

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

114th Session

Judgment No. 3174

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourth complaint filed by Mr B. H. against the Universal Postal Union (UPU) on 19 January 2011 and corrected on 11 February, the Union's reply of 2 May, the complainant's rejoinder of 11 July and the UPU's surrejoinder of 12 September 2011;

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. Information concerning the complainant's career at the UPU's International Bureau may be found, under A, in Judgments 2203, 2389 and 3009, delivered on the complainant's first, second and third complaints respectively. The complainant, who joined the UPU in 1994, was promoted on 1 August 2006 to the grade P4 post of Manager of the Staff Administration and Social Affairs Programme in the Human Resources and Social Relations Directorate (DRH). He retired on 31 August 2010.

On 11 November 2009, after a meeting of the Union's Council of Administration, the Director-General told the complainant that he deemed his conduct to have been improper and that he would call him to his office after the Council's session. By a letter of 12 November 2009 the complainant asked the Director-General to explain what aspect of his conduct had been improper and what this conclusion was based on. As he received no reply, he repeated his request on 15 January 2010. In a letter of 18 January the Director-General reminded him that the Deputy Director-General had had a meeting with him the previous month to clarify the situation and he informed the complainant that he was satisfied with the explanations he had been given after that meeting. On 4 February 2010 the complainant asked the Director-General to review that decision in accordance with Staff Rule 111.3. He pointed out that his meeting with the Deputy Director-General had been entirely unrelated to his letter of 12 November 2009. On 16 February 2010 the Director-General replied that, in the absence of any administrative decision, his reference to the above-mentioned Rule 111.3 was "misplaced" and that he considered the matter closed. On 25 March 2010 the complainant asked him to review that decision and to provide him with an answer to his letter of 12 November 2009.

On 3 May 2010 the complainant asked the Deputy Director-General what internal means of redress were available in the event of a dispute with the Director-General. He added that, if he did not receive a reply by 12 May, he would file a complaint directly with the Tribunal. In a letter of 31 August 2010, addressed to the Director-General, he accused him of harassment and abuse of authority, in particular because he had still not supplied him with an explanation regarding the conversation on 11 November 2009 and because, after the Council of Administration session of November 2009, he had relieved him of certain duties within his remit and had not selected him to stand in for the acting Director of DRH while the latter was on sick leave. *Inter alia*, the complainant requested the payment of 50,000 Swiss francs in compensation for moral injury and for costs. Before the Tribunal he impugns the implied rejection of his request of 31 August 2010.

B. The complainant contends that his complaint is receivable under Article VII, paragraph 3, of the Statute of the Tribunal since the Director-General did not reply to his letter of 31 August 2010 within sixty days of the date on which he was notified of it. On the merits, he submits that the Director-General committed an abuse of authority by calling on persons other than him to stand in for the acting Director of DRH. He also accuses him of abuse of authority and harassment on the grounds that he never told him what he had supposedly done wrong, relieved him of some of his duties and took no steps to protect his reputation.

He asks the Tribunal to order the Union to publish an “internal office notice” making it clear that it does not criticise him in any way and that any rumours that he engaged in improper conduct which might have been circulating are entirely wrong, and to apologise for all the unpleasant consequences these rumours have had for him. He also requests damages in the amount of 50,000 Swiss francs for moral injury, *inter alia*, and “a fair sum” in costs.

C. In its reply the Union contends that the complaint is irreceivable. It submits that the complainant did not file an appeal with the Joint Appeals Committee and that, by the time he repeated his request of 12 November 2009 in his letter of 31 August 2010, such an appeal was time-barred. It argues that, since he received no reply from the Director-General in the month following the sending of his letter of 12 November 2009, the complainant ought to have submitted an application to the Joint Appeals Committee within one month, in accordance with Staff Rule 111.3, paragraph 2. He could also have appealed against the Director-General’s decision of 16 February 2010 within the same time limit of one month, but he failed to do so. With regard to the contentions that the complainant was relieved of some of his duties and was not asked to stand in for the acting Director of DRH, the Union states that the complainant first raised them in the above-mentioned letter and that they have not formed the subject of an internal appeal in accordance with the procedure laid down in the Staff Rules.

On the merits, the Union rejects the complainant's claims of harassment and submits that he has offered no evidence to support his allegations of abuse of authority and damage to his reputation.

D. In his rejoinder the complainant asserts that his complaint is receivable. He points out that, under the Staff Rules, it is up to the Director-General to take a final decision at the end of proceedings before the Joint Appeals Committee, but he considers that when the Director-General is implicated, it would be contrary to the general principles of law for the latter to be able to "decide in matters concerning him personally". Hence, since no internal means of redress were available, he considers that he was entitled to file a complaint directly with the Tribunal under Article VII of its Statute.

On the merits, he submits that the Union has not proved that his conduct was improper.

E. In its surrejoinder the UPU acknowledges that the Staff Regulations and Staff Rules make no provision for a special appeal procedure when the alleged perpetrator of harassment is the Director-General himself, but it infers from Staff Regulation 11.1 and Staff Rule 111.1, paragraph 2, that decisions, actions or omissions of the Director-General are subject to appeal.

On the merits the Union maintains its position.

CONSIDERATIONS

1. The complainant joined the UPU in 1994. When he retired on 31 August 2010, he held the grade P4 position of Manager of the Staff Administration and Social Affairs Programme in the Human Resources and Social Relations Directorate.

2. On 11 November 2009, after a meeting of the Council of Administration, the Director-General told the complainant that he intended to call him to his office to ask him to explain his conduct, which he deemed improper. The next day the complainant wrote to the Director-General asking him to advise him in writing, prior to any

meeting, what aspect of his conduct had been improper and what this conclusion was based on. As the Director-General asked the Deputy Director-General to deal with the matter in his absence, the complainant had a meeting with the Deputy Director-General during which he refused to broach the subject with him on the grounds that the Deputy Director-General was not personally involved and that a discussion of it might cloud their good relations.

The complainant subsequently repeated his request of 12 November 2009. The Director-General replied on 18 January 2010 that he was satisfied with the explanations and information which the Deputy Director-General had given him after that meeting.

3. On 4 February the complainant asked the Director-General to review that decision on the basis of Staff Rule 111.3. On 16 February the Director-General sent him a letter worded as follows:

“I acknowledge receipt of your letter of 4 February 2010. I repeat what I said in my letter of 18 January.

There appears to be some confusion about your understanding of our brief conversation at the last [Council of Administration]. I think that this confusion could have been avoided if we had been able to talk about it, but unfortunately you refused to discuss the matter either with me, or with the Deputy Director-General. The result has been an excessively long exchange of letters, for reasons which escape me.

Your reference to Staff Rule [111.3] is misplaced, since [the latter] concerns appeals against an administrative decision. In the absence of any administrative decision, this rule is irrelevant to our discussion.

Having discussed the matter once again with the Deputy Director-General, we now consider it closed.”

Another follow-up letter which the complainant sent to the Director-General on 25 March therefore went unanswered.

4. By a letter of 3 May the complainant asked the Deputy Director-General if there was any internal appeal procedure which would apply in the event of a dispute between a staff member and the Director-General.

On 18 June he again wrote to the Director-General to remind him that he had still not told him what he had done wrong and what

evidence he possessed and he objected to a number of other actions by the Director-General.

On 31 August 2010, the date on which he retired, the complainant wrote a last letter to the Director-General in which he complained that the latter had still not replied to his request of 12 November 2009. He also took issue with certain measures or decisions which, in his opinion, reflected abuse of authority and harassment, in other words conduct prohibited by the bulletin of the Secretary-General of the United Nations of 11 February 2008. He submitted various claims aimed at restoring his reputation and obtaining redress for the moral injury he had suffered owing to the misconduct of the Director-General of the UPU. This letter also went unanswered.

The complaint now before the Tribunal is directed against the implied rejection of these claims.

5. The UPU principally submits that the complaint is irreceivable, because it was filed out of time and because internal means of redress have not been exhausted.

Under Article VII, paragraph 1, of the Statute of the Tribunal, a complaint filed with the Tribunal is not receivable unless the decision impugned is a final decision and “the person concerned has exhausted such other means of resisting it as are open to him under the applicable Staff Regulations”. Paragraph 2 of that Article provides that a complaint is receivable only if it is filed within ninety days after the complainant was notified of the decision impugned. 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, under paragraph 3 of Article VII, have recourse to the Tribunal and his complaint is receivable in the same manner as a complaint against a final decision. The period of ninety days provided for in paragraph 2 runs from the expiration of the sixty days allowed for the taking of the decision by the Administration.

6. In the instant case, the dispute chiefly concerns events that occurred after a meeting of the Council of Administration on

11 November 2009. The complainant submits that they took the form of a dispute with the Director-General himself, which could not be referred to any internal appeal body. He has therefore filed a complaint directly with the Tribunal.

7. The Tribunal will not accept the complainant's line of argument. The fact that a dispute involves the executive head of an international organisation in person does not exempt an official from following the internal appeal procedure prescribed by the organisation's staff rules.

The only exceptions allowed by the Tribunal's case law to the requirements, under Article VII, paragraph 1, of its Statute, that internal means of redress must have been exhausted are cases where staff regulations provide that decisions taken by the executive head of an organisation are not subject to the internal appeal procedure, where there is an inordinate and inexcusable delay in the internal appeal procedure, where for specific reasons connected with the personal status of the complainant he or she does not have access to the internal appeal body or, lastly, where the parties have mutually agreed to forgo this requirement that internal means of redress must have been exhausted (see *inter alia* Judgments 2912, under 6, and 2962, under 15, and the case law cited therein).

8. In the present case, as the complainant did not bring the matter before the Joint Appeals Committee but filed a complaint directly with the Tribunal, his complaint must be declared irreceivable on this point, because he has not exhausted internal means of redress.

9. The complainant also repeats allegations made for the first time on 18 June 2010 relating to the refusal to recognise his French nationality for the purposes of applying the Staff Regulations and Staff Rules, various measures adopted without consulting him although they lay within his responsibilities as Programme Manager in DRH and the refusal to nominate him to stand in for the acting director of that directorate.

The allegation concerning the refusal to recognise the complainant's French nationality was submitted to the Joint Appeals Committee, but it must be found that these other allegations could and should also have been referred to the Committee under Staff Rule 111.3. Instead of following that procedure, once again the complainant is seeking to challenge these measures directly before the Tribunal by including them in his complaint concerning the dispute arising from events on 11 November 2009 which he allegedly could not refer to the internal appeal body. The complaint is therefore also irreceivable on this point for the same reasons as those set out in consideration 7 above.

10. The complaint is therefore irreceivable in its entirety and must be dismissed.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 6 January 2013,
Mr Seydou Ba, 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 6 February 2013.

Seydou Ba
Claude Rouiller
Patrick Frydman
Catherine Comtet