

SIXTY-NINTH SESSION

In re ZAYED (Nos. 4 and 5)

Judgment 1042

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourth complaint filed by Mr. Ezzat Fayez Zayed against the Universal Postal Union (UPU) on 23 May 1989 and the fifth complaint filed by him against the Union on 4 July 1989;

Considering Judgment 1013 of 23 January 1990 ordering further submissions from the parties;

Considering the Union's further reply of 26 February 1990 to the fourth complaint and the complainant's rejoinder thereto of 27 March;

Considering the Union's further reply of 26 February to the fifth complaint and the complainant's rejoinder thereto of 26 March;

Considering the Union's further observations of 30 April seeking adjournment of the two complaints, the complainant's comments thereon of 7 May and the UPU's letter of 14 May 1990 to the Registrar of the Tribunal;

Considering Article II, paragraph 5, of the Statute of the Tribunal, Regulation 3.4 of the Staff Regulations and Rule 103.1 of the Staff Rules of the International Bureau of the Union;

Having examined the written evidence;

CONSIDERATIONS:

1. The complainant filed his fourth complaint on 23 May 1989 and his fifth on 4 July. In Judgment 1013, which it issued on 23 January 1990, the Tribunal joined them, declared that it was competent to entertain them, and reserved the issues of receivability and substance until it had the further submissions it ordered from the parties.

The Universal Postal Union and the complainant having entered the submissions in further adversarial proceedings, the Tribunal will now take up those issues. Since it is able to rule on the cases it sees no reason to allow the application the Union makes for adjournment.

2. In its letter of 14 May 1990 the Union invites the Tribunal, among other things, "to take note of the defendant's statement that it reverses the decision of 21 February 1989 to dismiss the complainant".

That letter deprives the fourth complaint of substance inasmuch as it seeks a grant of pay for the period from 9 December 1988 only up to 23 February 1989.

The complainant is nevertheless entitled to an award of costs, which the Tribunal sets at 1,000 Swiss francs.

3. His fifth complaint claims payment of a yearly salary increment for the period up to 8 December 1988.

On 20 January 1989 the Union sent the complainant a reckoning to give effect to points (2) and (3) of the Tribunal's decision in Judgment 922. In a letter of 9 February 1989 the complainant objected to the reckoning on the grounds that it discounted the yearly salary increment. His claim having been rejected, he lodged an appeal with the Joint Appeals Committee on 16 March 1989. Having got no answer, he took it that his appeal had been rejected and on 4 July 1989 submitted his fifth complaint impugning the implied rejection. In its report of 4 August 1989 the Committee recommended rejecting his appeal and on 31 August the Secretary-General did so.

4. The complainant is objecting to the reckoning of 20 January 1989 because it did not allow him the benefit of another increment although he had had such increments throughout his ten years' employment.

According to Regulation 3.4 of the Union Staff Regulations "Salary increments ... shall be awarded annually on the basis of satisfactory service", and Rule 103.1 of the Staff Rules, which is about "salary increments", says that "Satisfactory service for the purpose of awarding a salary increment shall be defined ... as satisfactory performance and conduct of staff members".

The Union cites a statement in the Committee's report of 4 August 1989 that discounting the increment was not at variance with the Union's rules and practice since the complainant's performance had not been declared satisfactory.

In its earlier report of 10 September 1986, cited in Judgment 868, the Committee's comments on the Union's evaluation of the complainant's performance were not so categorical. But in its report of 4 August 1989 it adds that since of course he had done no work since dismissal there was no assessing his performance or conduct.

Though that is because his dismissal had been held to be improper, the fact is that one condition set in the rules for the grant of the increment - a finding of satisfactory performance - was not met in this case.

Since he was not entitled to the increment his fifth complaint fails.

DECISION:

For the above reasons,

1. The Tribunal need not rule on the complainant's fourth complaint.
1. The Universal Postal Union shall pay him 1,000 Swiss francs in costs.
3. His fifth complaint is dismissed.

In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Edilbert Razafindralambo, Deputy Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 26 June 1990.

(Signed)

Jacques Ducoux
Mella Carroll
E. Razafindralambo
A.B. Gardner