

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**115th Session**

**Judgment No. 3210**

THE ADMINISTRATIVE TRIBUNAL,

Considering the sixth complaint filed by Mr A. P. against the International Telecommunication Union (ITU) on 13 August 2010, the Union's reply of 22 November, the complainant's rejoinder of 6 December and the ITU's surrejoinder of 22 December 2010;

Considering Article II, paragraph 5, 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's career is reviewed in Judgments 1646, 1743, 2074, 2075 and 3025, dealing with his five previous complaints. At the time to which the facts of this case relate, he was employed in the Archives Service. He took retirement on 30 June 2010.

By an e-mail of 1 September 2008 he was asked by a colleague, Mr G., to provide a copy of a memorandum written by the complainant that, supposedly, cast aspersions on him. An exchange of e-mails followed, during which the complainant accused Mr G. of

using inappropriate language. On 12 September the complainant sent a memorandum to the Chief of the Administration and Finance Department, stating that Mr G. had insulted him and attacked him physically that same day. He attached to the memorandum a certificate issued shortly afterwards by the nurse in the ITU's Medical Service, recording the presence of "moderate diffuse blotches on the left shoulder", and requested that "all necessary steps" be taken "to protect [his] mental and physical health". On 12 November he wrote to the Secretary-General asking him to intervene with the Chief of the above-mentioned department so that he could obtain a reply, and when none was received he asked him, on 24 December 2008, to review the decision not to take any action with respect to the attack he had reported.

On 16 March 2009 the complainant lodged an internal appeal. No reply was received, and on 31 July he enquired of the Chairman of the Appeal Board what reasons there were for not dealing with his appeal. On the same day the Board's Chairman replied that the case was "with the Deputy Secretary-General". On 3 August the Head of the Human Resources Policies Division had an interview with the complainant in which he suggested that the dispute should be settled amicably. In a memorandum sent to the complainant on 7 August 2009, the Chief of the Administration and Finance Department noted that the complainant had not taken up that proposal, and pointed out that, since there were no witnesses to the alleged incident of 12 September 2008, it would be difficult if not impossible to establish the truth of the allegation. It appeared that Mr G. had denied attacking the complainant physically, but had admitted to bringing about their meeting in order to obtain an explanation of what he considered to be unwarranted accusations. By acting in that manner, instead of complaining to his supervisors, he had set the stage for a confrontation. He would therefore be given a verbal reprimand.

On 25 September 2009 the complainant asked the Deputy Secretary-General to review that decision. No reply was received, and on 18 December 2009 he lodged an appeal with the Appeal Board. The Board was told by the Union that it had been thought preferable

not to issue a verbal reprimand to Mr G., so that the parties could find a means of settling the dispute in a more suitable manner. In its report of 15 March 2010 the Board found, first, that the complainant had not produced sufficiently strong evidence of the nature of his altercation with Mr G. and, second, that the disciplinary sanction decided upon in relation to the latter should have been carried out without delay. Accordingly, its recommendations to the Secretary-General were to implement the decision of 7 August 2009 as quickly as possible, and to seek the parties' agreement to a mediation procedure. By a memorandum of 12 May 2010 the complainant was informed that the Secretary-General had decided to follow the Board's recommendations. That is the impugned decision.

B. The complainant notes that the time limits for the Appeal Board procedure laid down in Chapter XI of the Staff Regulations and Staff Rules were not observed by the ITU. He continues to allege that Mr G. attacked him, and he produces a photograph taken "immediately after the attack", as well as a medical certificate dated 31 May 2010, stating that on 15 September 2008 he had "sustained [...] a psychological shock following an altercation with a colleague" as well as "bruising on the back". He also contends that the ITU failed in its duty of care, because it took no steps to safeguard his mental and physical health, that its inaction "is akin to a denial of justice" and that its complaisance towards Mr G. shows prejudice on its part. He also believes himself to be a victim of discrimination, because, according to him, in two similar cases the Administration had taken speedy action. He accuses the Union of not having taken the necessary steps to "shed light" on the motives of Mr G., and considers that a verbal reprimand was not a disciplinary sanction proportionate to a gratuitous physical attack. Lastly, casting doubt on the impartiality of the Chief of the Administration and Finance Department and the Head of the Human Resources Policies Division, he cites the Tribunal's finding in its Judgment 2892, also involving the ITU, to affirm that in this case the Deputy Secretary-General was the person most competent to deal with the matter in a fully impartial manner.

The complainant asks the Tribunal to set aside the impugned decision and to order the Secretary-General to take all necessary steps, as soon as possible, to resolve this matter in a suitable way. He also claims “appropriate compensation” for moral and material damages, and costs.

C. In its reply the ITU explains that, because its premises were closed during the end-of-year celebrations, the Appeal Board did not receive the complainant’s appeal until 4 January 2010. The Office of the Secretary-General was notified of it on 5 January 2010. Accordingly, the time limits specified in Chapter XI of the Staff Regulations and Staff Rules were observed.

The defendant also submits that the photograph and the certificate of 31 May 2010 produced by the complainant in support of his complaint are irreceivable, since he did not produce them during the internal proceedings. Moreover, having duly examined all the evidence in its possession and found that there was no witness to corroborate the version of events presented by the complainant, which moreover is contested by Mr G., it decided that it was impossible to prove beyond reasonable doubt that the latter had attacked the complainant. However, since it is established that Mr G. intentionally brought about the meeting of 12 September 2008, it considers that a verbal reprimand was a reasonable and fair sanction which, in its estimation, is just reparation for the harm the complainant claims to have suffered. It disputes the assertion that the motives of Mr G. had not been established, since it was explained in the memorandum of 7 August 2009 that he had engineered the meeting in question particularly for the purpose of obtaining an explanation of what he believed to be unfounded accusations. Lastly, it states that the reference to Judgment 2892 is irrelevant, because the facts in this case are unrelated to those referred to in that judgment. In that case, the Secretary-General was a party to the dispute.

D. In his rejoinder the complainant presses his pleas.

E. In its surrejoinder the ITU likewise maintains its position, noting that the complainant has not furnished any proof in support of his allegations.

### CONSIDERATIONS

1. On 12 September 2008, on the premises of the ITU, the complainant had an altercation with one of his colleagues, Mr G., following upon an exchange of e-mails indicating a degree of tension between them. On the same day the complainant, claiming that he had been hit and insulted by his adversary, sent a memorandum to the Chief of the Administration and Finance Department, with a request to take “all necessary steps to protect [his] mental and physical health”. He attached to the memorandum the e-mails in question, together with a certificate from the nurse at the Medical Service of the ITU, reporting “moderate diffuse blotches on the left shoulder” which, he alleged, had been caused by a blow received during the quarrel.

Since the memorandum remained unanswered in spite of a reminder sent to the Secretary-General, on 24 December 2008 the complainant requested a review of what he took to be an implicit decision to reject his request of 12 September 2008. That request too went unanswered, and on 16 March 2009 he lodged an internal appeal with the Appeal Board alleging, inter alia, a violation by the ITU of its duty of care, and a denial of justice. On 31 July the complainant was invited to give an account of the physical attack which he claimed to have suffered. During an interview on 3 August with the Head of the Human Resources Policies Division, the latter apologised to him on behalf of the Administration for the failure to respond to his appeal, and suggested that the dispute be resolved amicably, but the complainant refused.

By a memorandum of 7 August 2009 he was informed that although it had not been confirmed, for lack of any witness, that he had been the victim of an act of physical violence, it was nevertheless certain that by bringing about the encounter of 12 September 2008

Mr G. had created the setting for a confrontation, instead of referring the matter to his supervisors, and his conduct would be sanctioned by a verbal reprimand.

2. The complainant, who was not satisfied with this decision, challenged it on 25 September 2009 by submitting a request for review to the Deputy Secretary-General, whilst indicating that he acknowledged the apology made by the Union and would not complain to this Tribunal of the delay in handling his appeal. No reply was received, and on 18 December 2009 he lodged a second appeal with the Appeal Board, but without sending a copy to the Secretary-General. As the ITU's offices were closed for the end-of-year celebrations, the appeal was not received by the Secretary-General until 5 January 2010. In its reply of 2 February 2010 the Administration stated that, in order to enable the parties to find a means of settlement better suited to the nature of the dispute, it had been thought best not to proceed with the sanction announced on 7 August 2009. It suggested to the Chairman of the Appeal Board that the Board should recommend organising a meeting with the parties.

Having found that there was no evidence to show what kind of altercation had taken place on 12 September 2008, the Appeal Board recommended to the Secretary-General, in its report of 15 March 2010, that the sanction in question should be imposed without further delay and that a mediation procedure should be arranged between the protagonists, with their consent. On 12 May 2010 the Secretary-General decided to follow those recommendations. That is the decision impugned before the Tribunal.

3. The complainant accuses the defendant of having failed in its duty of care by deliberately ignoring the consequences of the attack that he claims to have suffered. He contends that its refusal to intervene constitutes a denial of justice. In addition, he accuses it of showing prejudice and discrimination towards him.

These allegations are without substance. The Union did in fact interview the complainant and also Mr G., who admitted having

shouted at him but denies having struck him. The complainant's assertion that he was physically attacked is not supported in any way by the statements and documents he produced during the internal procedure, nor indeed by those he has submitted to the Tribunal. Although it is evident from these documents that the complainant saw a nurse at the ITU's Medical Service, and that he consulted a doctor who found "bruising" and diagnosed psychological disturbance arising from his altercation with his colleague, the documents do not show that either phenomenon was caused by the blows he alleges to have been inflicted by the latter. There is nothing to suggest that the defendant was in a position to shed any more light on the facts of the altercation.

4. The Administration could undoubtedly have acted more promptly to settle the dispute, but the only question here is its diligence or lack of diligence in conducting the procedure that was instituted on 25 September 2009.

However, the complainant's criticisms relating to the time taken by the Administration to respond to his appeal of 18 December 2009, and by the Appeal Board to issue its report, are unjustified. According to the provisions of the Staff Regulations and Staff Rules on which he relies, the time limit of four weeks begins from the date on which a written appeal is submitted to the Secretary-General, and the Appeal Board has to deliver its report within ten weeks of the date on which the appeal was submitted. The first of these time limits began to run on 5 January 2010, because the complainant, contrary to paragraph 4 a) of Staff Rule 11.1.1, omitted to send a copy of his appeal directly to the Secretary-General. Although the second time limit was not adhered to because the offices were closed for the end-of-year celebrations, that did not cause the complainant any harm warranting compensation.

5. Lastly, it should be noted that the complainant is not justified in referring to Judgment 2892 in order to contend that, given the resemblance between his case and the case dealt with in that

judgment, his case should have been handled by the Deputy Secretary-General rather than by the Chief of the Administration and Finance Department and the Head of the Human Resources Policies Division, whose impartiality he questions. Neither of the latter was in a situation vis-à-vis the complainant such as to warrant their recusal.

6. In view of the foregoing, the complaint must be dismissed in its entirety.

#### DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 26 April 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 4 July 2013.

Seydou Ba  
Claude Rouiller  
Patrick Frydman  
Catherine Comtet