

EIGHTY-FOURTH SESSION

Judgment 1690

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Miss R. B. against the Universal Postal Union (UPU) on 10 March 1997 and corrected on 10 April, the UPU's reply of 16 May, the complainant's rejoinder of 16 June and the Organisation's surrejoinder of 18 July 1997;

Considering Articles II, paragraph 5, and VII, paragraph 1, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, which neither party has applied for;

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

A. The complainant, who was born in 1963, is a citizen of both Colombia and Switzerland. She joined the staff of the International Bureau of the UPU on 1 February 1996 as a technical assistant at grade G.2 on a short-term appointment up to 29 February 1996. She was assigned to the Stamp Distribution Unit in Section B of the Bureau and her work consisted in sorting out stamps for dispatch to the Union's member countries. The letter of appointment stated that since she was a short-term staff member the UPU Staff Regulations and Rules did not apply to her. The Union extended her appointment to 30 June, then up to 31 December 1996.

By a minute of 25 July 1996 the head of Section B told her that she must raise her output. She saw the Director-General and got him to agree to an official enquiry by the internal auditors into the quality of her work. In their report of 2 August the auditors found that her output was up to standard but that in future she should "keep it on a par with the average maintained by other staff in her unit". In a minute of 9 August the head of Section told her that their average output had gone up and she must raise her own accordingly; moreover, unless she changed her behaviour towards colleagues and supervisors she would have to go. A minute of 12 August from the head of Section again warned her of the risk of dismissal for the same two reasons. She wrote to the Director-General on the same day asking for some explanation. In a minute of 13 August the head of Section confirmed the criticisms of her on the Director-General's behalf.

By a letter of 16 August the Assistant Director-General gave her notice that her appointment would be terminated on 26 August 1996 because her output was below par. In a letter of 22 August she asked the Director-General to reconsider. He refused in a letter of 29 August, again on the grounds of low output and failure to get on with colleagues.

The complainant appealed to the industrial tribunal of Berne on 5 September and so informed the Director-General. In a letter of 4 October the Director-General told her that the Union was not subject to Swiss law and that "the appeals procedure applied to the regular staff [was] also applicable, by analogy, to short-term staff".

In a letter of 7 December she appealed to the Joint Appeals Committee against the decision of 16 August 1996. She admitted that she was out of time but asked the Committee to waive the time limit because of the "exceptional nature" of the case. The Director-General informed her in a letter of 12 February 1997 that her appeal was time-barred and therefore irreceivable. That is the decision she is impugning.

B. The complainant submits that the reason why she failed to apply within the time limit in the Staff Rules was that the Union gave her “wrong information”. Only on 4 October 1996 was she informed “for the first time” of the proper procedure.

On the merits she contends that it was “unfair and unreasonable” to ask her “twice in a fortnight” to raise her output, which had until then proved acceptable. Besides, the internal auditors’ report said that the quantity of stamps she was processing was satisfactory and it would be very difficult, if not impossible, for her to do better. She rebuts the charges of “unacceptable behaviour” on the grounds that they “rest on mere hearsay”.

She asks the Tribunal to quash the impugned decision and to order reinstatement or, failing that, payment of “salary due to [her] under the terms of [her] contract from 26 August to 31 December 1996”.

C. The Union replies that the complaint is irreceivable. It denies giving the complainant “wrong information”. Her letter of 22 August 1996 shows that she knew full well which rule applied to her. As from the date on which the Director-General’s reply of 29 August was notified to her, she had a month in which to appeal to the Committee, but “for reasons unknown to the defendant” she failed to do so. So she alone is to blame for missing the time limit.

The Union’s pleas on the merits are subsidiary. It submits that the dismissal was warranted. The complainant’s output was far below that of the other staff. Contrary to what she asserts, the report of 2 August 1996 did say that she had to improve. The Union cites several minutes from the internal auditor referring to her “unsatisfactory behaviour” and unconscientious attitude to work.

It asks the Tribunal to reject her claim to repayment of costs.

D. In her rejoinder the complainant rebuts all the Union’s pleas and presses her claims.

E. In its surrejoinder the Union observes that the complainant “offers no new argument on the lawfulness of the dismissal”.

CONSIDERATIONS

1. On 16 August 1996 the International Bureau of the Universal Postal Union (UPU) gave the complainant notice that it would terminate her short-term appointment on 26 August 1996. On 22 August she applied to the Director-General for review of that decision, and on 29 August he refused.

2. She then challenged his decision before the industrial tribunal of the city of Berne.

3. The Director-General informed her in a letter of 4 October 1996 that Swiss law did not apply to her case and that she might appeal to the Joint Appeals Committee. The Union sent her copies of the material provisions of the Staff Regulations and Rules.

4. Under Staff Rule 111.3 she had a month in which to put her case to the Appeals Committee. Even if time were deemed to run from the date at which she received copies of the material rules, the appeal she filed on 7 December 1996 was time-barred. The Committee accordingly decided that the appeal was irreceivable.

5. The Tribunal shares that view. Her complaint is irreceivable under Article VII(1) of its Statute because she has failed to exhaust her internal remedies.

DECISION

For the above reasons,
The complaint is dismissed.