

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

A. M.

v.

ITU

129th Session

Judgment No. 4209

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs B. A. M. against the International Telecommunication Union (ITU) on 2 May 2016 and corrected on 2 August 2016, the ITU's reply of 31 August 2018 (the stay of proceedings requested by the parties was granted by the President of the Tribunal until 31 August 2018), the complainant's rejoinder of 26 November, corrected on 18 December 2018, and the ITU's surrejoinder of 8 April 2019;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

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

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

The complainant challenges the ITU's failure to address her claim for reclassification and for payment of a special post allowance.

The complainant joined the ITU in July 1999 and was initially employed under a series of short-term contracts. As of January 2002 she worked as a proof reader at grade G.6. On 1 January 2004 she became a permanent staff member and in 2013 she was assigned to the G.6 position of Assistant in the Interpretation Service of the Conferences and Publications Department. The Department was restructured in 2014. She applied for the new P.3 position of Coordinator of the Interpretation

Service but was informed, by a letter of 24 July 2015, that she had not been selected, and that the creation of that post had resulted in the abolition of the G.6 post to which she was administratively attached. Hence she was assigned as from 1 August 2015 to the Office of the Chief of the Conferences and Publications Department, as Senior Administrative Assistant, for an initial period of six months.

On 4 September 2015 the complainant requested the Secretary-General to review the July decision. She also asked that her administrative situation be retroactively corrected, and that she be awarded material and moral damages. She alleged that she was a victim of discrimination and abuse of power, explaining that she held grade G.6 but was asked to perform duties of a higher level. On 14 October she was informed that the Secretary-General had decided to reject her request for review. With respect to the allegations of discrimination and abuse of power, she was requested, if she wished to maintain her allegations, to provide more details and evidence as required by Service Order No. 05/05.

On 24 November 2015 the complainant lodged an internal appeal with the Appeal Board challenging the Secretary-General's failure to reply to one of the requests she had made on 4 September 2015, namely that her administrative situation be retroactively corrected and that she be awarded material and moral damages. She requested that the post she held between 1 October 2013 and 31 July 2015 be retroactively reclassified at grade P.3, that she be paid a special post allowance with retroactive effect, and the difference in salary and other indemnities she would have received had her post been reclassified. She also claimed moral damages and costs.

In its report of 1 February 2016 the Appeal Board noted discrepancies between the claims the complainant had made in her request for review and those made in her appeal. In the request for review she merely asked that the non-selection decision be re-examined, that her administrative situation (on the basis of alleged discrimination and abuse of power) be corrected and that the decision to assign her to the post of Senior Administrative Assistant be reviewed. The Appeal Board found that prior to lodging her appeal in November 2015 she had not explicitly requested the Secretary-General to reclassify the post she held between

October 2013 and July 2015. It therefore recommended dismissing her appeal as irreceivable.

By a memorandum of 2 February 2016 the complainant was informed of the Secretary-General's decision to endorse the Appeal Board's recommendation to reject her appeal as irreceivable. The complainant impugns that decision before the Tribunal.

The complainant asks the Tribunal to quash the impugned decision and to award her 10,000 Swiss francs in moral damages as well as costs. She seeks the retroactive reclassification, to grade P.3, of the post she held from January 2002 to June 2013 and/or the post she held from 1 October 2013 to 24 July 2015, and payment of the difference in salary and other indemnities that she would have received had her posts been reclassified. In the alternative (if no reclassification is ordered) she claims the payment of a "special post indemnity" from January 2002 to June 2013 and from 1 October 2013 to 24 July 2015.

In her rejoinder she requests, as an alternative to the claim for retroactive reclassification, that the case be remitted to the ITU for "*de novo* internal proceedings".

The ITU asks the Tribunal to reject the complaint as irreceivable. It submits that the complainant's claims for reclassification of the post she held between January 2002 and June 2013, and the post she held between 1 October 2013 and 24 July 2015, are time-barred. The complaint is also devoid of merit.

CONSIDERATIONS

1. The complainant impugns the Secretary-General's decision, dated 2 February 2016, which accepted the Appeal Board's recommendation to reject her appeal as irreceivable.

2. The complaint has its genesis in the restructuring of the ITU's Conferences and Publications Department in which the complainant's G.6 post of proof reader was among those that were to be abolished. She was informed in a letter of 24 July 2015 that her application for a newly created P.3 position of Coordinator of the Interpretation Service

was unsuccessful and that she was assigned to the Office of the Chief of Department as Senior Administrative Assistant at grade G.6 with effect from 1 August 2015 for an initial period of six months. As her request of 4 September 2015 to the Secretary-General to review that decision and for her administrative position to be retroactively corrected was rejected, she lodged her appeal, dated 24 November 2015, with the Appeal Board.

3. In its report of 1 February 2016, the Board summarized the complainant's claims in her 4 September 2015 request for review as follows:

- (1) re-examine the decision not to appoint her to the post of Coordinator of the Interpretation Service;
- (2) correct her administrative situation (on the basis of alleged discrimination and abuse of power);
- (3) re-examine the decision appointing her to the post of Senior Administrative Assistant.

The complainant's statement of these pleas in her complaint brief is similar, except that she bifurcates what is stated in item 2 as follows:

- (a) that her administrative situation be corrected;
- (b) that she be paid damages for being the victim of discrimination and abuse of power.

4. Much has been made by the parties in their arguments concerning the complainant's allegations of discrimination and abuse of power. The ITU had informed the complainant of the procedure to be followed to seek redress in respect of these allegations. The complainant states that the ITU had "merely cited the procedure applicable [to seek redress in respect of these allegations], which was however not the aim of the [...] request regarding her administrative situation". She states in her submissions that she intended to request a retroactive reclassification of her functions in her two last assignments or to request the payment of a special post allowance at grade P.3 for functions which she alleges she undertook at that grade level when she held G.6 posts.

These statements make it clear that allegations of discrimination and abuse of power are not objects of this complaint, but that the claims for retroactive reclassification and payment of special post allowance are.

5. The Appeal Board found that the appeal before it was irreceivable because the complainant had never made a request for the retroactive reclassification of her former post, that is to say the post she held between October 2013 and July 2015, prior to lodging her appeal on 24 November 2015. The Secretary-General adopted this recommendation and did not err in so doing.

6. With respect to the request for the retroactive reclassification of the post the complainant held from January 2002 to June 2013, the Tribunal finds that the claim is irreceivable pursuant to Article VII, paragraph 1, of the Tribunal's Statute. Even if, as the complainant contends, she had made such a request on 4 September 2015, this request was clearly time-barred. The complainant received the last notification that her appointment to that post was at grade G.6 prior to June 2013. Staff Rule 11.1.1(2)(a) required her to request the review of the contested decision within six weeks after receiving notification of it in writing. The words of the rule are clear and unambiguous that the request must be made within that time.

7. The complainant's claim to be paid a special post allowance is made pursuant to Staff Regulation 3.8a), which relevantly states as follows:

“A non-pensionable special post allowance shall be paid to any staff member who is temporarily required to assume the responsibilities and duties of an existing post in a higher grade. This allowance shall be payable as from three months after the date on which the staff member has assumed the duties of the post in the higher grade.”

Irrespective of whether the claim was the subject of an internal review, it is plainly without merit. This is because the complainant was not required to assume duties of “an existing post in a higher grade”, and her claim for payment of a special post allowance does not fall within the ambit of Staff Regulation 3.8a). Her claim is therefore unfounded.

8. For the preceding reasons, the complaint should be dismissed. Accordingly, it would be inappropriate to address the complainant's request in her rejoinder that the matter be remitted to the ITU for "*de novo* internal proceedings".

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 22 October 2019, Ms Dolores M. Hansen, Vice-President of the Tribunal, Mr Michael F. Moore, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 10 February 2020.

DOLORES M. HANSEN

MICHAEL F. MOORE

HUGH A. RAWLINS

DRAŽEN PETROVIĆ