

SEVENTY-FOURTH SESSION

In re KIGARABA

Judgment 1228

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Richard Kigaraba against the Universal Postal Union (UPU) on 1 July 1991;

Considering the interlocutory order in Judgment 1188 of 15 July 1992 for the disclosure of items of evidence;

Considering the UPU's additional comments of 28 July 1992, the complainant's further brief of 4 September and the Union's final brief of 7 October 1992;

Considering Article II, paragraph 5, of the Statute of the Tribunal, Regulations 10.1.2, 10.2.1, 10.3.1 and 11.1.1 of the Staff Regulations and Rules 110.4.1, 110.4.3 and 111.3 of the Staff Rules;

Having examined the written submissions;

A. In accordance with the Tribunal's instructions in Judgment 1188 the Union produces with further comment the reports of the Disciplinary Committee and the Joint Appeals Committee. It observes that both committees upheld the charges against the complainant and that his being in charge of the refund of education expenses made his offence more serious. But the Joint Appeals Committee said that the leniency of the Union's practice in allowing refunds made it less so. The UPU refers to improprieties allegedly committed by the complainant in other circumstances.

B. In his further brief the complainant submits that the Union had been unwilling to supply the reports because neither committee had recommended as severe a sanction as the Director-General imposed. He points out that the committees failed to take sufficient account of the gulf between the material rules and the way they were being applied, though they did mention "mitigating circumstances". The UPU's reference to matters irrelevant to the present case suggests personal bias.

C. In its final brief the UPU recalls that the false statement it punished the complainant for was his own declaration that "textbooks were not given free of charge". The committees differed only on the punishment, not on the fact, and in any event their recommendations were not binding on the Administration. Besides, the complainant is the only official with children at the international school who has ever applied for the refund of school books. The Union denies bias: his behaviour amply warranted the impugned action.

CONSIDERATIONS:

1. By its interlocutory order in Judgment 1188 the Tribunal ordered the Union to produce the full report of the Joint Appeals Committee and the full report of the Disciplinary Committee provided that it formed part of the submission to the Joint Appeals Committee. The Union has supplied both reports and in its final brief observes that its refusal to communicate them to the complainant was prior to the judgments the Tribunal delivered on 15 July 1992 on the case of Mr. Tony Der Hovsépian (No. 1177) and on his own (No. 1188).

2. The principles governing discipline are set out in Regulation 10.1 of the Staff Regulations of the International Bureau of the Union. Regulation 10.1.2 provides:

"The Director-General shall set up administrative machinery (Disciplinary Committee) with staff participation which will be available to advise him in disciplinary cases."

Regulation 10.2.1 lists the disciplinary measures which the Director-General may apply after taking advice from the Disciplinary Committee.

Regulation 10.3.1 reads:

"Disciplinary action may be taken only after investigation. The staff member shall be notified of the charge. He shall be given the opportunity to present his defence within a time-limit fixed according to the circumstances."

According to Rule 110.4.1 of the Staff Rules of the International Bureau the Disciplinary Committee's deliberations shall normally be based "on the investigation and any other supporting documents and, where appropriate, on brief statements and rebuttals which may be made orally or in writing ...". And according to Rule 110.4.3 "The deliberations and reports of the Disciplinary Committee and its recommendation to the Director-General shall be confidential".

3. Regulation 11.1.1 stipulates:

"The Director-General shall set up administrative machinery (a Joint Appeals Committee) with staff participation to advise him in case of any appeal by staff members against ... disciplinary action".

Rule 111.3 lays down time limits for the various stages in proceedings before the Joint Appeals Committee and deals with other matters relating to procedure. Rule 111.3.8 reads:

"In considering an appeal the Joint Appeals Committee shall act with the maximum of dispatch consistent with a fair review of the issue before it. Normally, proceedings before the committee shall be limited to the original written presentation of the case, together with brief statements and rebuttals, which may be made orally or in writing."

4. There is no provision in the Regulations or Rules that authorises the disclosure to the Joint Appeals Committee of the Disciplinary Committee's report and indeed it is unclear why that report was made part of the submissions to the Appeals Committee in this case. It contained findings of fact and comments on issues of fact, some of which were adverse to the complainant, as well as the Disciplinary Committee's recommendation. At all events, the report having been put to the Appeals Committee, it had the duty to communicate its contents to the complainant and so to afford him the opportunity of challenging it or commenting on it.

The Appeals Committee's failure to observe that elementary rule of due process is an essential procedural flaw and constitutes a breach of the complainant's right of defence.

The internal appeal proceedings being flawed, the Director-General's decision of 19 April 1991 cannot stand, and the case must be sent back to the Union for reconsideration of the complainant's internal appeal. The complainant is also entitled to an award of damages for moral prejudice.

5. Lastly, the Union's statement in its further comments that it is taking action against the complainant in respect of matters totally unconnected with the present case is inadmissible and must be disregarded.

DECISION:

For the above reasons,

1. The Director-General's decision of 19 April 1991 is quashed.
2. The case is sent back to the Universal Postal Union for a new decision.
3. The Union shall pay the complainant 1,000 Swiss francs in damages for moral injury.
4. It shall pay him 2,000 Swiss francs in costs.

In witness of this judgment Sir William Douglas, Vice-President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Edilbert Razafindralambo, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 10 February 1993.

William Douglas
Mella Carroll
E. Razafindralambo

