

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**M. B. (No. 2)**

**v.**

**UPU**

**131st Session**

**Judgment No. 4331**

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Ms O. M. B. against the Universal Postal Union (UPU) on 3 July 2017 and corrected on 21 August 2017, the UPU's reply of 18 January 2018, the complainant's rejoinder of 9 April and the UPU's surrejoinder of 6 July 2018;

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

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

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

The complainant challenges the decision not to directly appoint her to posts which became vacant during the two years following the termination of her appointment owing to the abolition of her post.

The complainant, who held a permanent appointment at grade D 1, was informed on 7 January 2015 that her post had been abolished and, on 6 February 2015, that her appointment would be terminated with effect from 9 May 2015. The decision of 6 February 2015 stated that, pursuant to Staff Regulation 9.1.5, the complainant would normally be offered another suitable post for which she was considered to possess the necessary qualifications, if one became vacant during the two years after the date on which the termination became effective.

On 21 January 2017 the complainant wrote to the Director General requesting, pursuant to aforementioned Staff Regulation 9.1.5, that she be appointed to a D 1 post which had been advertised and for which she

considered she possessed the necessary qualifications. On 3 February she asked the Director General, in the event that he refused to appoint her to the aforementioned D 1 post, to appoint her to a P 5 post which was vacant but had not been advertised. On 14 February and 2 March 2017 respectively, the complainant was told that, with effect from 1 April 2016, the Council of Administration had decided to abolish Staff Regulation 9.1.5 and, consequently, she could no longer benefit from the possibility of a direct appointment.

On 23 February 2017 the complainant wrote to the Director General explaining that, in her view, Staff Regulation 9.1.5 remained applicable in her case. She requested that she be appointed to another D 1 post for which she considered she possessed the necessary qualifications or, alternatively, to another P 5 post. On 3 March she was informed that, as explained on 14 February and 2 March, the possibility of a direct appointment provided for in Staff Regulation 9.1.5 no longer formed part of the UPU's legal framework.

On 13 March the complainant lodged a request for review of the decisions of 14 February and 2 and 3 March, asking that they be set aside. Her request was dismissed on 10 April 2017 and she lodged an internal appeal. On 18 May the Chair of the Appeals Committee advised her that, under Staff Regulation 11.1, as a former staff member she was not entitled to lodge an appeal.

On 3 July 2017 the complainant filed her second complaint with the Tribunal, impugning the decision of 10 April 2017.

In Judgment 3929 delivered in public on 24 January 2018 on the complainant's first complaint, the Tribunal set aside the decision to abolish the complainant's post and the decision to terminate her appointment. However, the Tribunal did not order the complainant's reinstatement but decided to award her material damages, moral damages and costs.

The complainant asks that the revision of the Staff Rules and Regulations conducted in 2016 be found unlawful and that the 1973 version of the Staff Rules and Regulations be applied to her. She also requests the Tribunal to set aside the impugned decision and to order her reassignment as of 1 January 2017 to one of the posts to which she sought to be directly appointed or, alternatively, to award her material damages. In addition, she seeks the cancellation of the selection procedures for the posts for which she applied and the setting aside of the appointment decisions made at the end of those procedures. Lastly, she claims

250,000 Swiss francs in moral damages and 200,000 francs in exemplary damages, with 5 per cent interest on sums awarded, as well as costs. In her submissions she asks that the UPU be ordered to produce a number of documents.

The UPU asks the Tribunal to dismiss the complaint as irreceivable in part and unfounded in its entirety.

### CONSIDERATIONS

1. In her first complaint, which led to Judgment 3929, delivered in public on 24 January 2018, the complainant challenged the decisions to abolish her post and to terminate her permanent appointment with effect from 9 May 2015. In that judgment, the Tribunal set aside those decisions and awarded the complainant material damages, moral damages and costs.

2. In her second complaint, the complainant challenges the decision of the Deputy Director General, dated 10 April 2017, confirming the decisions which had been communicated to her in letters from the Director of Human Resources dated 14 February and 2 and 3 March 2017. In those letters, the Director of Human Resources notified the complainant that, on 25 February 2016, the Council of Administration of the UPU had decided, in conformity with its function defined in article 107.1.36 of the General Regulations of the UPU, to lay down a thoroughly revised version of the Staff Regulations and, in particular, to abolish with effect from 1 April 2016 Staff Regulation 9.1.5, which provided for the possibility of direct appointment and which the complainant had requested be applied to her. As a result, according to those letters, the possibility of direct appointment was no longer part of the legal framework of the organization, and no post for which a vacancy notice had been published on or after 1 April 2016 could be filled by direct appointment any longer. In her letter of 14 February 2017, the Director of Human Resources further informed the complainant that her applications for vacant posts advertised by the UPU would be taken into consideration as part of its ongoing recruitment processes, in full compliance with the existing rules.

3. The Tribunal has already ruled on a decisive preliminary issue that also arises in this case. In Judgment 4142, delivered in public on 3 July 2019, the Tribunal ruled on the complaints filed by two other UPU officials – Mr G. and Ms N. – whose posts, like the complainant’s, had been abolished as a result of the same general decision. The Tribunal held that, as a consequence of the *res judicata* authority of Judgment 3930 – in which the decisions to abolish Ms N.’s post and to terminate her permanent appointment were set aside – those decisions did not exist *ex tunc* and that, accordingly, Ms N.’s second complaint, based on those two decisions (and their consequences), which did not legally exist, was unfounded. The Tribunal does not intend, in this case, to deviate from the approach adopted in Judgment 4142.

4. In Judgment 3929, consideration 15, the Tribunal ruled as follows in respect of the abolition of the complainant’s post and the termination of her appointment:

“In light of the above considerations, the decision to abolish the complainant’s post was unlawful and must be set aside. The consequent termination of appointment, based on the unlawful abolition of her post, must also be set aside. Considering the difficulties raised by the time elapsed and the subsequent restructuring of the UPU, the Tribunal shall not order reinstatement. Having regard especially to the complainant’s age, qualifications, experience, and the length of time spent in the UPU’s service, it is reasonable to award her material damages for the loss of opportunity to continue working with the UPU until her retirement age in an amount equal to 30 months’ gross salary with reference to her last month’s gross salary. The UPU must also pay the complainant the equivalent of the employer’s contribution that would have been due to the Provident Fund during those 30 months.

The complainant is also entitled to an award of moral damages [...]

5. In accordance with what was decided in Judgment 4142, the Tribunal considers that, as a consequence of the *res judicata* authority of Judgment 3929, the decisions to abolish the complainant’s post and terminate her permanent appointment do not exist *ex tunc*. Accordingly, the complainant’s second complaint, based on those two decisions (and their consequences), which do not legally exist, is unfounded. It follows from the foregoing that, since the complainant’s claims for the challenged decisions to be set aside cannot be upheld, there is no need to rule on her claims concerning the alleged invalidity of the revision of the Staff Regulations and Staff Rules in 2016 or its implementation.

Nor can the complainant's claims in the alternative, in the event that the Tribunal does not order her reassignment, be granted.

Consequently, and without there being any need to order the production of the documents requested by the complainant, which would contribute nothing to the outcome of this case, the complaint must be dismissed in its entirety.

#### DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 28 October 2020, Mr Patrick Frydman, President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Ms Fatoumata Diakit , Judge, sign below, as do I, Dra en Petrovi , Registrar.

Delivered on 7 December 2020 by video recording posted on the Tribunal's Internet page.

*(Signed)*

PATRICK FRYDMAN GIUSEPPE BARBAGALLO FATOUMATA DIAKIT 

DRA EN PETROVI 