

FORTY-FIFTH ORDINARY SESSION

***In re* ROBINSON**

Judgment No. 428

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the International Telecommunication Union (ITU) by Mr. Edouard Robinson on 4 April 1979, the ITU's reply of 3 July, the complainant's rejoinder of 6 September and the ITU's surrejoinder of 28 September 1979;

Considering Article II, paragraph 5, of the Statute of the Tribunal, ITU Administrative Council documents Nos. 5022 and 5035 and Service Order No. 66;

Having examined the written evidence and disallowed the complainant's application for oral proceedings;

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

A. The complainant, a wireless operator by training, joined the staff of the ITU in 1954 as a technical assistant. In 1960 he was promoted to technician and in 1963 to engineer, at grade P.3, with the International Frequency Registration Board (IFRB). The Board is one of the four components of the ITU, the other three being the secretariat and two international advisory committees, one for wireless communications and the other for telegraphic and telephonic communications. Each body is headed by one or more elected officials. The Board has five members elected by the Plenipotentiary Conference and is served by a specialised secretariat which registers the allocation of frequencies. In 1973 the Plenipotentiary Conference asked for a review of the classification of all posts. Three experts were appointed to look into the efficiency of the secretariats, review post descriptions and recommend a revised scheme of employment. They recommended simplifying the organisation of the IFRB by merging the Administrative with the Notification Department and the Technical with the Planning Department. They proposed a new method of post classification to be put into effect by a post classification specialist. Those proposals were adopted in 1977. In the meantime each official had been asked to draft a description of his own post.

B. In his complaint the complainant states that on the proposal of the post classification specialist the Administrative Council of the ITU decided in 1977 that engineering posts should be variously classified at P.2, P.3 or P.4. By Service Order No. 66 a Review Committee was set up to hear disputes over classifications. On 8 August 1977 the complainant was told that he would continue to be graded P.3, and he applied for review of the classification of his post. His application having been refused, he appealed to the Appeal Board of the ITU. The Board held that he should continue to be graded P.3 but recommended that he should be paid a special post allowance at grade P.4 for an appropriate period during the interval from 1 January to July or August 1977 and that he should be systematically considered for promotion to P.4 vacancies for which he might be qualified. On 8 January 1979 the Secretary-General informed the complainant that he accepted the Appeal Board's recommendations, and that is the decision impugned.

C. The complainant contends that the ITU did not follow the right procedure for grading his post. Both before and after the regrading exercise he was performing the same duties and, barring minor differences, those duties correspond to the P.4 standard post defined by the classification specialist - as indeed actually acknowledged by awarding him the special post allowance recommended by the Appeal Board. Moreover, the Review Committee held that it was not competent to hear his application, even though the application fell squarely within its jurisdiction. The Committee did not give him a hearing. The impugned decision is discriminatory since grade P.4 was granted to several other engineers with the IFRB who were performing exactly the same duties as he. He therefore asks the Tribunal to quash the decision of 8 January 1979, to order review of the grading of his post and to award him 15,000 French francs as costs.

D. In its reply the ITU explains that effect has not been to the post descriptions drafted by ITU officials in 1976

because the Administrative Council has since decided that the specialised secretariat should be reorganised along quite different lines. The post classification specialist worked out a new system of grading based on description of "key posts" and drew up a new scheme for the classification of all ITU posts. The Administrative Council approved the scheme and the reorganisation of the IFRB at its 32nd (1977) Session. In his report the specialist explained that, being part of the reorganisation of the Board, the new grades did match former posts. There is therefore no direct connection between the post held by the complainant before the reorganisation and the one he holds now, and his references to the report on post classification (Administrative Council document No. 5022 of 1977) are immaterial. In early case in a memorandum he addressed to the classification specialist on 6 March 1978 he acknowledged that what he is objecting to is not so much the grading of post No. 501 - the one he now holds - at P.3 as the fact that he is performing the same duties as before, as set out in his own post description, and that they correspond to grade P.4. But the Appeal Board found that since July 1977 his duties had corresponded in substance to his present official post description, which is graded P.3. It also held that the Administration had not acted ultra vires in determining the nature of the post, classifying it and assigning the complainant to it. The nub of his case is that he was not chosen to perform more responsible duties, the reason being that he was considered less well qualified for them than others. The ITU therefore asks the Tribunal to dismiss his claims for relief as unfounded.

E. The complainant believes that the ITU is misrepresenting the facts and has failed to rebut his allegations about procedural flaw and the discriminatory character of the impugned decision. It is, in his view, quite wrong to dissociate former and present posts. In fact he has been performing the same duties as P.4 staff members, as indeed the ITU has acknowledged by granting him a special post allowance at grade P.4 from 1 January to 8 August 1977.

F. In its surrejoinder the ITU maintains that in refusing to acknowledge that the Board was reorganised the complainant is going in face of the plain facts. He is mistaken in arguing that the procedure for review of post classification was not followed in his case: it was not a matter of not classifying a post, but of assigning him to a new P.3 post, and the ITU settled it by a proper exercise of its discretionary authority and without any discrimination whatever.

CONSIDERATIONS:

Review of the impugned decision

1. The impugned decision assigning the complainant to a grade P.3 post was a discretionary one. The Tribunal may therefore set it aside only if it was taken without authority, or violated a rule of form or of procedure, or was based on mistake of fact or of law, or overlooked essential facts, or was tainted with abuse of authority, or it clearly mistaken conclusions were drawn from the facts.

The Tribunal will be even more cautious in reviewing the impugned decision since some of the matters raised in the complaint are technical and the ITU is more familiar than the Tribunal with the circumstances which determine how they should be settled.

The claims for relief

2. The complainant argues that by awarding him a special post allowance for the period from 1 January to 8 August 1977 to make up the difference between the P.3 and P.4 salaries the

Secretary-General impliedly acknowledged that his duties corresponded to those of a P.4 official.

The ITU answers that, although the complainant was indeed awarded the special post allowance, that was because during the period in question he performed the same duties as officials who had been promoted to grade P.4 retroactively from 1 January 1977, not because he actually performed P.4 duties. The Appeal Board's report bears out that explanation, and there is no evidence in the dossier to cast doubt on the matter.

3. The complainant maintains that, barring minor differences, his duties correspond to those of the engineering "standard post" defined by the post classification specialist and which are all performed by P.4 officials.

In fact the Administrative Council has created two kinds of engineering post. Only one of them is held by P.4 officials and it is therefore mistaken for the complainant to contend that he ought to hold that grade simply because he is an engineer.

4. The complainant also criticises the Review Committee for holding that it was not competent to hear his application.

The plea fails since he adduces no evidence on the Committee's terms of reference. Besides, it was another official's application that the Committee declared it was not competent to hear.

5. Although the complainant was not invited to address the Committee, his application for review of his classification was put to it. It is therefore not open to him to allege any breach of his right to a hearing since the right does not mean that he is entitled to be heard in person.

6. Lastly, the complainant contends that he fared less well than several other officials who, though performing the same duties as he, were classified P.4. In support of his contention he produces an affirmation by nine fellow officials.

Like the Appeal Board, the Secretary-General gave less weight to that affirmation than to the views of those in charge of post classification, such as the post classification specialist. He did not draw any mistaken conclusions from the facts.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, Vice-President, the Right Honourable Lord Devlin, P.C., Judge, and Mr. Hubert Armbruster, Deputy 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 11 December 1980.

(Signed)

André Grisel
Devlin
H. Armbruster

Bernard Spy