

EIGHTY-NINTH SESSION

Judgment No. 1976

The Administrative Tribunal,

Considering the complaint filed by Mrs M. P. against the International Telecommunication Union (ITU) on 13 August 1999 and corrected on 30 August, the ITU's reply of 2 December 1999, the complainant's rejoinder of 28 January 2000 and the Union's surrejoinder of 10 March 2000;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and disallowed the complainant's application for the hearing of a witness;

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

A. The complainant, a British citizen born in 1947, joined the staff of the ITU in 1988 and was assigned as an administrative assistant to the Chief of the External Relations Department on post number 205. On 1 June 1990 she was given a permanent appointment and held grade G.6.

Following the retirement of the Chief of the Department, the Legal Adviser of the ITU took over the role of coordinator of the department for the first half of 1991. This led to additional duties for the complainant and the Union paid her a special post allowance at grade G.7 for that period. From February 1992 to 31 December 1996 it seconded her to the Telecommunication Development Bureau as an administrative assistant at grade G.7. On 1 January 1997 she returned to post 205, at grade G.6, in her former department which had in the meantime become the Strategic Planning and External Affairs Unit.

The complainant wrote to the Secretary-General on 5 May 1997 asking that a job description be drawn up for her post. On 16 May 1997 the Head of External Affairs gave her a draft job description for her to consider. She submitted an alternative draft, but the matter was not finalised. The issue was taken up by the new head in mid-1998: on 6 July he asked her to submit a draft version of a job description. She did so on 8 July, but no final version was approved. In December 1998 he raised the possibility of her accepting a position in External Affairs at grade G.6, providing administrative assistance to an official at grade P.3 responsible for relations with member States, and on 11 December 1998 he sent her a copy of the relevant job description. She did not pursue that course of action.

On 17 December 1998 she sent a memorandum to the Secretary-General protesting that despite carrying out professional duties she had not had a job description for two years. In the absence of a job description, she asked for a special post allowance at the P.3 level for the two-year period from 1 January 1997 and expressed interest in being assigned to a Professional post.

On 12 January 1999 the ITU sent her a preliminary reply to that memorandum and on 1 February 1999 she submitted six appeals simultaneously to the Appeal Board. It heard her case and on 22 March 1999 issued two reports which the complainant received the following day. One covered her first appeal regarding her request for a job description. The second report covered her other five appeals which dealt respectively with: unfair treatment; unjust standards of conduct; lack of career prospects and unfair treatment; equitable assignment; and failure to convene a medical board in respect of a service-incurred injury she had sustained from a fall at work in 1992.

In its first report, the Board noted that there was a job description for post 205, but that it no longer corresponded to the actual tasks the job involved. It agreed that the absence of a relevant job description could lead to misunderstandings and had placed her in a frustrating situation. It recommended that a relevant job description should be drawn up for post 205. Her appeal included a claim to have her post classified at grade P.3. The Board

said that in the absence of an up-to-date job description, it could not decide on the matter. In its second report, the Board considered that her claims in the other five appeals were irreceivable for failure to exhaust the internal remedies within the time limit required by the Staff Rule 11.1.1.2 a).

By a memorandum of 12 April 1999 the acting Head of External Affairs informed the complainant that she would be seconded to Corporate Communication section. The Chief of that section undertook to prepare an appropriate job description for her. On 13 August 1999 she filed this complaint with the Tribunal, challenging the implied rejection of her appeals.

B. The complainant contends that she has not had a relevant job description for almost eleven years and that even the Appeal Board's recommendation that she should receive one has not been followed up. Although the Union systematically denied her a job description, it nonetheless frequently expected her to carry out Professional level duties at a General Service grade.

She claims that she has been a victim of "mobbing" (professional harassment) and unfair treatment over a long period which the ITU did nothing to prevent, and that when she had requested a job description, she was transferred elsewhere or asked to perform new tasks.

Her supervisors adopted a discriminatory attitude towards her, delaying her promotion and denying her career opportunities, in spite of her taking a diploma in Business Administration to further her career. The ITU also ignored her requests for a reclassification of her post. Exposure to such humiliating situations had a serious effect on her health, leading to stress and depression.

She asks the Tribunal to order the ITU to: finalise a "relevant job description in line with current tasks being carried out ... at the Professional level"; carry out a job classification review to determine impartially the current grade of her post; draw up a "career path" for her; take appropriate steps to stop "mobbing" which "is detrimental to health"; comply with its Regulations and Rules as well as with the "International Bill of Human Rights"; convene a medical board in respect of her service-incurred injury in 1992 so as to assess the degree of loss of function suffered since then; and award her an amount equal to 1,471,357 United States dollars "for damages, moral injury, costs and for all the prejudice sustained".

C. In its reply the ITU holds that although the complaint is not structured in the same form as the complainant's internal appeals, it is clear that she is seeking a ruling from the Tribunal on claims of which the majority were considered as irreceivable by the Appeal Board since they related to matters dating from previous years and she had failed to comply with the rules on time limits.

It invites the Tribunal to limit the scope of the present complaint to the matters relating to the possibility of updating her job description for post 205 subsequent to her return to the External Affairs Unit in January 1997.

There was a job description pertaining to post 205, and having previously occupied the post, the complainant was familiar with the duties it entailed. The description of the duties needed to be changed owing to changes in the Unit, but until it was revised, it remained valid and the level of the post corresponded to the complainant's own grade. At no stage in her career did it deny her a job description. She was not satisfied with the draft job descriptions her supervisors had given her in 1997 and in 1998 and her counter proposals had not been approved. Her main preoccupation, however, was the level at which her post was classified and hence her personal grade. The complainant repeatedly showed unwillingness to accept a job description which did not satisfy her desire to perform duties belonging to the Professional category. While her aspirations were legitimate, the ITU had to consider the needs of the organisation. In any event, the promotion to the Professional grade that she seeks can only be achieved by the procedures prescribed in the applicable rules. She is seeking to obtain a ruling from the Tribunal to the effect that a job description should be classified in the Professional category, but the Tribunal is not competent to make such a ruling. It has no competence to endorse a list of duties drawn up by the complainant, nor is it able to classify those duties. Citing the case law, the ITU says that such a matter ultimately falls within the discretion of the Secretary-General.

The Union also submits that the complainant has produced no objective evidence to show that she has been a victim of moral or professional harassment. It views her claim for the convening of a medical board as being irreceivable in that she did not submit it to the Secretary-General before bringing it to the Appeal Board. For the same reason it rejects her claim for damages.

D. In her rejoinder, on the matter of the receivability of her claims, the complainant stresses that when she initially wrote to the Secretary-General on 17 December 1998 she covered all the matters which she later dealt with in her internal appeals, and that her appeals were therefore receivable. She maintains all her claims and enlarges on her pleas.

From comments which had been made to her verbally in 1997, she had deduced that while her supervisors seemed to be willing for her to perform professional tasks, they nevertheless made sure that her job description did not contain duties exceeding those assigned normally to staff on grade G.5 or G.6. In her view, this constituted a form of "unjust enrichment" on the part of the organisation as she was "underpaid" considering the level of tasks assigned to her. She emphasises that the job classification review which she is claiming should be "based on tasks she is actually performing".

She points out that although the ITU granted her a special post allowance for the first semester of 1991, it refused her request for a six-month extension of the allowance even though she continued to carry out the same duties. In so doing, it did not treat her fairly and did not act in good faith or treat her with dignity and respect.

Furthermore, she considers that a promise was made to her regarding the development of her career. As head of her department, the Chief of the Strategic Planning and External Affairs Unit had to fill in part of a form she had submitted in 1998 applying to go on an external training course in Business Administration. He had ticked the option of "training to take on new responsibilities" as the justification for the Unit's need for her to do the course; this had led her to assume that career development would follow.

E. In its surrejoinder the ITU contests the complainant's allegations of professional harassment. It has shown consideration towards her and has given her "opportunities to demonstrate her capabilities". It further asserts that it paid her the appropriate special post allowances when she assumed additional responsibilities. Successive supervisors of the complainant have sought to revise her job descriptions in consultation with her. She simply refused to accept job descriptions that were not at the Professional level. Indeed, a job description for the complainant was officially drawn up and approved by her supervisors in June 1999; but as on previous occasions, the complainant showed no wish to perform tasks that she regarded as being below the Professional level.

Although her former chief may have encouraged her to enrol in the training course, his encouragement cannot be construed as a promise that career development or access to a higher grade would necessarily follow.

CONSIDERATIONS

1. The complainant lodged this complaint with the Tribunal on 13 August 1999 on the grounds that she did not have a job description which adequately reflected the level of the tasks she was performing. In the complaint form she identifies the impugned decision as being an express final decision dated 20 May 1999. The file does not bear that out. It appears that the complaint was lodged on the basis that the appeal procedure within the ITU had been exhausted. The Union does not have any comments with regard to the receivability of the complaint under Article VII, paragraphs 2 and 3, of the Statute of the Tribunal.

2. The complainant has seven claims. She asks the Tribunal:

- "- To order the ITU to finalise a relevant job description in line with current tasks being carried out by [the complainant] at the Professional level.
- To order that a job classification review impartially determines the current grade of the post.
- To order the ITU to organise and project for [the complainant] a 'career path'.
- To constrain the ITU to take appropriate measures to stop 'mobbing which is detrimental to health'.
- To order the ITU to comply with its Rules and Regulations as well as with the International Bill of Human Rights.
- To compel the ITU to convene a medical board in respect of the service incurred injury in order to determine the degree in loss of function as from 1992.

- To adjudge and order the ITU to pay to [the complainant], by way of compensation, an amount equal to US \$1,471,357 for damages, moral injury, costs and for all of the prejudice sustained."

3. The Union objects to the receivability of any of the claims which were not properly before the Appeal Board in the internal appeal procedure.
4. The Tribunal holds that only the matters relating to her request for a job description and her claim to be regarded at the Professional level can be considered on the merits by the Tribunal. All of her other claims are irreceivable on the grounds of failure to observe the rules for internal complaints.
5. The Union submits that the dispute between the complainant and the organisation is concerned less with the existence of a job description for the posts in which she was placed than with the level at which her post was classified. It claims it has never refused to provide the complainant with a job description at any stage and there were many exchanges of correspondence which show that her supervisors endeavoured to prepare job descriptions in consultation with her. She refused, however, to accept any job description that did not satisfy her desire to perform duties at the Professional level. There is no provision in the staff regulations or rules under which the complainant could be promoted to a Professional grade unless she were chosen for an advertised vacancy as a result of a selection procedure or if her post were reclassified at a Professional grade, subject to the Appointment and Promotion Board finding that she has the necessary qualifications for employment at that level.
6. The relief claimed by the complainant is that the Union should finalise a job description for her "in line with current tasks being carried out ... at the Professional level". The complainant was reassigned in April 1999 and an official job description was established in June 1999. As regards her request that her current tasks be classified at the Professional level, this is not within the competence of the Tribunal. The Tribunal has no power to direct that a particular job be classified at the Professional level.
7. The next five of the claims listed under 2 above are irreceivable on the grounds that the complainant has not exhausted the internal means of redress.

Her seventh and last claim concerns consequential relief stemming from those five claims, but since they are not receivable this claim too must fail. The complainant is therefore not entitled to succeed on any ground in this complaint.

8. The Tribunal endorses the view of the Appeal Board that it was abnormal for the Administration not to have established an up-to-date job description over a two-year period. Indeed, it is for the Administration to exercise its authority and to establish a job description in a timely fashion.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 10 May 2000, Mr Michel Gentot, President of the Tribunal, Miss Mella Carroll, Vice-President, and Mr James K. Hugessen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 12 July 2000.

Michel Gentot

Mella Carroll

James K. Hugessen

Catherine Comtet

