

TWENTY-SIXTH ORDINARY SESSION

***In re* BOYLE**

Judgment No. 178

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the International Telecommunication Union (ITU) drawn up by Mrs. Doris Ilse Boyle on 2 June 1970, the ITU's reply of 29 September 1970, the complainant's rejoinder of 22 December 1970 and the ITU's surrejoinder of 29 March 1971;

Considering Article II, paragraph 5, of the Statute of the Tribunal, Resolutions Nos. 581, 608 and 625 of the Administrative Council of the ITU, Staff Regulation 2.1 and Annex 3 to the Staff Regulations and Staff Rules of the ITU and Service Orders Nos. 54, 57, 58, 77 and 78;

Having examined the documents in the dossier, the complainant having withdrawn in her rejoinder the request for oral proceedings made in her complaint and the Tribunal not having ordered such proceedings;

Considering that the material facts of the case are as follows:

A. At the end of 1966 Mrs. Boyle, who had joined the ITU in 1958 and who then held a G.5 post, was offered by the Chief of the Department of Common Affairs a G.5 post in the Secretariat Division of the International Frequency Registration Board (IFRB). She was told that the post called for knowledge of English, French, Spanish and even German and that it would soon be upgraded to G.6. Mrs. Boyle, who has a knowledge of these four languages and also a working knowledge of Russian, accepted the post in view of the prospect of its being upgraded. She began her new duties in May 1967 and then received a job description, No. IFRB-DA/1/5/7, which was described as "proposed G.6" and in which it was stated that among the qualifications required the incumbent of the post should possess an excellent knowledge of at least one of the three working languages of the ITU and a working knowledge of the other two. Her work consisted mainly of reading and sorting mail received by the IFRB for channelling to the ITU divisions or officials responsible and of despatching mail and sorting copies for distribution to the divisions concerned. She states that she thus had to read through many letters in Spanish and also a few in German and Russian.

B. For some ten months during the period 1967-68 the ITU employed two experts to establish detailed job descriptions for all posts in the ITU, to propose grading standards for all fields of employment and to recommend the grading of all ITU posts in accordance with the grading standards prepared by them. Staff members were accordingly invited to prepare descriptions of the duties and responsibilities pertaining to their posts, and their immediate supervisors to make comments and to list the qualifications required for each post. The complainant's description of her post was seen by her supervisor, who listed among the required qualifications knowledge of two of the ITU's working languages. When the experts had drawn up the job description, the section entitled "field of activity", that is, the job description proper, was communicated to the complainant on 9 October 1967 for observations. She proposed a change which was accepted by the experts. On 18 July 1968 the Secretary-General sent the complainant the text of her job description as finally established by the experts (i.e. the description of her field of activity and not of the qualifications required), stating that the results of the experts' inquiry approved by the Administrative Council had not led to any change in the grading of her job, which accordingly remained G.5. He added that up to 30 August 1968 Mrs. Boyle could submit through hierarchical channels a request, with reasons, for review of her grading. On 30 July 1968 all officials were informed by Service Order No. 58 that from mid-August they could consult in the Personnel Department the text of the section of the job description drawn up by the experts relating to "qualifications required". Not being yet aware of the qualifications laid down for her post, the complainant did not realise that they included knowledge of only two languages, namely English and French, and not of Spanish. She maintains, however, that as she went on maternity leave from 10 August 1968 and later on sick leave until 15 December 1968, she could not avail herself of the opportunity provided by Service Order No. 58. On 20 October 1968 she asked the Secretary-General, through the Chairman of the International Frequency Registration Board, to review her case. She stated, among other things, that although the job description was

largely correct, she thought it vital to carry out a more thorough examination of the statement of qualifications required with reference to the responsibilities of her post and the linguistic and general knowledge which it required. She stated that because of the serious consequences which mistakes in the channelling of mail could produce the level of her responsibilities was that of a G.6 and not a G.5 post, that she had to read through many letters in Spanish, that knowledge of Spanish was therefore indispensable and that knowledge of Russian was at least desirable. She pointed out that, according to a provision contained in a footnote to Annex 3 to the Staff Regulations and Staff Rules: "Posts of this type [i.e. grade G.5] necessitating, besides the required qualifications, the practical knowledge of a third working language should normally be graded G.6." She gave evidence before the review committee set up under Service Order No. 54 to examine such requests, and on 3 July 1969 the Secretary-General informed her that by a decision taken at its 24th Session (May 1969) on the basis of the report of the review committee the Administrative Council had confirmed the grading of her post, which would continue to be G.5. In the meantime her annual report drawn up on 15 April 1969 had stated: "Her knowledge of languages (German, English, French and a working knowledge of Spanish and Russian), her conscientiousness and her initiative are extremely useful in the registration, channelling and despatch of all IFRB mail."

C. On 11 August 1969 Mrs. Boyle asked the Secretary-General to review the decision communicated to her on 3 July 1969. Her request was rejected on 25 September 1969 in a letter in which the Secretary-General explained that the complainant's own division (IFRB) had itself stated the language requirements for the post. On 12 December 1969 Mrs. Boyle appealed to the Appeals Board which, in its report of 9 January 1970, declared itself incompetent to determine whether a third language was necessary and held that only the chief of the division concerned was qualified to do so. It nevertheless expressed regret that the section of the job description entitled "qualifications required" had not been communicated to the officials. On 6 March 1970 the Secretary-General informed the complainant that, as recommended by the Board, the Chairman of the IFRB had considered her request for review of her job description and decided that there were no grounds for changing it.

D. In her complaint against the decision of 6 March 1970 Mrs. Boyle contends that (1) there is indisputable proof that at the time of her appointment to the post the Administration itself stated that knowledge of three languages was necessary for performing the duties of the post. Those duties have remained unchanged, she claims, and in discharging them she has in fact had to make daily use of her knowledge of the ITU's three working languages; (2) it is beyond dispute that the grading experts based their recommendation that the post should be graded G.5 on a unilateral assertion by the Administration - which the complainant had no opportunity to refute - that knowledge of two languages sufficed, and all the subsequent decisions concerning the grading of the post flowed from that misstatement of fact; (3) the grading standards laid down in the Staff Regulations, on which the complainant relies, expressly refer to the requirement of knowledge of a third working language as a special factor which distinguishes clerical posts in the General Service category to be graded G.6 from other posts which should be graded G.5. She asks the Tribunal:

(a) to find that the qualifications required for the discharge of the functions of post No. IFRB-DA/1/5/7, occupied by the complainant, include a good knowledge of two of the three working languages and practical knowledge of at least the third working language and that, according to the grading standards adopted by the Administrative Council by Resolution No. 625 and promulgated as Annex 3 to the Staff Regulations and Rules of the ITU (in pursuance of Staff Regulation 2.1) this post should be graded at the G.6 level;

(b) to find that the decisions concerning the grading of the complainant's post, taken by the Administrative Council in Resolutions Nos. 627 and 645 adopted at its 23rd and 24th Sessions and communicated to the complainant by the Secretary-General's letters of 18 July 1968 and 3 July 1969 respectively, were based on a materially incorrect statement of fact by the Administration, which resulted in an incorrect application of the above-mentioned grading standards in so far as the complainant was concerned;

(c) to find that the decisions of 3 July 1969 and 6 March 1970 are tainted by the same misstatement of fact and similarly involve an incorrect application of the above-mentioned grading standards;

(d) to find that the complainant's post should, on the basis of the relevant grading standards, have been graded at the G.6 level with effect from 1 January 1968;

(e) to order the ITU to take the necessary measures to regrade the complainant's post at the G.6 level;

(f) to order the ITU to pay the complainant compensation representing the loss of salary, allowances and other

entitlements through the grading of her post at the G.5 level, instead of the G.6 level, from 1 January 1968 to the date at which the post is effectively regraded at the G.6 level;

(g) to order the ITU to pay the complainant such sum in respect of the costs of the present proceedings as the Tribunal may deem appropriate.

E. In its memoranda the ITU does not deny that the complainant was informed in 1967 that the post offered to her would be regraded as G.6, but contends that that was simply a proposal which was not put into effect and which did not in any way constitute a formal promise. The document of May 1967 referred to by the complainant was not an official job description, but an unofficial paper which was not issued by the Secretary-General. It was not a job description in the strict sense of the term since no job descriptions existed at the time and it was for the purpose of drawing up such descriptions for all ITU posts that the grading experts had been appointed. On the most favourable assumption the document is no more than a draft reflecting an unofficial view not borne out by subsequent events. The ITU adds that in 1969 11 per cent of the letters received by the ITU were in Spanish and 1 per cent in Russian. The head of the complainant's division and one of her colleagues have a knowledge of Spanish and can deal with correspondence in that language. Moreover, the Language Division can help in sorting out mail in Russian. One of the criteria for the grading of a job is the seriousness of the consequences of any errors made by the incumbent. In the case of the job held by the complainant mistakes have only "minor consequences which can easily be corrected". Moreover, there are other posts, particularly in the division responsible for the records and for handling the Secretary-General's mail, which are similar to the complainant's and call for an equally extensive knowledge of languages. These posts are also graded G.5. The provision in Annex 3 to the Staff Regulations and Staff Rules relied upon by the complainant makes it clear that the requirement of knowledge of a third language must be acknowledged; besides, it is expressed in the conditional mood and is in no way mandatory. Although the complainant states that the experts never questioned her about the duties of her post, they did communicate to her the section entitled "field of activity" in her job description and took account of the sole observation which she made in writing. They did not question her in person because in the exercise of their legitimate discretion they thought it unnecessary. The complainant states, moreover, that at the time of the experts' survey she was not informed of the statements of fact, which she claims to be mistaken, made to the experts by the Administration concerning her post. In reply the ITU points out that each official's supervisors were required to list the qualifications required for each post and that each official was entitled under Service Order No. 58 to be informed of those qualifications. Moreover, the complainant was informed of the possibilities of appeal open to her and availed herself of them by asking the review committee to alter her job description. Her case was also reviewed before being examined by the Appeals Board, then by the Appeals Board and finally, for a fifth time, by the Secretary-General in conjunction with the Chairman of the IFRB on the recommendation of the Appeals Board.

F. The ITU accordingly prays that the complaint be dismissed.

CONSIDERATIONS:

It appears from Resolution No. 7 adopted by the Plenipotentiary Conference meeting in Geneva in 1959, from Resolution No. 6 adopted by the same Conference in 1965 in Montreux and from Regulation 2.1 of the Staff Regulations and Staff Rules that the Administrative Council and, subject to its authority, the Secretary-General of the ITU, in the exercise of their discretionary power determine and then grade the posts held by staff members. Consequently, the Administrative Tribunal, which has before it an appeal against a decision of those authorities grading a specific job, may interfere with that decision only if it was taken without authority, is irregular in form or tainted by procedural irregularities or by illegality, or is based on incorrect facts, or if essential facts have not been taken into consideration, or, again, if conclusions which are clearly false have been drawn from the documents in the dossier, or finally, if authority has been exercised for purposes foreign to the Organisation's interests.

In support of her claim Mrs. Boyle contends that the decision grading her post at the G.5 level, which was confirmed by the impugned decision of 6 March 1970, taken by the Secretary-General following an internal appeal, was preceded by procedural irregularities, and was based on a materially incorrect statement of fact and on an obvious misinterpretation of the documents in the dossier.

As to the first claim:

Mrs. Boyle claims that the grading of ITU posts was carried out by two experts, whose conclusions were approved by the competent bodies of the ITU, and that the experts defined each job on the basis of two factors, first, the

"field of activity" and, secondly, the "qualifications required". She complains that, although the draft description of the "field of activity" of her post was sent to her on 18 July 1968 and she was therefore able to comment on it, the section of the draft entitled "qualifications required" was not communicated to her before its adoption by the Administrative Council and that the Council, being unaware of the rights of the staff and not fully informed, took its decision on the basis of procedural irregularities.

In view of the nature of the assessment which the experts had to make of the "qualifications required" for the complainant's post there was no need for them to hear the complainant or consult her in writing, and they were entitled to rely mainly on the information supplied by her supervisors, as indeed they did.

As soon as their draft had been prepared, however, the Secretary-General of the ITU informed staff members by Service Order No. 58, that from 15 August 1968 they could consult the text of the section of the job description entitled "qualifications required". Moreover, by Service Order No. 54 he had set up a special procedure to enable officials to appeal against their job descriptions and gradings.

Thus the grading procedure gave both sides an opportunity to express their views, enabled the Administration to base its decisions on full knowledge of the facts and safeguarded the right of officials to be heard before final approval of the grading by the competent authority.

Although it is true that Mrs. Boyle contends that, having gone on maternity leave on 10 August 1968 and then on sick leave until 15 December 1968, she could not avail herself of. As explained above, the competent authorities of the ITU took the view that the complainant's post did not call for practical knowledge of a third working language. She cannot therefore properly rely upon the footnote as affording grounds for regrading her post at the G.6 level.

Finally, the grading of each post is based exclusively on objective criteria. It is a fact that Mrs. Boyle, the present incumbent of the post which forms the subject of the complaint, has qualifications superior to the standards required for the post which she accepted on the understanding that it would be upgraded to G.6. While this fact must leave her with an understandable grievance, it affords no legal basis for the upgrading which she claims.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Bernard Spy, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 3 May 1971.

(Signed)

M. Letourneur
André Grisel
Devlin

Bernard Spy