

The Administrative Tribunal,

Considering the seventh complaint filed by Mrs M. P. on 11 July 2001 and corrected on 18 October, her eighth, ninth and tenth complaints filed on 18 October, all against the International Telecommunication Union (ITU), the ITU's single reply of 5 February 2002, the complainant's rejoinder of 20 February on her seventh complaint, and her rejoinders of 6 May on her eighth, ninth and tenth complaints, and the Union's letter of 11 June 2002 to the Registrar of the Tribunal stating that it did not wish to enter surrejoinders;

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 hearings;

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

A. The complainant is a former staff member of the ITU. Facts relevant to this case are to be found in Judgments 1976, 2026, 2070, 2160 and 2161 in which the Tribunal ruled on her first, second, third, fourth and fifth, and sixth cases.

As stated in Judgment 2160, a psychiatric specialist drew up a report, dated 13 January 2001, on the complainant's state of health. The Director of the Joint Medical Service forwarded it to the Personnel and Social Protection Department on 24 January 2001.

The complainant's seventh complaint arose from a letter she wrote to the Secretary-General on 12 February 2001. She referred therein to the report of 13 January and requested compensation under Appendix D to the United Nations Staff Rules for what she deemed to be a "total [...] service-incurred impairment". She asked to be put on special sick leave with full pay, and included other claims mainly relating to the adjustment of her sick leave and annual-leave situation. Having received no reply, on 7 April she filed an internal appeal.

By a letter of 25 May 2001 the Secretary-General informed the complainant that because she was no longer able to carry out her duties, and had exhausted her entitlement to sick leave, her contract would be terminated on 29 May and, dependent on confirmation from the United Nations Joint Staff Pension Fund in New York, she would receive a disability benefit with effect from 30 May. She was to receive two indemnities: (a) an amount equivalent to three months' salary in lieu of notice; and (b) a termination indemnity equal to 11 months' basic salary including language allowance, reduced by any amounts received from the UNJSPF as disability benefit over the same 11 months. The termination indemnity was based on 13 years of service (from 1 June 1988 to 29 May 2001).

Her eighth complaint stemmed from a letter that she wrote to the Secretary-General on 3 June 2001. In that letter she contested the amount of her pension fund contributions for the period between October 2000 and April 2001. They seemed to have been calculated on a full salary, whereas she had been on half pay during that time. She also objected to her contract being terminated with such short notice, before guarantees for medical coverage had been put in place, and disputed the amount of the termination indemnity paid to her. On 18 July 2001 she filed an internal appeal, taking up the same matters.

Responding to the complainant's request of 12 February for compensation under Appendix D, the Secretary-General informed the complainant on 28 May that he had decided to appoint an ad hoc compensation board to determine if her condition was work-related, and would subsequently advise if any compensation was due to her. He said that the organisation was in the process of choosing its representative for the board.

The ninth complaint arose from the letter she wrote in reply on 3 July. She expressed concern because the board

had not yet met and said she had chosen her own representative and asked who was to represent the organisation. On 18 August she filed an internal appeal, since despite information communicated to her in a letter of 28 May from the Secretary-General, no ad hoc compensation board had met.

Her tenth complaint arose from another letter to the Secretary-General, dated 16 July. She protested that she had not received the breakdown of her sick leave and had not been told why the ITU had chosen the date of 29 May to end her appointment. She again took issue with the calculation of her termination indemnity and wanted the organisation to pay its share of pension fund contributions over the three months constituting her notice period, i.e. from June to August 2001. The Chief of the Personnel and Social Protection Department responded to that letter on 6 August. He explained why he considered that the organisation's calculations of her end-of-service and pension entitlements were correct. On 20 August 2001 she filed an internal appeal on the same issues.

B. The complainant argues that her complaints are receivable. Having received no reply from the Union regarding any of her four appeals, she has filed complaints Nos. 7 to 10 with the Tribunal challenging the implied rejection of her claims.

Her main contention in her seventh complaint is that against her expectations the ad hoc compensation board had not yet met. Because the organisation had not yet dealt with her claim that her illness was service-incurred, she asks the Tribunal itself to examine the report of 13 January 2001 drawn up by the psychiatric specialist. As in previous complaints, she claims that she was the victim of mobbing and unfair treatment, and sees that as the cause of her illness. Again, she takes issue with the organisation for not treating her absences as special sick leave; for placing her on half pay; not convening a medical board; and abusing its power in the manner in which it conducted an enquiry into her administrative situation. She again contests the amount of compensation paid to her for the foot injury she sustained in 1992. The ITU, she avers, left her case pending without making a final decision, and terminated her contract before matters were settled.

In her eighth complaint her main contention is that at the time of her separation the measures taken by the ITU were not in conformity with the Staff Regulations and Staff Rules or Appendix D. Her termination was premature. The ITU had neither convened a medical board, nor had it settled outstanding matters related to her foot injury. Moreover, it ended her contract because of a "professional illness" before granting her appropriate financial compensation under Rule 6.2.4 and before settling all her medical expenses, future medical coverage and matters relating to sick leave. The letter notifying her of termination reached her only on 28 May and she objects to the short notice, claiming that it is against the terms of Regulation 9.5.2 a). She contends that the ITU wrongly calculated her termination indemnity since it should have been based on 13.5 years of service (from February 1988 to 31 August 2001). It also underpaid its share of pension fund contributions for June and July 2000, and should have paid its share to the fund during the months of June to August 2001. It terminated her contract prematurely, before it had obtained confirmation from the UNJSPF that she would receive the disability benefit.

In her ninth, the complainant has several pleas. Firstly she takes issue with the fact that the ad hoc compensation board had not met or even set a date, and secondly, submits that the ITU terminated her contract prematurely without making provision beforehand to settle the outstanding issues. Thirdly, it had failed to offer financial compensation for the wrong done. Lastly, it had failed in its duty to respect her dignity.

In her tenth complaint she again contests the calculation of the termination indemnity paid to her and challenges a personnel action form dated 25 May 2001. In her view, in calculating the amounts due to her the Union did not correctly apply the Staff Regulations and Staff Rules. In replacing the three-month notice period with an indemnity it applied Regulation 9.5.2 c), which she contends was not in force at the time of her recruitment. It acted in breach of other Regulations which were in force in 1988 and applied ones that met "its current needs". She also takes issue with the ITU's failure to give details of sick leave deducted.

The complainant claims the following relief. In all four cases she asks for financial compensation under Appendix D. In her seventh and eighth cases she claims 100 per cent reimbursement of all medical expenses connected with her 1992 injury and her subsequent "service-incurred" illness.

The other claims in her seventh complaint are as follows. She seeks: payment of salary deducted since June 2000 and corresponding adjustment to pension fund contributions; reinstatement of annual leave withheld in 2000 and 2001; "exemplary redress" from the organisation in the sum of 200,000 United States dollars on account of the investigation conducted into her administrative situation (she wants the official who was asked to carry out the

enquiry to be heard as a witness); damages; financial compensation for a 25 per cent loss of function resulting from her foot injury; and confirmation that the Union will meet the costs of a second operation, if needed.

In the context of her eighth complaint she also seeks the following: 200,000 dollars in damages as "exemplary compensation" for non-observance of the Staff Rules, Staff Regulations, and Appendix D and for the short notice period that she was given; compensation for missed career opportunities; reimbursement of salary deducted between June 2000 and May 2001 and reinstatement of sick-leave credit; payment in lieu of annual leave withdrawn between January 2000 and August 2001; termination indemnity based on 13.5 years of completed service; payments of entitlements, including non-paid contributions towards the pension fund for June and July 2000 and June to August 2001; a correction of the amount of compensation for her foot injury; the convening of a medical board; payment of interest; compensation for delays; and explanations regarding her sick leave and termination.

In her ninth complaint, she asks the Tribunal to order the ITU to pay her financial compensation under Appendix D and Staff Rule 6.2.4 for a "100% total and permanent disability", with interest on the amounts due, and compensation for the delays.

The other claims in her tenth complaint are as follows. She asks the Tribunal to declare that the rules and regulations in force at the time of recruitment "are binding". She wants the ITU to supply "proof of payment" showing how the termination indemnity was calculated and to recalculate it on the basis of 13.5 years of service. She claims: reinstatement of sick-leave credit wrongfully deducted; a refund of salary withheld and reinstatement of annual leave; a complete explanation of sick-leave deductions; payment of pension contributions for June, July and August 2001; 200,000 dollars in moral damages; and compensation for losing out on the exchange rate applied in the calculation of her disability benefit - since a more favourable rate would have applied in August 2001. She also wants the organisation to bear the cost of her income tax during the notice period. She claims interest on all these amounts.

In all four complaints she claims costs and any other relief deemed appropriate.

C. In its single reply the Union contends that all four cases - which relate to the same issues and contain similar claims - are devoid of merit. It asks the Tribunal to reject all the claims related to the complainant's career with the ITU or the compensation procedure in connection with her foot injury in 1992 as they have already been ruled on in Judgments 1976, 2026 and 2070.

As stated in its submissions on her previous cases, on the basis of the medical report of 13 January 2001 the ITU decided to terminate the complainant's contract, submit her case to the United Nations Joint Staff Pension Fund (UNJSPF) to determine her eligibility for disability benefit, and constitute an ad hoc compensation board that would examine her request for financial compensation and submit a recommendation to the Secretary-General. It rebuts the complainant's pleas concerning delay in constituting the board; it maintains that the organisation acted in a timely manner. The complainant herself contributed to the delay. This was because neither her choice of representative nor her choice of counsellor were acceptable to the organisation. As was pointed out to her, she had to nominate either an ITU staff member or former ITU staff member to fulfil those roles.

The termination of the complainant's appointment was, it contends, conducted in full compliance with the Staff Regulations and Staff Rules. After consultation of the Joint Advisory Committee, the ITU terminated the complainant's appointment for reasons of health. The termination became effective as from 29 May 2001 and, by application of Staff Regulation 9.5.2 c), in lieu of three months' notice the Secretary-General authorised payment of an indemnity equivalent to the salary and allowances she would have received had the date of termination been at the end of the notice period. Contrary to the complainant's assertions in her tenth complaint, that regulation was already in force at the time of her initial recruitment in 1988. For the purposes of calculating termination indemnity only completed years of service count, and the complainant's argument that she had served 13.5 years is therefore of no consequence, since it would not affect the amount due to her. Bringing forward the date of termination was in the complainant's interest as it allowed payment of the disability benefit in May instead of September 2001. The question of payment of pension fund contributions for June, July and August 2001 does not arise, since from 30 May she was in receipt of the disability benefit and could no longer contribute to the fund.

The complainant, it submits, has not substantiated her claim to damages, and although she claims reimbursement of income tax in her tenth complaint, she has furnished no evidence of payment of tax on the indemnity received from

the organisation.

D. In her rejoinders the complainant states that she is opposed to the consolidation of her complaints and wishes to claim costs incurred for each one. She enlarges on her pleas. In support of her claim for damages, she says that the Appeal Board failed to take up any of her four appeals, and that fact alone caused her injury, as did the organisation's failure to convene the compensation board.

The complainant does not accept the ITU's argument that only completed years of service are taken into account for calculating the indemnity. She says that the choice of the date of her termination was a ploy to end her contract just before the expiry of a completed year of service, and the actions taken against her constitute "constructive dismissal". She produces evidence of payments made in monthly instalments to the tax authorities, and presses her claim to reimbursement. Payment of termination indemnity should in her opinion have been made on the basis of her pensionable remuneration, whereas the ITU took only her base salary into account, which was not in conformity with Regulation 9.6 a).

CONSIDERATIONS

1. On 11 July 2001 the complainant filed her seventh complaint wherein she largely sought compensation and payments under the same heads as in previous complaints.
2. The day after she filed her seventh complaint, the Tribunal delivered Judgment 2070 in which it ruled on her third case. It upheld the decision taken by the Secretary-General of the ITU on 26 October 2000 awarding her the sum of 15,714.80 United States dollars in compensation for her service-incurred injury in 1992. Her claim for a "lump-sum benefit" was thus met and the Tribunal dismissed all other claims.
3. On 18 October 2001 the complainant simultaneously filed her eighth, ninth and tenth complaints.
4. Complaint No. 8 principally seeks damages for the termination of her permanent contract for health reasons, after only 24-hours' written notice, with effect from 29 May 2001. This termination was considered by her to be premature inasmuch as the compensation board had not met to determine whether the illness she was suffering from was work-related, nor had a medical board been convened; there had been no prior confirmation from the UNJSPF that it would pay her a disability benefit as of 30 May 2001 and her claims for compensation and damages had not been resolved.
5. Complaint No. 9 mainly focuses on the fact that the compensation board referred to by the Secretary-General in his letter of 28 May 2001 had not yet met. The complainant points out that in a letter of 3 June 2001 she had notified the Secretary-General that she wished to appoint herself and a former United Nations official as representatives to the board. In that same letter she had asked the Secretary-General to let her know the name of his representative as well as the date and place of the board's meeting. She had again written to the Secretary-General on 3 July 2001 requesting the name of his representative but, at the time of filing her complaint, there had been no reply to her letters. She claims financial compensation for a "100% total and permanent disability", as well as for delays.
6. Complaint No. 10 seeks the payment of oft-repeated claims for diverse items, alleges errors in the calculation of termination indemnity and pension fund contributions and asks the Union to supply "proof of payment" of the termination indemnity due to her. She also wants the ITU to bear the cost of her income tax during the three-month notice period. She claims financial compensation for moral and material damages in the amount of 200,000 dollars.
7. In its single reply the Union asks the Tribunal to join the four complaints inasmuch as they are clearly related to the same issues and contain similar, if not identical claims. The Tribunal agrees that they should be joined.
8. The Union states that in his report assessing the complainant's illness the specialist found that her symptomatology "would result in a total and lasting unfitness for work". It asserts that on the basis of that report, which was approved by the Joint Medical Service, it undertook the following three administrative actions.
 - (i) It was decided to terminate her contract in accordance with Staff Regulation 9.2 which states, in part, that:

"The services of a staff member may be terminated when he is unable to perform his duties, or any other duties which might reasonably be assigned to him, as a result of infirmity, illness or the weakening of his physical or mental faculties."

(ii) It was decided to submit the case to the UNJSPF in accordance with Article 33 of its Regulations, concerning disability benefit, and paragraph H.3 of Annex I to the same Regulations, which states that:

"A request for a determination by the staff pension committee under article 33(a) of the Regulations shall be made by the organization:

[...]

(c) Whenever the appointment of a participant is terminated or is proposed to be terminated, for reasons of health."

(iii) It was decided that an ad hoc compensation board would be constituted in order to formulate a recommendation to the Secretary-General on the complainant's request for financial compensation in respect of her illness.

9. The Union further states that with regard to the termination of the complainant's permanent appointment due to reasons of health, the Secretary-General, in accordance with Staff Regulation 9.1. d), consulted the Joint Advisory Committee which recommended that her appointment be terminated.

10. Accordingly, on 25 May 2001, the Secretary-General sent a letter to the complainant informing her that her appointment would be terminated for reasons of health and that by application of Staff Regulation 9.5.2, concerning the notice period due, her termination would be effective as from 29 May 2001.

The Tribunal considers that the Union's actions were taken in compliance with the applicable regulations.

11. Under Regulation 9.5.2, a staff member whose permanent appointment is to be terminated shall be given not less than three months' written notice. However, in lieu of the notice period, the Secretary-General may, under 9.5.2 c) authorise payment of "an indemnity calculated on the basis of the salary and allowances which the staff member would have received had the date of termination been at the end of the notice period". Contrary to the complainant's assertions, this Staff Regulation was already in force at the time the complainant was initially employed in 1988. The complainant has not shown that the Secretary-General has wrongly exercised his discretion in her case.

12. The termination indemnity to be granted to the complainant was calculated in compliance with the schedule for payment of the indemnity, set out in Staff Regulation 9.6 a).

Likewise applicable was Regulation 9.6 b) which provided that, when an appointment is terminated for reasons of health, the staff member concerned shall receive an indemnity equal to that provided in the schedule of Regulation 9.6 a), but "reduced by the amount of any disability benefit that the staff member may receive under the Regulations and Rules of the United Nations Joint Staff Pension Fund [...] for the number of months to which the indemnity rate corresponds".

Applying the foregoing Regulations, the complainant was entitled to an indemnity equivalent to 11 months of pensionable remuneration since she had accumulated a period of 13 completed years of service.

13. As regards disability benefit, the Secretary-General, in the same letter of termination of 25 May 2001, informed the complainant that the ITU Staff Pension Committee had decided to grant her a disability benefit, subject to confirmation by the UNJSPF in New York. It would be payable from 30 May 2001, the day after her separation from service.

In his letter of 28 May 2001, the Secretary-General confirmed that on 3 May the ITU local Pension Board had decided to grant her an invalidity pension on a permanent basis because of her "permanent and total invalidity".

14. That the three-month notice period was replaced by an indemnity in the form of a lump sum, equivalent to salary and allowances she would have received for the said period had she stayed in service, had implications on the date at which her disability benefit was to become payable. Instead of her remaining in service for the three-

month period, the date of her separation was advanced, thus allowing the benefit to be paid to her at the earliest date possible, that is, on 30 May 2001, instead of 1 September 2001. The notice period was not taken into account for pension fund purposes. She could not have contributed to the pension fund for the period from 1 June to 31 August 2001, nor could the organisation have made any contributions on her behalf.

Therefore her contentions on that issue are without merit.

15. With respect to the convening of the compensation board, in his letter of 28 May 2001 the Secretary-General informed the complainant that he would appoint an ad hoc compensation board composed of his representative, the complainant's representative, a Chairman to be chosen by the two representatives, and the Head of the Pension and Insurance Section acting as Secretary. The complainant, having been asked to designate her representative, submitted her own name and that of a former United Nations staff member.

16. In reply, the Union told the complainant, in a letter dated 26 June 2001, that her designation of herself and the former United Nations staff member was not acceptable. In accordance with the established procedure, she had to nominate an ITU staff member or former staff member to represent her. Otherwise, should she be unable to do so, the board could be composed of three representatives of the Secretary-General and three representatives of participants on the ITU Staff Pension Committee, which would comply with the provisions of Appendix D.

17. The complainant did not act on that suggestion. Instead, in a letter dated 3 July 2001, she drew the attention of the ITU to its failure to name its representative to the board although she had already nominated hers.

Not having received any new nominees from the complainant, the Union, by a letter of 10 December 2001, gave the name of its representative and reminded her that she had to nominate someone other than herself. Because of the impasse in determining the composition of the compensation board, it failed to meet. In the Tribunal's view, the delays resulted solely from the complainant's own actions and cannot give rise to any claim on her part.

18. As regards the complainant's allegations that the ITU had incorrectly calculated the duration of her service for purposes of end-of-service entitlements and her pension benefits, the Union pointed out that, as provided in Regulation 9.6, only "completed years of service" shall be considered. Her records showed that she was employed on short-term contracts from 8 February to 31 May 1988 and was granted a probationary contract from 1 June 1988. Calculating the length of her service from 8 February 1988 instead of from 1 June 1988 would have had no effect on the calculation of her termination indemnity as adding the extra months would not alter the number of "completed years of service".

19. As to the calculation of her pension entitlements, the period from March to May 1988 was taken into account since the complainant validated it when she was granted a probationary contract.

20. The disability benefit was made payable on 30 May 2001, the day after her termination became effective, instead of on 1 September 2001. Under the applicable Staff Regulation, the Secretary-General opted to pay the complainant a lump sum instead of granting her the three-month notice period over June, July and August 2001. That being the case, this three-month period could no longer be considered as a period of service and could not be taken into account for pension fund purposes; it was similarly irrelevant for calculating her termination indemnity.

21. As to the complainant's claim for proof of payment of the termination indemnity, the Union produces copies of the payment orders issued by its Finance Department.

There is therefore no longer any basis for that request and her claim fails.

22. With regard to the complainant's claim, in her tenth complaint, for the reimbursement of income tax, this claim is not supported by any evidence of payment made by her of income tax on the termination indemnity she received. Moreover, in accordance with Article 15 on "Immunities and facilities accorded to all officials" of the Agreement between the Swiss Federal Council and the Union establishing the organisation's juridical status in Switzerland, signed on 22 July 1971, the officials of the Union, irrespective of nationality, enjoy "exemption from all federal, cantonal and communal taxes on salaries, emoluments and indemnities paid to them by the Union".

23. The claims made by the complainant in relation to compensation for her 1992 service-incurred accident have already been ruled on by the Tribunal in Judgments 1976 and 2070, on her first and third cases, and are therefore *res judicata*.

24. Since her main claims fail, so too do her subsidiary claims.

DECISION

For the above reasons,

The complaints are dismissed.

In witness of this judgment, adopted on 1 November 2002, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Judge, and Mrs Florida Ruth P. Romero, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 3 February 2003.

Michel Gentot

James K. Hugessen

Florida Ruth P. Romero

Catherine Comtet