of 29 November 1973 to the UPU the complainant implied that his heart attack had been due to the performance of his official duties and accordingly claimed the application of the provisions of Appendix D of the United Nations Staff Rules. On 21 December 1973 the UPU replied asking the complainant to furnish proof that his illness and its possible consequences were due to the performance of his official duties. By letter of 26 January 1974 he acknowledged receipt of that reply but, according to the UPU, failed to give the information it had asked for. By letter of 27 March 1974 the UPU reminded him of its letter of 26 January 1974 and said that his case was being

examined by the administration and that he would be informed of its decision. On 10 May 1974 it asked the General Postal Administration of France to state whether the complainant's earning capacity in the French postal and telecommunications service had suffered on account of his illness. On 22 July 1974 the Director-General of the General Postal Administration informed the UPU that the complainant had been appointed in the normal way as Director for a territorial department in Charleville-Mézières on terms which he had found acceptable.

E. In his memorandum the complainant states that the myocardial infarction which he suffered while working as project manager in Rio de Janeiro was due to his working conditions, in that for almost a year he had had to work some sixteen hours a day because the UPU had failed to appoint certain experts by the scheduled date and others had resigned. He lodged a claim for compensation on 29 November 1973 and bases his present complaint on the UPU's failure to decide on that claim. He asks the Tribunal - inasmuch as during his mission in Brazil he was obliged to work in arduous conditions for which the UPU was to blame; inasmuch as the resulting overwork and nervous strain were, according to medical opinion, the causes of his infarction; inasmuch as, despite medical treatment, certain sequelae persist which have compelled him to work less; and inasmuch as the UPU automatically admitted him as a member of a comprehensive insurance scheme - to order the UPU to pay him compensation for the prejudice he has suffered, plus costs.

F. In its reply the UPU observes that the complainant lodged his complaint before it had taken any decision, although the Director-General's letter of 27 March 1974 had promised that a decision would be taken. Since the complainant's case was pending when he lodged his complaint, there was no decision against which he could appeal to the Joint Committee. For that reason, and since the Director-General would have taken a final decision on the Joint Committee's recommendation, the UPU contends that the complaint is irreceivable. Nor can the complainant rely on Article VII of the Statute of the Tribunal to justify a direct appeal inasmuch as the UPU did respond to his claim in its letter of 27 March 1974 informing him that his case was under study. Even if the letter of 27 March were regarded as a "decision" which he might impugn, his complaint would not be receivable unless he had first exhausted the internal means of redress; and that he failed to do.

G. The UPU points out that according to the complainant's letters of appointment articles 200.1 to 212.7 of the United Nations Staff Rules applied to the complainant only in so far as the letters specified no derogation therefrom. But those letters expressly stipulated that if he fell ill the complainant should be entitled to compensation under the provisions of the special insurance scheme for UPU experts, which exclude risks of disability arising from illness and are incompatible with article 206.5 of the United Nations Staff Rules, which refers to Appendix D to those rules.

H. As to the merits, the UPU contends that a staff member is entitled to compensation for illness only if two conditions are fulfilled: first, the illness should be directly due to the performance of official duties; and, secondly, one of its direct consequences should be a reduction in earning capacity. As to the former condition, the UPU argues that the claimant has not established - and the burden of proof lies on him - that his myocardial infarction in May 1973 was directly due to the performance of his duties in Brazil. Moreover, his contention that he regularly worked sixteen hours a day is refuted by Mr. Bäckström's findings during his on-the-spot inquiry in July 1973. As to the second condition - relating to a reduction in earning capacity - the complainant has failed to produce any medical report certifying chronic partial disability and indicating the degree of disability. Moreover, immediately after the termination of his mission as an expert in Brazil he was reinstated and actually promoted in the General Postal Administration of France.

I. In conclusion, the UPU asks the Tribunal: as to the form: (1) to hold that it is competent to hear the complaint; (2) to declare the complaint irreceivable; and as to the merits: (a) principally: (3) to dismiss the complainant's claims as unfounded and to award costs against him, including a reasonable contribution towards the legal fees incurred by the UPU; and (b) subsidiarily: (4) to allow the defendant organisation to disprove all the complainant's allegations and to prove its own allegations by all the means available to it under the law, including the calling of witnesses.

CONSIDERATIONS:

This case relates solely to the nature and amount of the compensation claimed by the complainant on his resigning for reasons of health with effect from 30 September 1973.

A clause in the complainant's contract of appointment to the UPU and the subsequent contracts extending it

provided that if he suffered illness or injury or died during the period of his appointment he should be compensated under the special insurance scheme established for UPU experts on technical assistance projects.

The complainant, the last of whose contracts of appointment as expert was to expire on 31 December 1973, suffered a myocardial infarction on 9 May 1973. He had to stop work immediately. Although he was able to go back to work by August, on the Organisation's advice he resigned with effect from 30 September 1973.

The UPU paid him all the benefits due under his contract of appointment.

The complainant maintains, first, that over and above the benefits prescribed in his contract of appointment as due in the event of illness and those which as a French civil servant he might claim from the French Ministry of Posts, he is entitled to benefit under the provisions of Appendix D to the United Nations Staff Rules; and, secondly, that he should be granted further compensation on the grounds that his illness not only occurred during the period of his assignment but was caused by excessive fatigue due to the conditions in which he had to work.

As to his first contention, it appears clearly from the terms of his contracts of appointment that in the event of illness he was entitled only to the benefits prescribed therein, which were exclusive of those set out in Appendix D mentioned above.

As to his second contention, it is debatable whether the term of appointment entitling him to compensation in the event of "illness" applied to all cases of illness contracted by him during his period of service, whatever their nature origin might be, or, on the contrary, should be taken only to apply to cases of illness which occurred during the period of his appointment and were directly due to performance of his duties by reason of the particularly demanding nature thereof.

Assuming that the latter interpretation is the right one, the complainant would be entitled, quite apart from the terms of his appointment and in accordance with the general principles of liability in public law, to full compensation for any prejudice suffered by him and its direct consequences, including, for example, chronic or temporary disability.

Without settling that question, and assuming in the complainant's favour that the second interpretation is correct, the Tribunal notes that after examining the complainant the heart specialist in the French General Postal Administration found that his assignment to Brazil had a bearing on his illness only in so far as his allegation that he was overworked - in working sixteen hours a day - could be proved.

It appears from the numerous documents in the dossier that the complainant's duties, however demanding and difficult they may have been, did not as such require him regularly to work longer hours than might reasonably have been expected of a staff member in his position.

Moreover, the illness which he suffered during his appointment with the UPU left no mark on him; in particular it did not prevent him from resuming normal work on being reinstated in the French postal administration nor indeed from obtaining immediate promotion to Director for a territorial department in that administration.

Accordingly, since the UPU generously met all expenses incurred by reason of his illness, the complainant suffered no other prejudice thereby and, in particular, cannot properly claim compensation for disability from which he does not in fact suffer.

For the foregoing reasons the complaint is in any case ill-founded and cannot be allowed.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Maxime Letourneur, President, Mr. Andre 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 5 May 1975.

(Signed)

M. Letourneur
André Grisel
Devlin

Roland Morellet

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