

SEVENTY-SIXTH SESSION

In re AMIRA

Judgment 1317

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Charles Mbagaya Amira against the International Telecommunication Union (ITU) on 4 September 1992 and corrected on 23 October 1992, the ITU's reply of 28 January 1993, the complainant's rejoinder of 8 April and the Union's surrejoinder of 28 May 1993;

Considering Articles II, paragraph 5, and VIII of the Statute of the Tribunal, Regulations 9.12 and 11.1 and Rule 11.1.1 of the ITU Staff Regulations and Staff Rules and Rule 4.7 of the Staff Rules governing technical assistance project personnel;

Having examined the written submissions and decided not to order hearings, which neither party has applied for;

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

A. The complainant, a Kenyan born in 1938, is trained in electronics and business administration. The ITU first employed him from 14 September 1982 to 14 November 1983 as a senior expert at grade P.5 on a regional project for Africa. In January 1984 it gave him a fixed-term appointment to a P.5 post as an engineer in the Technical Cooperation Department of its General Secretariat at headquarters in Geneva. In 1985 it issued a notice of vacancy for the Senior Regional Representative for Africa at grade D.1 as head of its Regional Office for Africa in Addis Ababa. On 24 August 1986 it granted him a fixed-term appointment to the post. He got three extensions, the last of which expired on 30 September 1990.

By a circular letter of 9 January 1990 the Secretary-General announced the setting up on 1 January of a Telecommunications Development Bureau - commonly known as the BDT, the initials of its title in French - in response to recommendations adopted in 1989 by the Union's Plenipotentiary Conference in Nice. The complainant's post and those of the other senior regional representatives were transferred from the General Secretariat to the new body, which was to be directly answerable to the Secretary-General.

In a handwritten letter of 24 April 1990 to the Secretary-General the complainant spoke of "difficulties" in the exchange of information between headquarters and the Regional Office; with just over three months of his contract left he expressed "anxiety" about what was to become of him and of that Office.

By a letter of 27 April the Secretary-General informed him that the transfer of his post to the BDT and the need for a new job description would "imply" not extending his contract beyond its expiry on 30 June 1990; there appeared to be no suitable vacancy for him; but because of his "experience and qualifications" his contract was extended by three months "pending further examination of the situation"; and he might apply for any suitable vacant post that was advertised in the BDT.

Having got the Secretary-General's letter on 22 May, the complainant replied on 22 June. The letter had, he said, "surprised" him: he had a legitimate expectation of return to headquarters; the 1989 Conference had set aside funds for his post; staff at headquarters assigned to the BDT had had their appointments extended; and the decision not to renew his contract was likely to be "misunderstood" by African organisations with which the ITU had been working and by others.

In a letter to the Secretary-General of 26 July 1990 the Secretary-General of the Organization of African Unity (OAU) expressed fear that closing down the Regional Office would not help economic development in Africa.

In a telex of 7 August the acting Chief of the BDT ordered the complainant to stop work at Addis Ababa on 24 August and report to headquarters for "debriefing" on 27 and 28 August; put him on "terminal leave" as from 30 August; and spoke of various end-of-contract formalities.

In a letter of 10 August sent by fax the Secretary-General addressed the complainant's comments in the letter of 22

June: since his letters of appointment made him subject to the Staff Rules governing technical assistance project personnel and offered "no expectancy of renewal or of conversion to any other type of appointment" he had no grounds for expecting to return to headquarters; his post would have to be "discontinued"; and the Secretary-General was sending him through the office of the United Nations Development Programme (UNDP) in Addis Ababa a copy of the ITU's reply to the letter of 26 July from the Secretary-General of the OAU.

In a letter of 30 August the OAU's ambassador and executive secretary in Geneva gave the Organization's Secretary-General an account of a meeting that he and ambassadors from seven African countries had had on 29 August with the Secretary-General of the ITU; according to that account they had been told that the complainant's appointment would be extended only until 30 September - "for family reasons" - because the Plenipotentiary Conference had called for abolition of the senior regional representatives' posts.

By a letter of 17 September the complainant made a request for administrative review of the decision not to extend his appointment. In a letter of 25 September to the Secretary-General he sought to set the record straight on issues which he believed the Secretary-General had misrepresented at the meeting of 29 August with the African ambassadors.

The Secretary-General rejected his request for review in a letter of 29 October. On 28 January 1991 the complainant put his case to the Appeal Board. In its report of 26 May 1992 the Board concluded that the ITU had complied with the rules on fixed-term contracts. By a letter of 4 June 1992 the Secretary-General sent the complainant the Board's report. It is that letter, from which he infers rejection of his appeal, that he is now challenging.

B. The complainant submits that the decision not to renew his appointment shows mistakes of fact and of law. His pleas come under five main heads.

He first alleges procedural and formal flaws. The Secretary-General's "vague" and "ambiguous" letter of 27 April 1990 suggested that there was to be review of his situation with extension of his appointment in mind. But without so much as a reply to his letters of 24 April and 22 June 1990 the Secretary-General told him on 29 October that he had had "five full months" to make arrangements; so the Secretary-General had reached a decision without giving him a hearing. What is more, the acting Chief of the BDT, who on 7 August notified to him the decision to let his contract run out, held the same grade as he. By saying in his fax of 10 August that he fully agreed the Secretary-General gave the impression that the acting Chief of the BDT had acted on his own.

His second plea is that the Secretary-General failed to state the reasons for the decision. He just appended the Appeal Board's report to his letter of 4 June 1992, without comment. At best he may be said to have given "shifting and/or erroneous contradictory reasons" in communications of 27 April and 10 August 1990.

Thirdly, the complainant alleges bias and the mis-appraisal and neglect of essential facts. Contrary to what the Secretary-General told him, the Plenipotentiary Conference never recommended abolishing the senior regional representatives' posts: indeed that would have been contrary to its real intent. Nor were funds for the posts lacking. He suspects, for want of objective grounds, that the non-renewal was due to malice on the part of the acting Chief of the BDT, who saw him as a rival.

Fourthly, he alleges breach of his legitimate expectations of renewal. There were many reasons for him to expect renewal: his performance had been "very good", his post had a place in the BDT, and the notice of vacancy issued in 1985 announced that it was to be filled for two years and possibly five. Officials at headquarters, among them the acting Chief of the BDT, who like him had been transferred from the Technical Cooperation Department, had their appointments extended even though their job descriptions were also due for revision. The Administration singled him out as an "outposted" official of the General Secretariat for "humiliating and prejudicial treatment".

Lastly, he alleges breach of Staff Rule 11.1.1.4 f), which says that "the total duration of the procedure in any particular case shall not exceed 14 weeks from the date on which the appeal was submitted". In his case the Board took some one-and-a-half years to report and even then failed to examine the parties' submissions properly.

He seeks the quashing of the impugned decision, reinstatement in a D.1 post as from 1 October 1990 or, failing reinstatement, payment of his "salary and emoluments" as from 1 October 1990 to 30 June 1993. He also claims 80,000 Swiss francs in material and moral damages and 12,000 United States dollars in costs.

C. In its reply the ITU contends that the decision not to renew the complainant's appointment was at the Secretary-General's discretion. He took it in the Union's interest and it complied with the material rules and the letter of appointment, which stated that it carried "no expectancy of renewal".

Because of the Plenipotentiary Conference's wish to strengthen activities in the regions the Union's Administrative Council decided to do away with the senior regional representatives' duties and to assign new ones in the area of technical cooperation to the new heads of the Regional Offices. The difference between the two sets of duties "could hardly be greater". Since the Council did not change the duties of officials in the former Technical Cooperation Department the Secretary-General extended their contracts pending review.

The Union observes that the complainant was not an "outposted" member of the General Secretariat headquarters staff: his letters of appointment said that he was subject to the Staff Rules governing technical assistance project personnel.

It is plain from the Secretary-General's communications of 27 April and 10 August 1990 that he looked into the case thoroughly and the complainant was given his say. Moreover, the letter of 27 April left him in no doubt but that his appointment as Senior Regional Representative would end at 30 September 1990.

As to the competence of the acting Chief of the BDT the Union observes that since he was in charge of its work in the field he was empowered to act on the Secretary-General's behalf. The Union also maintains that the account of the meeting of 29 August with the African ambassadors was just the recollection of one man and was not reliable.

Though conceding that the internal appeal proceedings were "unduly protracted" the Union sees "culpable negligence" in the complainant's own procedural mistakes, such as failing to send his appeal to the competent officials by registered letter. In any event the Board "gave due weight" to all the documents which both parties put to it.

D. In his rejoinder the complainant develops his earlier pleas. He sees the ITU's reply as misleading and gratuitous. The senior regional representatives' duties related mainly to technical cooperation and were close to those of the new regional office heads under the BDT. For reasons that he explains the ITU's allegations of procedural mistakes do not square with the facts. He presses his claims.

E. In its surrejoinder the Union enlarges on its reply and seeks to refute the complainant's pleas, stressing, among other things, that the senior regional representatives' duties concerned "policy matters" while those of the new heads focus on "operational matters".

CONSIDERATIONS:

1. The complainant is a Kenyan and a telecommunications engineer. The ITU used to employ him at grade D.1. He wants the quashing of a decision by the Secretary-General not to renew the fixed-term appointment he held as the Union's Senior Regional Representative for Africa.

2. He took up duty with the Union on 4 January 1984 on a fixed-term appointment at grade P.5. At the outset he belonged to the Group of Engineers in the Technical Cooperation Department at headquarters in Geneva. A notice of vacancy issued in 1985 invited applications for an appointment under a fixed-term contract to the post of Senior Regional Representative for Africa, stationed in Addis Ababa. On 24 August 1986 the complainant was appointed to the post and promoted to D.1. The notice invited applications for an appointment for two years, with the possibility of extension by another three. The complainant had his appointment regularly extended and, in particular, by six months from 1 January to 30 June 1990.

3. A Plenipotentiary Conference which the Union held in Nice in 1989 gave new policy "directives", and the Secretary-General accordingly made preparations in 1989 and 1990 for reform of the Union's regional activities throughout the world. One of the reforms was the setting up of a Telecommunications Development Bureau, known as the BDT, which was to replace the old Technical Cooperation Department. The Bureau was to have regional offices for Africa, the Americas, Asia and the Pacific, and the Arab States, each of which was in turn to have several area offices within its jurisdiction.

4. By circular No. 3 of 9 January 1990 the Secretary-General informed the staff that the BDT was soon to be set up. The new "organizational structure" was described for the first time in general terms in a document, No. 6967,

which the Secretary-General submitted to the ITU's Administrative Council on 26 April 1990. In June the Council approved that structure and the transfer of several posts. It appears on the evidence that the post the complainant then held was to be extended until 31 December 1993. More detailed organisation charts appeared early in September 1990.

5. The complainant sent the Secretary-General a handwritten letter on 24 April 1990 courteously expressing some of his worries: he was having difficulty in keeping in touch with headquarters; he was in ignorance of what they had in mind there; and he was uncertain about his own future at a time when his contract was running out.

6. On 27 April - the day after document 6967 had gone out - the Secretary-General informed the complainant by letter that he would not be renewing that contract; the Plenipotentiary Conference had, he explained, transferred the senior regional representatives' posts to the new BDT and intended to give them "completely revised job descriptions"; so "in view of the present staffing" there was no vacancy that the complainant could be "redeployed" to; but in view of his "experience and qualifications" the Secretary-General had decided to extend his appointment by three months "pending further examination of the situation" and was willing to consider any application from him for posts "advertised within the framework of the BDT".

7. The complainant got that letter on return from a mission in the second half of May 1990. In his reply of 22 June 1990 he said he was "surprised" at the decision considering the Plenipotentiary Conference's wish to strengthen the ITU's "regional presence" and at the Secretary-General's settling his case so hastily. He pointed out that headquarters staff who were to be transferred to the BDT had been given extensions of contract to 30 June 1993 pending the adoption of the reforms by the Administrative Council following the conclusions of a "High Level Committee" set up for the purpose. Considering that he too was a member of the headquarters staff, albeit one assigned to the field, he concluded by asking to be treated in the same way as everyone else.

8. It appears on the evidence that at about the same time the Secretary-General of the Union had been in correspondence about the abolition of the post of Senior Regional Representative for Africa with the Secretary-General of the Organization of African Unity (OAU); that he had seen that Organization's ambassador in Geneva and several African ambassadors; and that the complainant's recall and the downgrading of the Addis Ababa post had been arousing strong opposition in those quarters.

9. On 8 August 1990 the complainant got a telex dated 7 August from the acting Chief of the new BDT as well as a copy of a telex of even date which the Chief sent through the office of the United Nations Development Programme (UNDP). They gave information about the abolition of his post in Addis Ababa and his own and his family's repatriation and told him to report to Geneva for "debriefing" on 27 and 28 August. There came soon after, on 10 August, a letter sent by fax from the Secretary-General himself. The Secretary-General pointed out that the complainant was a member not of the headquarters staff but of "technical assistance project personnel"; said that his post was to be discontinued once and for all, in accordance with document 6967, which in the meantime the Administrative Council had approved; endorsed the telex of 7 August from the acting chief of BDT; and proposed seeing the complainant during the debriefing in Geneva. According to a postscript the Secretary-General had in the meantime been corresponding about his case with the Secretary-General of the OAU and had also informed the Resident Representative of the UNDP in Addis Ababa, whom the complainant was dealing with regularly.

10. On account of the OAU's objections the ITU's Secretary-General gave an account of the framework for the Union's future work in Africa in letters of 3 September 1990 to the Secretary-General of the OAU and the United Nations Under-Secretary-General and Executive Secretary of the Economic Commission for Africa. In a letter of 25 September to the Secretary-General of the ITU the complainant commented on some disparaging remarks the Secretary-General had made about him at the meeting with the African ambassadors.

11. The Secretary-General having stood his ground, the complainant submitted to him on 17 September 1990 a fully argued request for administrative review. He alleged personal prejudice, which he said had been evident in his debriefing on 27 and 30 August; he had been discriminated against in that he had been refused the extension of appointment freely granted to others affected by reform; and the abolition of his post in Addis Ababa was in fact just a pretext for getting him out of the Union altogether.

12. In his reply of 29 October 1990 the Secretary-General reaffirmed that as a member not of the headquarters staff but of the technical assistance project personnel the complainant might not claim to be put on a par with the headquarters staff affected by reform; the Secretary-General had discretion in the matter; having been told of the

decision on 27 April 1990 and got the three months' extension without even asking for it, the complainant had had five months to make arrangements; and since the "institutional, structural and administrative considerations underlying" the decision had been "spelt out" in the fax of 10 August 1990 there was no need to go into the complainant's "purely subjective" objections.

13. On 28 January 1991 the complainant filed an appeal with the Appeal Board against that unfavourable answer. He gave the background to the dispute and pressed his earlier pleas. He contended that all the replies from the Secretary-General had dodged the real issue, which was that his record of service had given him legitimate expectancy of renewal of appointment in the BDT. He had, he maintained, never been given proper notice, and by granting the three-month extension "pending further examination of the situation" the letter of 27 April 1990 had left the matter of renewal open. And he cited the Tribunal's case law, which in his submission made it plain that an Administration's exercise of discretion in the matter of renewal of fixed-term appointments was subject to judicial review.

14. It took a long time to set up the Board, which because of administrative shortcomings was unable to meet. The Secretary-General did not enter his answer to the appeal until 6 May 1991. After giving his own account of the dispute he argued in substance that the reform consisted at the first stage in matching the Union's regional activities more closely to specific needs in the field. The duties of the offices of the senior regional representatives were to be developed at a later date. So the job descriptions were quite different from those of the former regional representatives, and that was why the complainant's post had been done away with.

15. The Board met on 7 and 25 May 1992 and reported on 26 May. Its report fits into a single page and merely sets out its "conclusions": the D.1 posts were to carry "new responsibilities" in the context of "a complete review of the functions of the Regional presence" and for that reason the complainant had no expectancy of renewal of his appointment in the BDT. The report was passed on to him without comment under cover of a letter of 4 June 1992 from the Secretary-General.

16. It is that letter that the complainant is treating as the final decision. He filed his case with the Tribunal on 4 September 1992, and the defendant is not challenging receivability.

17. The complainant asks the Tribunal to quash the Secretary-General's decision, order his reinstatement or, failing that, award him material and moral damages, and grant him costs. He has five main pleas:

(a) There was breach of the rules on competence and administrative process in that the Secretary-General suddenly presented him with a *fait accompli* without having given him a proper hearing.

(b) No reasons were stated for ousting him from the Union or false reasons were given instead of the actual ones.

(c) There were mistakes of appraisal and essential facts were overlooked. For example, the decision on his case was attributed to the Plenipotentiary Conference and the Administrative Council when in fact the acting chief of the BDT, who himself stood to gain from getting rid of a potential rival, and the Secretary-General had combined against him.

(d) There was breach of his legitimate expectation of extension; he was discriminated against in the redeployment to the BDT of headquarters staff who had belonged to the old Technical Cooperation Department; and he was refused any proper help in finding other employment.

(e) The proceedings before the Appeal Board took far too long and were unfair.

18. The gist of the Union's reply is that his appointment ended *ipso facto* on expiry, that there were objective reasons for the decision, namely the need to reform the Union's regional efforts to foster development, and that as a result the duties of staff in the new regional offices were not the same as those of the former senior regional representatives.

The material issues and legal context of the dispute

19. The complainant's pleas are to some extent redundant, and the Union's manner of reply consists in addressing them *seriatim* instead of making a full and proper statement of its own case. The material issues and legal context of the dispute therefore have to be defined first.

20. One preliminary point is that, though the Union dwells on the issue at length, it is immaterial whether the complainant was a member of headquarters staff or of project personnel. It is clear from the Staff Regulations and the relevant Rules that the provisions on fixed-term appointments are in substance the same for both. Thus Regulation 9.12 reads:

"a) A fixed-term appointment shall expire automatically and without prior notice on the expiration date specified in the letter of appointment.

b) Separation as a result of the expiration of any such appointment shall not be regarded as a termination within the meaning of the Staff Regulations and Staff Rules."

and Rule 4.7 of the Staff Rules governing technical assistance project personnel says:

"a) Project personnel shall be engaged on temporary appointments which are for a fixed period and which expire without prior notice on the expiration date specified in the letter of appointment.

...

f) A temporary appointment does not carry any expectancy of renewal, or of conversion to any other type of appointment."

21. Since the gist of both sets of provisions is the same, the Union is mistaken in relying on Rule 4.7 to rebut the complainant's charge of discrimination in favour of other staff who, unlike him, were transferred to the BDT. The charge therefore stands unanswered and will be taken up in the proper context below.

22. It should also be made clear that the above provisions have counterparts in the staff regulations and staff rules of several other international organisations: for the World Health Organization, see Judgment 268 (in re Bâ); for the United Nations Educational, Scientific and Cultural Organization, 354 (in re Shalev No. 2); for the Pan American Health Organization, 469 (in re O'Connell); for the World Meteorological Organization, 972 (in re Unninayar); for the Food and Agriculture Organization of the United Nations, 1044 (in re Colagrossi); for the International Labour Organisation, 1145 (in re Durai); and for the World Intellectual Property Organization, 1154 (in re Bluske). The ruling on this case must be in line with what proves to be an important feature of the common law of international organisations, or at least of those that define contracts by category in determining relations with their employees. The complainant has cited the relevant case law, which the defendant ignores, and the main features of it are summed up below.

23. First, consistent precedent has it that even where an organisation's staff regulations say that a fixed-term contract is ipso facto extinguished on expiry non-renewal is to be treated as a distinct and challengeable administrative decision. An early ruling to that effect was in Judgment 17 (in re Duberg: see the second paragraph under the heading "Competence"), and the same idea has since run through all the case law on the subject. A more recent and especially succinct example is to be found in Judgment 1040 (in re Douglas) under 3:

"Precedent is clear: even when someone has just a temporary appointment a decision not to renew it must be taken when the contract period is expiring ..."

That requirement is an indispensable safeguard of security of employment in the international civil service, which indeed, unlike many national civil services and some regional organisations, commonly grants fixed-term appointments.

24. Another point firmly rooted in precedent is that the Tribunal must in substance respect the exercise of discretion in any decision to terminate employment on expiry of the contract, but may review the lawfulness of any such decision and in doing so will, again by virtue of clear precedent, determine from the circumstances of each case:

- whether the rules on competence, form and procedure were observed;
- whether the official was given reasonable notice, even if the contract did not require it;

- whether the decision was duly substantiated and the reasons for it were conveyed to the official in such a way that he might properly defend his interests;
- whether some material fact was overlooked or there was some obvious mistake of fact or of law; and
- whether the decision was taken in the organisation's interests or shows some abuse of authority.

Several recent rulings on the subject sharply define the ambit of such review in line with the case law affirmed from the outset: see Judgments 956 (in re Gianoli) under 2 and 3; 1262 (in re Scherer Saavedra) under 4; and 1273 (in re Oïga) under 8.

25. Though the complainant has put forward almost all the above pleas all that need be said is that according to the usual criteria there are two obvious flaws in the impugned decision which alone are fatal. One is the ITU's disregard of the basic procedural safeguards that are calculated to protect the staff against arbitrary management, including the inadequacy of the explanation for the decision. The other flaw is the failure of due process in the internal appeal proceedings. Both issues are taken up below.

Disregard of the safeguards of fair administrative process and inadequate substantiation

26. The communications from headquarters to the complainant show an unusually cavalier attitude that fails in the duty of care the Union owes its staff, especially when they are cut off in places far from where decisions are being taken. The duty is the more compelling where a staff member like the complainant has taken on a demanding job in the field, with all the drawbacks it has for him and his family. The salient facts are the following:

Without affording the slightest explanation or justification the ITU suddenly announced in its letter of 27 April 1990 that it intended to terminate the relationship of employment forged by a series of contracts under which the complainant had served well.

It showed unusual haste in getting rid of the complainant on the pretext that the Nice Conference had taken "decisions" and in anticipation of decisions which the competent body, the Administrative Council, did not take until the Secretary-General had declined to renew his contract.

He was refused an extension although it was granted until 30 June 1993, seemingly with no difficulty, to other staff in the same position as he.

Any direct and personal explanation was postponed until his debriefing on 27 and 30 August 1990, although by then the termination had become irrevocable because the post of Senior Regional Representative in Addis Ababa had been abolished and his family sent home.

As far as the essential question was concerned, the debriefing was a pointless exercise. In his capacity as head of the Addis Ababa office he ought to have been called to headquarters for talks long before the whole process had started.

27. The sequence of administrative action set out in detail above, and particularly the letter of 27 April and the telexes he got on 8 August 1990, show that the Union deliberately presented the complainant with a *fait accompli* without letting him defend his rights properly. Quite plainly the Secretary-General and the acting chief of the BDT ought to have freed his post before the arrangements for carrying out the desired reforms were made or approved by the competent body.

28. The duty to state the reasons for a decision forms part of any due administrative process. The Tribunal is not questioning that there was an objective need for the reforms the Union brought in if it was to make its regional work more efficient. In this instance that was the reason given, not for the actual reforms, but for the decision on the complainant's case. That being so, the Union ought to have explained to him why the reforms warranted removing him. It did not. More particularly, when it changed the content of the post he had been holding it ought at the same time to have explained why, in view of his qualifications and experience, which the Secretary-General had praised, he would or would not have fitted the requirements of the new regional representatives' job descriptions. There is a strong line of precedent on the duty to explain the reasons for non-renewal: see for example Judgments 268 (in re Bâ); 448 (in re Troncoso) under 4; 474 (in re Gale) under 3 and 4; 544 (in re Bordeaux) under 2 and 3; 675 (in re Pérez del Castillo) under 9 to 11 and 17 to 19; 946 (in re Fernandez-Caballero) under 4 to 6;

1154 (in re Bluske) under 3 to 7; 1230 (in re Filatkin) under 4; and 1298 (in re Ahmad No. 2) under 6. The Union ignored such precedents in taking its decision.

29. To sum up, it appears that at the critical moment, when the process of reform was directly affecting the complainant's position and interests, the Union did no more than take an irrevocable decision on his case for which it afforded no proper explanation and which he had no opportunity of challenging by due administrative process. Thus the arbitrariness of its action is clearly established.

30. Lastly, the Tribunal observes that thereafter it took precious little interest in redeploying him. Since he was a senior official redeployment did of course raise very serious difficulties, but it was not free on that account to neglect the fate of a staff member to whom it was bound by reciprocal obligations of loyalty that the complainant, for his part, has honoured throughout. Such neglect was the more to be regretted because by prematurely bringing two other organisations, the UNDP and the OAU, into discussion about his personal position the Secretary-General made his redeployment even less likely.

The Appeal Board's shortcomings

31. An internal appeal procedure that works properly is an important safeguard of staff rights and social harmony in an international organisation and, as a prerequisite of judicial review, an indispensable means of preventing dispute from going outside the organisation. In the event of a complaint it greatly helps the Tribunal in identifying the material issues of fact and law. Although the ITU's Staff Regulations make due provision for it by establishing a joint Appeal Board under Regulation 11.1, the Board did not function properly in the present instance.

32. The complainant's foremost objection is that the proceedings took too long. The Union retorts that his own behaviour was partly to blame, but that is unfair comment on someone who was living far from headquarters. The dates speak for themselves. He lodged his internal appeal on 28 January 1991. On the evidence the Board was not ready to function promptly at the time. The Union took over three months, until 6 May 1991, to enter a reply that ran to three-and-a-half pages. The complainant's rejoinder came in the second half of July 1991, and so by then the pleadings were complete. The Board did not meet until some ten months later, on 7 and 25 May 1992, to take up the case, i.e. over fifteen months after the lodging of the appeal.

33. The report which the Board submitted on 26 May 1992 is open to even more serious objections. It is terse and offers no reasoning on issues of fact or of law. There is no telling whether, as due adversarial process required, the Board took up the complainant's pleas and the Union's replies. Even though a report by an appeals body is not a judgment by a court of law, the report of 26 May 1992 does not come up to the minimum standards of justice that the complainant was entitled to.

34. The Union is wholly to blame for those shortcomings. The Appeal Board is set up under the Staff Regulations and the Union has a duty to keep it at all times in proper working order. Indeed Regulation 11.1 expressly lays such obligation on the Secretary-General. Since the Board is a joint body the Union plays a direct part in the functioning of the procedure in each case. Lastly, by endorsing the report without comment or qualification in his letter of 4 June 1992 the Secretary-General too assumed full responsibility for its contents.

Redress

35. For the foregoing reasons the impugned decision cannot stand. What, then, are the consequences of quashing it when the complainant held a fixed-term appointment that as such ceased to take effect upon expiry?

36. His main claim is to reinstatement in his former job and his subsidiary one to awards of material and moral damages.

37. Reinstatement is a form of *restitutio in integrum* that will afford proper redress when the holder of an indefinite appointment has been wrongfully dismissed. As the Union rightly observes, the complainant tends to pass off the non-renewal as dismissal when in fact his contract simply expired at the agreed date.

38. In accordance with the provisions quoted above a fixed-term appointment will automatically cease to have effect upon expiry. But according to the case law a contract of service, even if for a fixed term, creates in law a relationship of employment; that relationship exists in an administrative context and is subject to a set of staff regulations; and there may therefore be requirements or consequences that go beyond the bounds of the contract as

such. So the Tribunal may consider ordering the reinstatement even of someone who held a fixed-term appointment provided that the circumstances are exceptional. It may do so when an organisation makes a practice of granting fixed-term appointments for the performance of continuing administrative duties; or when some inadmissible administrative practice flaws the contractual relationship; or when an untimely non-renewal prevents the accrual of pension entitlements. See for example Judgments 17 (in re Duberg), 136 (in re Goyal), 1230 (in re Filatkin) and 1249 (in re Reznikov); and, on pension entitlements in particular, 245 (in re Meyer), 470 (in re Perrone), 1230, and 1298 (in re Ahmad No. 2).

39. There are no such circumstances here. At all points in his career the complainant knew full well that his contractual position was precarious. What is more, the level and nature of his duties were such that he was unusually vulnerable to changes in the Union's policy on external relations. His main claim therefore fails, since reinstating him would in the circumstances be tantamount to direct interference by the Tribunal in the structuring of the ITU's secretariat.

40. He is nevertheless entitled to a substantial award of damages for the material and professional injury that the Union's inadmissible manner of management caused him.

41. Because of the uncertainty he has been in for over three years - since the termination of his appointment at the end of September 1990 up to the date of this judgment - the equivalent of three years' salary and allowances will be a fair amount. But the Union may subtract therefrom any professional earnings he may have had in that period.

42. Lastly, he is entitled to 5,000 Swiss francs in costs.

DECISION:

For the above reasons,

1. The impugned decision by the Secretary-General of the ITU is set aside.
2. The Union shall pay the complainant damages for all forms of injury in an amount equivalent to three years' salary and allowances less any occupational earnings he may have had since 30 September 1990.
3. It shall pay him 5,000 Swiss francs in costs.
4. His other claims are dismissed.

In witness of this judgment Sir William Douglas, Vice-President of the Tribunal, Mr. Pierre Pescatore, Judge, and Mr. Mark Fernando, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 31 January 1994.

William Douglas
P. Pescatore
Mark Fernando
A.B. Gardner