

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**K.**

**v.**

**ITU**

**131st Session**

**Judgment No. 4370**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr E. K. against the International Telecommunication Union (ITU) on 31 January 2018 and corrected on 20 February, the ITU's reply of 8 June, the complainant's rejoinder of 4 August and the ITU's surrejoinder of 29 November, corrected on 5 December 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 impugns the decision to retire him at the end of the month in which he reached the age of 62, even though he had not completed the five years of contributions required for the payment of a retirement pension by the United Nations Joint Staff Pension Fund (UNJSPF).

The complainant joined the ITU on 1 April 2013 under a two-year fixed-term appointment, which was subsequently extended to 31 July 2017. He was assigned to the ITU Regional Office for Africa.

In an email dated 7 April 2017, the Director of the Regional Office reminded the complainant that he was due to retire in July 2017 – the month in which he would reach the age of 62 – and that his position was to be advertised. The following day, the complainant replied that he intended to address a request to the Secretary-General in the light of the fact that the retirement age had, according to him, been set at 65 since

the publication of Service Order No. 16/08 in July 2016 and that he would not be entitled to a retirement pension since he had worked for the ITU for only four years.

On 8 June the complainant submitted an “informal appeal” to the Secretary-General against the decision to retire him on 31 July. The Chief of the Human Resources Management Department (HRMD) replied by telephone on 15 June and then, in a memorandum dated 20 July, confirmed that under Staff Regulation 9.9 as in force at the time, staff members could not be retained in active service beyond an age that depended on the date on which they had joined the ITU and that, under Staff Regulation 9.9b), the age of 62 applied in his case. Since he had reached that age in July, he had to retire on 31 July. The Chief of HRMD added that the complainant could not invoke Service Order No. 16/08 since the amendments to the Staff Regulations which it announced would raise the retirement age to 65 for staff members who would be in service on 1 January 2018.

The complainant did in fact retire on 1 August 2017. As he had paid contributions to the UNJSPF for less than five years, he was not eligible for a retirement pension but only a withdrawal settlement. The sum in question was paid to him at the end of August.

On 24 July the complainant filed an internal appeal in which he requested, in particular, the cancellation of the decision to retire him and compensation for the injuries he alleged he had suffered. In its report dated 31 October, the Appeal Board stated that the decision that the complainant be retired on 31 July was in line with the Staff Regulations and Rules and recommended that the appeal be rejected. By a letter of 20 November 2017, which constitutes the impugned decision, the Chief of HRMD informed the complainant that the Secretary-General had decided to reject his appeal.

The complainant requests the Tribunal to set aside the decision to retire him on 31 July 2017 as well as any other decision based on it, to order his reinstatement as of 1 August 2017, and to award him compensation for the injuries he alleges to have suffered. Should the decision to retire him be considered lawful, he requests that the ITU pay, as of 1 August 2017, “his normal retirement pension, and recognise

and guarantee all his other retirement benefits”\*. Lastly, he claims 6,000 euros in costs.

The ITU requests the Tribunal to dismiss the complaint as unfounded.

### CONSIDERATIONS

1. The complainant impugns the decision of 20 November 2017 which dismissed the internal appeal he had lodged against the decision to retire him on 31 July 2017.

2. First, the complainant submits that the impugned decision is tainted with errors of law in that it applied Staff Regulation 9.9 and not Staff Regulations 9.11 and 9.12. He argues that the beginning and end of a continuing appointment and a fixed-term appointment are not governed by the same rules. In his view, the normal expiry of a fixed-term appointment is governed by Staff Regulation 9.12, while that of a continuing appointment is governed by Staff Regulation 9.11. According to him, only holders of a continuing appointment can apply for retirement.

3. At the material time, Staff Regulation 9.9, entitled “Mandatory age of retirement”, read as follows:

“Staff members shall not be retained in active service beyond the age of:

- a) 60 years; or
- b) 62 years, if appointed on or after 1 January 1990; or
- c) 65 years, if appointed on or after 1 January 2014.

The Secretary-General may, in the interest of the Union, extend this age limit in exceptional cases, on the proposal of the Director of the Bureau concerned.”

Staff Regulation 9.11 states that “[r]etirement under the provisions of the Regulations and Rules of the United Nations Joint Staff Pension Fund shall not be regarded as a termination within the meaning of the Staff Regulations and Staff Rules”.

Staff Regulation 9.12 provides as follows:

- “a) A fixed-term appointment shall expire automatically and without prior notice on the expiry date specified in the letter of appointment.

---

\* Registry’s translation.

b) Separation as a result of the expiry of any such appointment shall not be regarded as a termination within the meaning of the Staff Regulations and Staff Rules.”

4. It follows from these provisions that the age-related conditions for the retirement of ITU officials are solely governed by Staff Regulation 9.9, and that the rules set out in Staff Regulations 9.11 and 9.12 have no bearing on the application of those conditions.

Staff Regulation 9.9 makes no distinction between staff members who hold continuing and fixed-term appointments. In consequence, when any ITU staff member reaches the age limit set by that regulation which is applicable to her or him, she or he may not be retained in active service and must retire, unless the Secretary-General, in the interest of the Union, on the proposal of the Director of the Bureau concerned, decides in exceptional cases to extend that age limit.

5. The file shows that the complainant, who joined the ITU on 1 April 2013 under a two-year fixed-term appointment extended to 31 July 2017, reached the age of 62 that July. As a result, under aforementioned Staff Regulation 9.9, the complainant could not be retained in active service unless the Secretary-General took a decision to the contrary in his case, in the manner described above.

6. The complainant further argues that Staff Rule 4.12.2 (*recte* 4.14.2) allowed him to obtain an extension of his appointment. Paragraph a) of that rule reads as follows:

“A fixed-term appointment is a time-limited appointment of one year or more. Fixed-term appointments do not carry any expectancy of renewal or conversion to any other type of appointment. A fixed-term appointment may be extended, under the conditions set by the Secretary-General, provided that the total duration of service under consecutive fixed-term appointments does not exceed five years. Exceptionally, service on such appointments may be further extended for up to one additional year, under the conditions set by the Secretary-General.”

7. The Tribunal observes that, besides the fact that this provision merely allows the ITU to extend a fixed-term appointment without requiring it to do so, it cannot be construed as by itself authorising the extension of such an appointment beyond the age limit where that age limit has not been otherwise raised under the conditions specified in Staff Regulation 9.9.

8. Regarding the fact that such a decision to raise the age limit was not taken by the Secretary-General in the present case, it should be borne in mind that the Tribunal has consistently held that a decision to retain an official beyond the normal retirement age is an exceptional measure over which the executive head of the organisation exercises wide discretion and which is subject to only limited review by the Tribunal (see, for example, Judgment 3884, consideration 2). In addition, the Tribunal notes that, in any event, the complainant did not, in this case, request an extension of his fixed-term appointment beyond the retirement age on the basis of the aforementioned Staff Regulation 9.9.

9. The complainant further alleges a misuse of Staff Regulation 9.9 by the Secretary-General. He submits that the organisation could not retire him, even though he had reached the mandatory age of retirement under its Staff Regulations, since Article 28 of the UNJSPF Regulations provides that a retirement benefit is payable only if a participant who has reached the normal retirement age has at least five years of contributory service, and he did not meet this condition.

10. However, the Tribunal notes that, “[a]lthough the [executive head of an organisation] is empowered to extend a staff member’s appointment [beyond the mandatory retirement age], he is in no case bound to do so. He may exercise that authority to allow an exception only in the interests of [the service], not in the exclusive interests of the staff member. In deciding on the complainant’s case he [has] to bear in mind the possibility that the complainant might obtain a pension, but that [is] only one fact to be taken into account among others” (see Judgment 358). The Tribunal further clarified in Judgment 4037, consideration 11, that “an international organisation’s duty of care towards its officials does not compel it to extend an official’s appointment for the sole purpose of enabling her or him to draw a pension from the UNJSPF”. An organisation is therefore not required to depart from the Staff Regulations in the sole interest of the complainant.

11. It follows from the foregoing that the plea alleging misuse of Staff Regulation 9.9 is unfounded.

12. Furthermore, insofar as the impugned decision merely applies the normal rule of mandatory retirement for staff members who have reached the age limit, it cannot be considered that such a decision

involves a misuse of authority or that it constitutes a measure which discriminates against the complainant.

The complainant's line of reasoning to this effect will therefore be dismissed.

13. It follows from all the foregoing that the complaint is unfounded.

#### DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 14 December 2020, Mr Patrick Frydman, President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Ms Fatoumata Diakité, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 18 February 2021 by video recording posted on the Tribunal's Internet page.

*(Signed)*

PATRICK FRYDMAN   GIUSEPPE BARBAGALLO   FATOUMATA DIAKITÉ

DRAŽEN PETROVIĆ