Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

*Registry's translation,
the French text alone
being authoritative.*

108th Session **Judgment No. 2901**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms C. S. Z. against the International Telecommunication Union (ITU) on 21 July 2008 and corrected on 4 November 2008, the ITU's reply of 16 January 2009, the complainant's rejoinder of 17 February and the Union's surrejoinder of 23 April 2009;

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

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

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

A. The complainant, a Swiss national born in 1971, joined the Union in September 1997 at grade G.4. Having been employed under short-term contracts until 2000, she obtained a fixed-term appointment on 1 March 2000, followed by a permanent appointment on 1 March 2004 as a draughtswoman in the Editing and Publication Division, again at grade G.4. She left the Union on 31 March 2006 after having tendered her resignation.

On 28 November 2006 the complainant and five of her former colleagues in the above-mentioned division lodged a complaint of harassment and abuse of authority against Ms P., the head of the division. A commission of inquiry was therefore set up. In the report which it issued on 3 August 2007, the Commission stated that it was "unable to find any evidence which might lead it to conclude that [Ms P.] had engaged in harassment or abused her authority vis-à-vis the complainants". It recommended inter alia that "[a] psychological unit should be set up to continue the therapeutic listening which [it] ha[d] begun". On 6 September a copy of the Commission's report was forwarded to the complainant, and by a letter of 29 October the Deputy Secretary-General in charge of the Administration and Finance Department informed her that, although she no longer worked for the Union, she was being offered psychological support, like the other complainants.

In a letter of 13 December 2007 to the Secretary-General, the complainant requested her reinstatement, since she considered that the Commission of Inquiry had acknowledged that her complaint had merit.

B. The complainant submits that from the moment her supervisor, Ms P., took up her duties, she proved to be incapable of proper personnel management and she harassed her staff and abused her authority over them. For example, she regularly came into the complainant's office to denigrate her subordinates and she did the same thing with each of them.

The complainant asserts that Ms P. subjected her to intolerable bullying, snubs and contempt and that her repeated complaints and those of her colleagues regarding this conduct were not taken seriously by senior management. She states that "this noxious and psychologically stressful situation led in [her] case to a complete loss of motivation and a deterioration in her physical and mental health" resulting in four months' sick leave because of a nervous depression.

Lastly, she explains that in view of senior management's failure to react appropriately – which for her "is tantamount to passive complicity" – and above all in order to preserve her health, she decided to tender her resignation.

The complainant requests "compensation for the loss of acquired benefits (especially with regard to the United Nations [Joint] Staff Pension Fund)", "financial compensation for loss of earnings during the period following her resignation" and "[her] reinstatement at the ITU in a post matching her qualifications, since the service to which she used to belong has been dismantled".

C. In its reply the ITU disputes the receivability of the complaint on two grounds, namely that internal means of redress have not been exhausted and that it is time-barred.

Firstly, the Union emphasises that the complainant did not lodge an internal appeal, and it points out that the provisions of Chapter XI of the Staff Regulations and Staff Rules, which deal with the appeal procedure, apply to all staff members, former staff members and their successors in title. Termination of the contractual relationship for whatever reason does not affect the obligations resulting from the application of these provisions. Moreover, the complainant did not request, let alone obtain, the Secretary-General's authorisation to file a complaint directly with the Tribunal. Furthermore, the complainant's statement that she had been advised by the Appeal Board to turn to the Tribunal directly, assuming that it is true, cannot be accepted as a valid argument, given the complainant's obligations in terms of exhausting internal means of redress.

Secondly and without prejudice to the foregoing remarks, the ITU submits that, since the complainant filed her complaint with the Tribunal more than six months after having submitted her request for reinstatement on 13 December 2007, this complaint is irreceivable according to Article VII, paragraph 3, of the Statute of the Tribunal.

Subsidiarily, with regard to the merits of the case, the Union considers that the conclusions drawn by the Commission of Inquiry did not warrant any action by the Secretary-General over and above the decision that he took, which has not been challenged by any of the parties concerned, except the complainant.

D. In her rejoinder the complainant draws attention to the fact that there is nothing in the Staff Regulations and Staff Rules to indicate that the term "staff member" also refers to a former staff member. She considers that it is "wrong and contradictory" to take her to task for not obtaining the Secretary-General's authorisation to refer her case to the Tribunal, given that he did not even reply to her request. Referring to Articles 7 and 8 of the Tribunal's Rules, the complainant submits that the fact that a reply from the Union was sought and supplied within the requisite time limits might suggest that her complaint had already been deemed receivable.

E. In its surrejoinder the ITU maintains its objections to the receivability of the complaint. It adds that the argument based on the fact that it was invited to submit a reply to the complaint is devoid of merit. Indeed, it is contradicted by the Tribunal's case law, which shows that a case placed on the roll of a session may be heard by the Tribunal and result in the delivery of a judgment dismissing the complaint as irreceivable on the grounds that internal means of redress have not been exhausted, or because it is time-barred.

CONSIDERATIONS

1. The complainant, who joined the ITU in September 1997 at grade G.4, was given a permanent appointment on 1 March 2004 as a draughtswoman in the Editing and Publication Division.

As she was faced with a deterioration in the working atmosphere in that division, particularly from 2004 onwards, she tendered her resignation and left on 31 March 2006.

2. On 28 November 2006 the complainant and five of her former colleagues, who had remained in their posts, lodged a complaint of harassment and abuse of authority under Service Order No. 05/05 of 16 March 2005 against Ms P., the head of their division, whom they blamed for this worsening of the working atmosphere.

Prior to this step, on 29 March 2006 these staff members had sent a memorandum to the Chief of the Personnel and Social Protection Department regarding the same events, but the action taken by the Union in response to this did not satisfy them.

3. In its report of 3 August 2007 the Commission of Inquiry set up under Service Order No. 05/05 dismissed the accusations of harassment and abuse of authority levelled at Ms P., but noted the existence of the serious shortcomings denounced by the complainants, which it ascribed primarily to managerial errors on the part of the Union's senior management. It recommended that the Secretary-General should "make arrangements so that the complainants are no longer under the supervision of [Ms P.]", "reorganise the service accordingly" and "[set up] a psychological unit" to assist the complainants.

4. By a letter of 6 September 2007, to which a copy of the report was attached, the Deputy Secretary-General in charge of the Administration and Finance Department informed the complainant that she would be notified shortly of the Secretary-General's decision on the conclusions contained in the report.

On 18 October 2007 the complainant, who had learnt from her former colleagues that they had been moved to different posts within the ITU, wrote to the Secretary-General to ask what decision he had taken on her case. She reminded him that she had been led to resign from the Union because of the shortcomings observed by the Commission. On 29 October the Deputy Secretary-General replied to the complainant that since she no longer worked for the ITU she could not, by definition, unlike the other complainants, benefit from the

Commission's recommendation that she should be transferred to another post. In that letter he therefore merely proposed that, if she so wished, she should avail herself of the psychological support also offered to her former colleagues.

5. By a letter of 13 December 2007 to the Secretary-General the complainant, who stressed the particular circumstances under which her resignation had taken place, having regard to the findings of the Commission of Inquiry, asked to be reinstated at the ITU in a post matching her qualifications.

As this letter went unanswered, the complainant sought to challenge the implicit decision refusing her request for reinstatement. Since, according to her, the Appeal Board of the ITU had informed her that she had no *locus standi* to refer a matter to it because she was no longer a staff member of the ITU, the complainant appealed directly to the Tribunal.

Thus, on 21 July 2008 she filed her complaint in which she seeks not only reinstatement but also financial compensation for the loss in earnings and loss of "acquired benefits", especially in terms of pension rights, caused by her resignation in 2006.

6. The Union raises two objections to the receivability of the complaint. The first is failure to exhaust internal means of redress as required by Article VII, paragraph 1, of the Statute of the Tribunal and the second is failure to abide by the time limit stipulated in paragraph 3 of the same article for filing a complaint against an implied decision.

Since this second objection to receivability is undeniably well founded, it will be unnecessary for the Tribunal to rule on the first objection.

7. While paragraph 2 of Article VII of the Statute of the Tribunal lays down that a complaint against an express individual decision must be filed within ninety days of the notification of this decision, paragraph 3 of that article stipulates that:

> "Where the Administration fails to take a decision upon any claim of an official within sixty days from the notification of the claim to it, the person concerned may have recourse to the Tribunal and his complaint shall be receivable in the same manner as a complaint against a final decision. The period of ninety days provided for by the last preceding paragraph shall run from the expiration of the sixty days allowed for the taking of the decision by the Administration."

8. As the Tribunal had occasion to explain in Judgment 456, under 2, the purpose of these provisions is twofold. Their first aim is to enable an official to defend his or her interests by going to the Tribunal when the Administration has failed to take a decision. Their second aim is to prevent a dispute from dragging on indefinitely, which would undermine the necessary stability of the parties' legal relations. It follows from these twin purposes that, if the Administration fails to take a decision on a claim within sixty days, the person submitting it not only can, but must refer the matter to the Tribunal within the following ninety days, i.e. within 150 days of his or her claim being received by the organisation, otherwise his or her complaint will be irreceivable.

9. In the instant case, the complaint filed with the Tribunal must be considered to be directed against the implied decision resulting from the absence of a reply from the Secretary-General of the ITU to the request for reinstatement contained in the complainant's letter of 13 December 2007. She thus had 150 days as from the Union's receipt of this letter to challenge that decision. It is clear that this time limit had well and truly expired by the time her complaint was filed with the Tribunal on 21 July 2008. For this reason the complaint is irreceivable because it was lodged out of time.

10. The Tribunal's case law does allow a complaint against an implied rejection to be deemed receivable, notwithstanding the expiry of the time limit for filing a complaint, if a particular step taken by an organisation, such as sending a dilatory reply to the complainant, might give that person good reason to infer that his or her claim is still under consideration (see Judgment 941, under 6). But that cannot be said to

have occurred in the instant case where the ITU, having forwarded to the complainant on 29 October 2007 the Secretary-General's decision of which she had already been informed on 6 September of that year, simply refrained from replying to the request for reinstatement made by the complainant on 13 December 2007 and thus took no steps which might have suggested that it intended to accede to that request.

11. Moreover, the Tribunal notes that the complainant does not formally dispute the fact that her complaint was time-barred. In this connection she merely points out that it was not summarily dismissed in accordance with the procedure which, under Article 7 of the Rules of the Tribunal, may be applied to complaints which are found to be clearly irreceivable on registration. This circumstance clearly cannot prevent the Tribunal from ruling in this judgment that the complaint was filed out of time.

12. As the Tribunal has repeatedly stated, for example in Judgments 602, 1106, 1466 and 2722, it should not entertain a complaint filed out of time, because any other conclusion, even if founded on considerations of equity, would impair the necessary stability of the parties' legal relations, which is the very justification of the time bar.

13. It follows that the complaint must be dismissed as irreceivable, without there being any need for the Tribunal to rule on its merits.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 13 November 2009, Mr Seydou Ba, Vice-President of the Tribunal, Mr Claude Rouiller, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 3 February 2010.

Seydou Ba
Claude Rouiller
Patrick Frydman
Catherine Comtet