

SEVENTIETH SESSION

In re SAUNDERS (No. 3)

Judgment 1093

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Mr. Yann Harris Saunders against the International Telecommunication Union (ITU) on 9 May 1989;

Considering the interlocutory order in Judgment 989 of 23 January 1990;

Considering the Union's submissions of 22 February 1990 in answer to the questions the Tribunal put to it in that judgment, the complainant's comments of 14 March on those submissions, the ITU's further submissions of 27 March, its observations dated 19 September in answer to questions addressed to it in the Registrar's letter of 23 August, the complainant's comments thereon of 5 October and the Union's communication of 19 October 1990;

Having examined the written evidence;

- A. In Judgment 989, which it delivered at its 68th Session, the Tribunal ordered further submissions from the parties. After consideration of their submissions at its 69th Session it invited further observations in answer to specific questions the Registrar addressed to them on its behalf.
- B. In its submissions in answer to the questions put to it in Judgment 989 the Union discusses previously disclosed figures setting out the complainant's earnings in 1985 and 1986. It explains, among other things, that the difference in the figures of his gross annual pay in Swiss francs between 1985 and 1986 is due to variation in the rate of exchange of the dollar.
- C. In his comments the complainant objects to the fact that the post adjustment allowance does not fully offset fluctuations in exchange rates. He submits that the grade he was promoted from P.2 on 1 January 1986 was G.7 and not G.5 and that it cannot be lawful that in the long run promotion should be to his financial detriment.
- D. In its further submissions the Union contends that there is nothing new in the complainant's comments that makes it change its point of view.
- E. In later observations the Union answers the further questions from the Tribunal. It states what the complainant's gross earnings for 1986 would have been if he had stayed at G.5, step 11: his gross monthly pay would have been 6,272 Swiss francs from January to March and 6,462 Swiss francs from April to December, making a total figure of 76,974 Swiss francs. It points out that family allowances are not included in the amount of earnings as reckoned on promotion.
- F. In his reply the complainant maintains that he was not promoted from G.5 to P.2.
- G. In its final communication the Union observes that the complainant's reply is merely a restatement of his earlier position.

CONSIDERATIONS:

1. The Tribunal took up this case at its 68th Session but for want of complete information made an interlocutory order in Judgment 989 inviting the Union to answer six questions and the complainant to comment on its answers. Since the parties' submissions still did not allow of a ruling, the Tribunal asked the Union, by a letter of 23 August 1990 from the Registrar, to answer two further questions. It again asked the complainant to comment on those answers.
2. As is recounted in Judgments 970, 988 and 989, the complainant joined the Union in 1967 at grade G.4 and in 1969 was granted a permanent appointment at grade G.5 in the Technical Co-operation Department. From 1973 he held several posts under fixed-term appointments. In January 1974 he was appointed to a post in the Professional

category, at grade P.1, for one year and paid a special post allowance corresponding to that grade. In September 1974 he was assigned to a P.2 post under another fixed-term appointment and was paid a special post allowance corresponding to P.2 so that his pay came to the amount he would have earned had he been promoted from his permanent grade of G.5 to the higher post. On 15 May 1984 the Secretary-General transferred him as from 1 May 1984 to a G.7 post in the Conferences and Common Services Department, still with payment of the P.2 allowance. He has been paid at the P.2 grade since September 1974.

3. A fixed-term appointment carries neither right nor expectancy of renewal or conversion to any other type of appointment. To protect the complainant from the risk of loss of employment at the end of each of his fixed-term appointments, he was allowed to keep his permanent G.5 appointment until a P.2 post turned up.

4. On 8 October 1985 his post in the Conferences and Common Services Department was upgraded to P.2 as from 1 January 1986 and he was promoted to it as from the same date.

5. As was explained in Judgment 989, under A, the policy of the Union was set out in a paper - CA 43/6729-E - which its Secretary-General put to its Administrative Council in 1988. That policy is to guarantee, for staff promoted from the General Service to the Professional category, that the salary differential resulting from the promotion and during the year following it, as calculated in local currency, will be equivalent to at least one step in the new grade.

For that purpose the Union carries out a review of the official's pay on the first anniversary of promotion, known as the "anniversary calculation". It does not, however, guarantee the level of pay after the first year.

6. Judgment 989 describes, again under A, how the present dispute arose. The gist of the complainant's case is that in the year following his promotion at 1 January 1986 to his P.2 post the total of his earnings came to a figure over 6,000 Swiss francs short of his earnings in 1985. The Secretary-General rejected his claims in a final decision of 9 February 1989, the one he is impugning.

What he is claiming is:

- (a) the quashing of the decision of 9 February 1989;
- (b) the correction of his "administrative and salary status to grade G.7" to bring it into line with the grade attributed since 1977 to his former permanent post in the Technical Co-operation Department and with the grade of the post he held from 1 May 1984 until 31 December 1985;
- (c) the award as from 1 January 1986 of a "definitive minimum differential in salary and allowances in local currency" worth at least one step in P.2 more than the sums he would have been entitled to in Swiss francs at G.7;
- (d) the continuance of that differential until further advancement or promotion;
- (e) the recalculation of the Union's and his own pension contributions at G.7 as from 1 May 1984;
- (f) the determination of his pensionable remuneration at at least the level it would have reached at G.7 at 31 December 1985;
- (g) declarations that it is unlawful to pay him less in Swiss francs after promotion than he would have got at his former, lower, grade and to reduce his pensionable remuneration below the level it would have reached at 31 December 1985 if he had been "correctly promoted to grade G.7 on 1 May 1984" before the regrading of his post to P.2 at 1 January 1986; and
- (h) an award of costs.

7. Immediately before his promotion to grade P.2 at 1 January 1986 the complainant held not only his permanent appointment at G.5 but also a fixed-term one on a G.7 post, though he was being paid a special post allowance at grade P.2.

But for the reasons set out below his claims are devoid of merit however his promotion is construed.

8. Since before promotion he held a fixed-term appointment on a Professional category post and was getting the P.2 allowance, one possible construction is that his promotion was from one Professional category post to another. In that case he has no valid claim under the policy in the paper of 1988 (CA 43/6729-E) because that policy applies only to promotion from the General Service to the Professional category.

9. Since before promotion he also held a permanent appointment at G.5 and was on a G.7 post, the other possible construction is that he was promoted from the General Service to the Professional category. On that assumption the policy did apply to him, and it required that the salary differential in Swiss francs resulting from his promotion in the year following 1 January 1986 should be equivalent to at least one step in P.2.

10. He founds his claims on a further assumption. He says that he ought to be deemed to have had promotion to G.7 at 1 May 1984, when he was transferred to the G.7 post in the Conferences and Common Services Department, and that, since he was so promoted, he was entitled under the policy to higher earnings in 1986.

There is no merit in the argument: he was never permanently appointed to G.7 and up to the date of his promotion to P.2 his permanent grade was still G.5. Whether he ought to have been paid more on promotion than he was, and if so how much more, therefore depends solely on the rules governing increments on promotion, not from G.7, but from G.5 to P.2.

11. To test whether the policy was duly applied, the complainant's earnings in the year after his promotion to P.2 must be compared, not with his actual earnings in the year before, 1985, but with the figure of the earnings he would have received at his permanent grade, G.5, in 1986.

According to the figures the ITU gives in its observations dated 19 September 1990 (see E above), the earnings of a G.5 staff member with the same entitlements as the complainant would in 1986 have come to 76,974 Swiss francs. The complainant has been given that figure and does not challenge it. Over the same period, according to his own figure, he was actually paid 91,004.70 francs at P.2.

The difference between the two figures is more than the equivalent of one step in P.2. Moreover, that finding holds good even if, as the Union says is its practice, family allowances are discounted. So there was no need or reason to apply the "anniversary calculation" and the Union committed no breach of the rules in declining to do so.

12. Since the impugned decision is lawful the complainant's claims set out in 6 above are devoid of merit and fail in their entirety.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Mr. Jacques Ducoux, President of the Tribunal, Tun Mohamed Suffian, Vice-President, and Miss Mella Carroll, Judge, have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 29 January 1991.

Jacques Ducoux
Mohamed Suffian
Mella Carroll
A.B. Gardner