

## SIXTY-NINTH SESSION

### *In re SAUNDERS (No. 4)*

#### **Judgment 1018**

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourth complaint filed by Mr. Yann Harris Saunders against the International Telecommunication Union (ITU) on 28 June 1989 and corrected on 3 July, the Union's reply of 5 October, the complainant's rejoinder of 20 November 1989 and the ITU's surrejoinder of 1 February 1990;

Considering Article II, paragraph 5, and VII, paragraph 1, of the Statute of the Tribunal, Articles 9.1(3), 56.1(b) and 56.1(g) of the International Telecommunication Convention adopted in 1982 in Nairobi, and Regulation 1.2 and Rule 11.1.1.2 of the ITU Staff Regulations and Staff Rules;

Having examined the written evidence;

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

A. The complainant's career in the Union has been summed up in Judgments 970, under A and 1, and 988 and 989, under A. In 1969 he was granted a permanent appointment as an office assistant on a grade G.5 post in the Technical Co-operation Department. He was on secondment to other posts at grades G.6 and P.1 from 1973 and P.2 from 1974. He was transferred as from 1 May 1984 to a G.7 post - S39 - as an administrative assistant in the Supplies and Stores Section of the Conferences and Common Services Department, though he was still paid a special post allowance at P.2 and his permanent grade was G.5. His post was regraded P.2 and renumbered S26 and he was promoted to it from his G.5 post as from 1 January 1986 as an administrative officer.

On 21 February 1986 he was given a description of post S26 which he objected to in a memorandum of 25 February to the Chief of the Personnel Department. He continued to decry the lowly nature of his duties, the staffing of the section and other things in many memoranda he sent to his superiors. At an interview with him on 6 January 1989 the Chief of the Conferences and Common Services Department went over his grievances, took him to task for the rudeness he pursued them with and notified a recommendation for transfer. By a decision of 25 January 1989 the Secretary-General transferred him with immediate effect to the Documents and Publications Production Division of the same Department; he took his post with him, and it was renumbered S70; and he kept his P.2 grade and his title of administrative officer.

On 26 January 1989 he sent the Secretary-General a request for review under Rule 11.1.1.2a); the Secretary-General having confirmed the decision on 30 January, on 9 February he appealed under Rule 11.1.1.2b), further asking that if the decision were not set aside he should be granted grade G.7 instead of P.2. In its report of 21 March the Board held that his transfer had been proper, that his duties had been graded P.2 and that that was the grade he should have; it recommended rejecting his appeal. By a memorandum of 29 March 1989, the decision impugned, the Deputy Secretary-General informed him that his appeal was rejected.

B. The complainant recounts his recent career and explains the nature of his grievances from 1986 on, which were about his own and others' job descriptions, his status and the organisation of the Supplies and Stores Section. Though he was supposed to be in charge of purchasing, his duties in the Section consisted in clerical and other routine work hitherto performed by someone at grade G.4 and in buying, storing and distributing office supplies, a job earlier carried out by a G.6 official. After three years' striving in vain to have his status reviewed he got an oral reproof on 6 January 1989 from the Chief of the Department for unsatisfactory performance, to which his written objections of 9 January 1989 went unanswered, and was arbitrarily moved elsewhere in the Department. He submits that, though Regulation 1.2 does say that "Staff members are assigned to their posts according to the needs of the Union", that did not empower the Secretary-General, suddenly and without prior consultation, to do away with his former duties and transfer him. The transfer was tantamount to a disciplinary sanction and was an abuse of authority. His transfer in May 1984 had probably aroused resentment in his supervisors and others who saw him as an intruder and were wary of the new techniques he brought in. He has suffered too often and for too long from stop-gap measures. His new work is temporary and once it is over he will face yet another makeshift expedient. It calls for skills he largely lacks, and the purpose of giving him such work is to enable the Union to find fault and

then get rid of him for good.

He seeks the quashing of the impugned decision, reinstatement in his former position, the review of his job description and grading and the job descriptions of subordinates, the "review" of the "personal report" he asked for after the oral reproof of 6 January 1989, substantiation of the charge of unsatisfactory performance and a full report recognising the work he did from 1 May 1984 to modernise his section. He claims costs.

C. The Union gives its own version of the facts, pointing to many mistakes and omissions in the complainant's, which it sees as tendentious.

The Secretary-General has wide discretion over transfers. That is clear, from the case law, from several articles of the International Telecommunication Convention and from the allusion in Regulation 1.2 to the "needs of the Union": the Secretary-General decides in the Union's interests, taking account of the staff member's qualifications merely "as far as possible". The decision impugned may therefore be set aside only if tainted with a fatal flaw.

There is no such flaw. The rules lay no duty on the Secretary-General to consult a staff member before transfer; besides the Chief of the Conferences and Common Services Department told the complainant in writing of his transfer a fortnight before it took effect. His transfer caused him no prejudice: it neither lowered his pay nor changed the nature of his contract. Though his duties are temporary, he took his permanent post with him and preserves all the rights it carries. There was no abuse of authority: the evil intentions he imputes to the Union are not supported by a shred of evidence. His transfer was no punishment but was ordered on objective grounds in the interests of more efficient management. A review in 1987 of the Department's computer work showed that what he was doing was "no longer essential" and that he would be better set to work on the centralised computer storage of texts produced in the Department. That was why he was moved to the Documents and Publications Production Division. That his superiors have not found fault with him suggests that the work suits him and that the decision was right. A further purpose of the transfer was to ease tension in his former division, where he got on badly with superiors and subordinates alike; any measure that improves efficiency will be even more warranted if it also makes for better working relations.

D. The complainant rejoins that the Secretary-General was never supposed to use his management prerogatives to push staff around at the whim of a department chief and that the treatment of him offends against justice and common sense. He again recounts his grievances arising out of his earlier assignments and discusses in detail many issues of fact.

He seeks to refute the Union's pleas, contending in particular that his transfer was prompted by the hostility of other staff, was a covert punishment for his determined defence of his rights and, not being ordered on objective grounds, was tainted with abuse of authority. It is only right and courteous to consult a staff member beforehand about a change that affects his interests and it is wrong to inflict it on him suddenly in retaliation for having annoyed a superior. Since his duties are only temporary he faces redundancy when he has accomplished them. He contends that there was no tension in the Supplies and Stores Section and submits a declaration to that effect signed by his subordinates in the Section. He presses his claims.

E. In its surrejoinder the Union submits that much of the complainant's rejoinder is irrelevant. Seeking to refute his other pleas, it observes in particular that, though he goes on protesting about one thing and another in objectionable memoranda to his supervisors, his experience and skills suit him well for his duties, which he is carrying out satisfactorily. The testimony signed by former and serving staff is the less cogent because he secured it for the sole purpose of appending it to his rejoinder and the signatories were not his subordinates at the time of signing. Tension did exist in his former Section, as is plain from many memoranda he wrote at the time airing his grievances. The transfer cannot be properly described as arbitrary when it caused him no injury, did not alter his contractual status and was ordered on objective grounds and in the Union's best interests.

The Union invites the Tribunal to dismiss his claims in their entirety.

#### CONSIDERATIONS:

1. The Tribunal disallows the complainant's application for oral proceedings because it has before it enough material to enable it to rule on his complaint.
2. As is stated under A above, the complainant took up a permanent appointment with the Union in 1969 on a grade

G.5 post. The features of his career that are material to this case are that in 1974 he was put on a G.7 post as an administrative assistant, but he kept his permanent appointment at G.5 and he continued to be paid a special post allowance corresponding to grade P.2 that he had already been getting before transfer to that post. As from 1 January 1986 the grade of that post was raised to P.2 and he was promoted to it with the title of administrative officer from his G.5 post, thereby acquiring grade P.2 in place of the grade of his permanent appointment, G.5.

He was far from satisfied with his lot, however. For one thing, he objected to the description of his new post, and he was also displeased with the nature of his duties, which he thought too humble, and with other matters. Eventually the chief of his Department recommended transferring him, and on 25 January 1989 the Secretary-General accordingly transferred him forthwith to another division in the Department. He kept the P.2 grade and the title of administrative officer. The very next day he applied for review of the transfer order and in time his case went to the Appeals Board, which recommended rejecting it. The final decision he is impugning is the one of 29 March 1989 that did so, and the case turns on whether there was anything unlawful about his transfer of 25 January 1989.

3. The International Telecommunication Convention which was adopted in Nairobi in 1982 and which constitutes the basic instrument of the Union confers on the Secretary-General wide discretion to engage staff and assign them functions in the Union's interests. Thus Article 9.1(3) reads: "The Secretary-General shall take all the action required to ensure economic use of the Union's resources ..."; Article 56.1(b) empowers the Secretary-General to "organize the work of the General Secretariat and appoint the staff of that Secretariat ..."; and Article 56.1(g) authorises him to "supervise ... the staff of the Headquarters of the Union with a view to assuring the most effective use of personnel ...". Regulation 1.2 of the ITU Staff Regulations further provides:

"Staff Members are assigned to their posts according to the needs of the Union and, as far as possible, in accordance with their qualifications ...".

4. The complainant pleads that despite the authority vested in him by Regulation 1.2 the Secretary-General acted unlawfully in suddenly and without prior consultation removing his former duties from him and transferring him; that the transfer was tantamount to a disciplinary sanction; that he was put in a job for which the Union knew he was largely unqualified, in the hope that he would do it badly and give it a pretext for getting rid of him; and that there was therefore abuse of authority.

5. Those pleas fail. The exercise by the Secretary-

General in this instance of the discretionary authority he enjoys under the provisions cited in 3 above shows none of the flaws that would warrant setting aside the decision.

Although Regulation 1.2 does not require the Secretary-

General to consult an official before transfer, the complainant was in any event informed of the transfer in writing a fortnight before it took effect and so had due warning of a decision that was to affect his legitimate interests.

The transfer does not show any of the characteristics of a hidden sanction. The complainant kept his permanent grade, which was P.2, and his title of administrative officer; the decision neither altered his contractual status nor caused him any injury.

The Tribunal is further satisfied on the evidence that there was no abuse of the Secretary-General's authority. So far from being arbitrary the transfer was ordered on objective grounds and in the interests of more efficient management, and there are three grounds on which the Tribunal comes to that conclusion.

One is that a review that had been carried out in 1987 of the computer work being done in the Department revealed that the sort of work the complainant was doing was no longer needed and that better use could be made of his talents if he were assigned to the electronic storage of texts, a task that was carried out in the division he was moved to.

Secondly, his supervisors found his services satisfactory in his new job, and there is therefore no reason to suppose that the Secretary-General assigned him to functions he was unqualified or unsuitable for.

Thirdly, it appears from the many grievances the complainant pursued at the time that in his former division he did

not always get on well with superiors and subordinates. A further aim of his transfer was to reduce tensions and improve the working atmosphere within his former division in the interest of the service. It is the duty of the head of any international organisation to take whatever measures can reduce tensions among his staff, bring about good working relations and improve efficiency. That is one of the factors he may take into account when considering transfers, and the Tribunal will be slow to interfere with such exercise of his discretion especially if, as is the case here, the transfer causes no injury to the employee transferred.

6. The complainant further argues that his new work is only temporary and that once it is done he will yet again be moved from pillar to post, that his position is precarious and that he faces the risk of termination.

The argument is unfounded. The complainant's transfer did not reduce his salary or change the nature of his employment. His new duties were classified at P.2. He was transferred not to a temporary post but with his own permanent post. When his new duties have been fully accomplished, he will still retain his permanent appointment and all the rights that go with it.

7. The complainant's claims to the quashing of the decision of 29 March 1989 and to reinstatement are disallowed because that decision shows no flaw.

8. His claim to the review of his job description and grading is devoid of merit. He adduces no evidence to suggest that his job description is in any way mistaken or improper. Nor does he put forward any argument in favour of changing the grading of his post.

9. His various other claims are rejected because they are irreceivable. They did not form part of his internal appeal and are not covered by the final decision which he is impugning, and which relates only to the matter of his transfer. He has therefore failed to exhaust the internal means of redress, as Article VII(1) of the Tribunal's Statute requires.

10. Since his complaint fails in its entirety he is awarded no sum in costs.

#### DECISION:

For the above reasons,

The complaint is dismissed.

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 26 June 1990.

Jacques Ducoux  
Mohamed Suffian  
Mella Carroll  
A.B. Gardner