

SIXTY-EIGHTH SESSION

In re SAUNDERS (No. 3)

(Interlocutory order)

Judgment 989

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Mr. Yann Harris Saunders against the International Telecommunication Union (ITU) on 9 May 1989 and corrected on 8 June, the ITU's reply of 12 September, the complainant's rejoinder of 12 October and the Union's surrejoinder of 15 November 1989;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Regulation 3.8 and Rules 3.4.2(a) and 11.1.1 of the ITU Staff Regulations and Staff Rules;

Having examined the written evidence, oral proceedings having been neither applied for by the parties nor ordered by the Tribunal;

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

A. As is stated, under A and 1, in Judgment 970 and, under A, in Judgment 988, the complainant took up duty with the Union in 1967 at grade G.4 and got a permanent appointment in 1969 on a post (C12T) as an office assistant at grade G.5 in the Technical Co-operation Department. From June 1973 he was on secondment to G.6 and P.1 posts. By a decision of 23 September 1974 the Secretary-General granted him under Regulation 3.8 of the ITU Staff Regulations a special post allowance corresponding to grade P.2 as from 17 September 1974 and without limit of time. In 1984 he was seconded on a fixed-term appointment to a G.7 post (S39) in the Conferences and Common Services Department. But he still got the allowance for P.2 and his permanent appointment, on post C12T, was still at G.5. Post S39 was graded P.2 as from 1 January 1986 and renumbered S26. By a decision of 31 October 1985 he was transferred from post C12T to post S26, also as from 1 January 1986, as an administrative officer.

According to a paper (CA 43/6729-E) which the Secretary-General put to the ITU's Administrative Council at its 43rd Session, in 1988, United Nations policy was "to guarantee to staff promoted from the General Service to the Professional category that the salary differential resulting from the promotion and during the year following it, calculated in local currency, will be at least equivalent to one step of the new grade". For that purpose, said the paper, there was review of the official's pay on the first anniversary of promotion, known as the "anniversary calculation". The Union was now following that policy, though there was no "guarantee concerning the level of remuneration after the first year following promotion".

In a memorandum of 20 June 1988 to the Chief of the Personnel Department the complainant cited the paper and observed that in the year following his promotion to the P.2 post his earnings had fallen over 6,000 Swiss francs short of his earnings in 1985. He asked that his salary for 1986 in Swiss francs be recalculated so as to make the increase he had got on promotion at least equivalent to one step in P.2. He added that since he had already reached the top step in P.2 the ITU might have to "apply the figures that correspond to existing 'personal steps' on the P.2 scale".

The Chief of Personnel answered on 26 July 1988 that since at the date of his promotion to the P.2 post - 1 January 1986 - he had already been getting the P.2 special post allowance there was no call to pay him any more for 1986.

The complainant pressed his claim in a memorandum of 17 October 1988 and the Chief of Personnel refused it again on 8 November. On 9 November the complainant addressed to the Secretary-General a request for review under Rule 11.1.1.2(a). The Deputy Secretary-General refused it on the 22nd and he repeated it on the 24th. The Deputy Secretary-General sent him a memorandum on 21 December confirming the decision of 26 July. On 4 January 1989 he lodged an appeal under Rule 11.1.1.2(b). In its report of 26 January the Appeal Board observed that he had been continuously paid since 1974 as if permanently appointed to P.2 and his appointment to that grade in 1986 was "confirmation on a permanent basis of his P.2 level"; it held that the anniversary calculation was meant to apply only to direct promotion from the General Service to the Professional category. In a memorandum to him

of 9 February 1989 the Deputy Secretary-General endorsed the Board's report and that is the decision he is challenging.

B. Giving an account of his career in the ITU, the complainant submits that the decision of 31 October 1985 to put him on a P.2 post as from 1 January 1986 did not confirm an earlier promotion. All that he had got from the Secretary-General's decision of 23 September 1974 was payment of the P.2 post allowance, and that was not promotion: the term was not used and he was not transferred from the General Service to the Professional category. Later decisions simply defined or extended the duration of his secondment from his "permanent" grade and the grant of the allowance. In its reply to his first complaint the Union contended that he did not change categories until 1986 and that till then he was merely on secondment and getting the allowance: that contention does not square with its stand in this case.

The Union is wrong not to apply the anniversary calculation to his case. It should have reviewed his earnings in Swiss francs on the first anniversary of his promotion, 1 January 1987, to make sure that the differential in local currency was worth at least one step in P.2. That is the whole purpose of the policy, and the burden is on the ITU to apply and to maintain the differential for everyone on promotion. The Union is not bound by the scales of pay that apply to the common system of the United Nations: for example, the P.2 scale applied in the Union includes several "personal" steps that go above the maximum in the common system. The Secretary-General may therefore depart from the common system to solve a problem that affects only the very few officials promoted from the General Service to the Professional category.

It stands to reason that on promotion a staff member should be paid more. How much more is set by Rule 3.4.2(a): it is the equivalent of at least one step in the higher grade, and indeed for everyone but those, like the complainant, who have been promoted to the Professional category the differential will hold good after promotion, however the salary scales and exchange rates may vary. He has been denied the proper reward of promotion by a narrow reading of Rule 3.4.2. Justice and equality, too, entitle him to the proper differential.

He seeks the quashing of the decision of 9 February 1989; the correction of his "administrative and salary status to grade G.7 to bring it into line with the grade attributed since 1977 to his former permanent post" in the Technical Co-operation Department and with the grade of the post he held from 1 May 1984 until 31 December 1985; the award as from 1 January 1986 to a "definitive minimum differential in salary and allowances in local currency" worth at least one step in P.2 more than the sums he would have been entitled to in Swiss francs at G.7; the continuance of that differential on further advancement or promotion; the recalculation of the Union's and his own pension contributions at G.7 as from 1 May 1984; the determination of his pensionable remuneration at at least the level it would have reached at G.7 at 31 December 1985; declarations that it is unlawful either to pay him less in Swiss francs after promotion than he would have got at his former, lower, grade or to reduce his pensionable remuneration below the level it would have reached at 31 December 1985 if he had been "correctly promoted to grade G.7 on 1 May 1984" before the regrading of his post to P.2 as from 1 January 1986; and an award of costs.

C. In its reply the ITU gives its own account of the complainant's career, citing its replies to his first two complaints. It explains that, though from 1974 he held temporary appointments at higher grades and was paid the corresponding special post allowances, he kept his permanent appointment at G.5 on post C12T to fall back on if the temporary ones ran out, until he was permanently promoted to P.2, as from 1 January 1986. It maintains that it has always acted in his best interests.

The purpose of the anniversary calculation is to protect the pay of staff promoted from the General Service to the Professional category, but only in the year after promotion. The method is to compare pay in the first year in the Professional category according to the scales applicable to that category. Under no circumstances may the anniversary calculation be made where, as in this case, the Professional category scales applied both before and after promotion.

Besides, until his promotion on 1 January 1986 to the P.2 post, S26, the complainant's permanent post was the G.5 one, C12T. His earnings in 1986 at G.5 would have come to only 68,249 Swiss francs whereas he earned 84,139 at P.2, so he got much more than the equivalent of one step in P.2 on promotion and applying the anniversary calculation would have made no difference.

Since taking on P.2 work in 1974 he has been paid at grade P.2 and had all the benefits due to a member of the Professional category of staff; since being promoted to a P.2 post in 1986 he has continued to have the same pay

and conditions under a permanent appointment.

D. In his rejoinder the complainant objects at length to observations and pleas that appear in the Union's surrejoinder about his second complaint.

He explains that what prompts this and his other complaints is the keen sense of injustice and indignation he feels at the fact that his take-home pay and the estimate of his future pension entitlements are lower than they would have been if he had been lawfully transferred to his present post on 1 May 1984 at grade G.7 and if the post had then been regraded at P.2. He estimates that for October 1988 his gross salary at grade G.7, step 12, plus allowances, would have come to 8,500 Swiss francs and his pensionable remuneration to some 10,500 francs, whereas his actual gross salary for that month at P.2 was only 7,900 francs and his pensionable remuneration 7,300 francs.

Though the Union is not responsible for the fall of pay for P.1 and P.2 staff below the pay of G.6 and G.7 staff, it is wrong that the Union should make savings on salary and pension contributions through having promoted him. He discusses further what he sees as the main issues of fact, enlarges on his interpretation of the purpose of the anniversary calculation, and explains further how his status has deteriorated since his promotion to P.2 at 1 January 1986.

He presses his claims.

E. In its surrejoinder the Union submits that much of the complainant's rejoinder beclouds the material issues and is irrelevant. His comments on its surrejoinder on his second complaint are out of order, and the observations that are of any relevance at all are trivial or misconceived and do nothing to weaken its case. He persists in confusing his own grade with the grades of the posts he was assigned to at various times. The hypothesis he bases his case on, that he should have held grade G.7 at the date of his promotion to P.2, is pure surmise and has no foundation in law. It is irrelevant that the G.5 post he originally held was regraded G.7 after he had ceased to hold it. At 31 December 1985, on the eve of his promotion to P.2, he held a permanent appointment at G.5 and was receiving a P.2 post allowance. The earnings of G.5 and P.2 staff members in 1986 being as indicated in C above, there were no grounds for applying the anniversary calculation to him.

CONSIDERATIONS:

Before ruling on this case the Tribunal wishes to have further submissions about the figures in items 26 and 27 appended to the complaint and on other matters.

1. It accordingly orders the International Telecommunication Union:

(a) to confirm the accuracy of the figures in item 26, which gives the complainant's total remuneration for 1985, and in item 27, which gives his total remuneration for 1986;

(b) to explain why the figures of base salary in column 1 of each item fell in some months;

(c) to explain why the total - 91,004.70 Swiss francs - of the first and second columns in item 27 is 6,107.05 francs lower than the total - 97,111.75 francs - of the first and second columns in item 26;

(d) to state the grade pertaining to the base salary stated in each item;

(e) to state for what period the special post allowance for grade P.2 was paid to the complainant and to indicate the amount of that allowance;

(f) to explain the statement in paragraph 12 of the reply that in 1986 the complainant received 84,139 francs as remuneration at P.2.

The Union shall file its replies with the Tribunal not later than thirty days from the date at which it receives official notification of this judgment.

2. The complainant shall file his comments on the Union's further submissions within a further time limit of thirty days.

3. The Union may file final comments on the complainant's submissions within a time limit of fifteen days.

DECISION:

1. Further submissions are ordered in answer to the issues set out in 1 above.
2. The Tribunal's ruling on the parties' pleas and rights is reserved.

In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, Tun Mohamed Suffian, Vice-President, and Miss Mella Carroll, Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 23 January 1990.

Jacques Ducoux
Mohamed Suffian
Mella Carroll
A.B. Gardner