

**FOURTEENTH ORDINARY SESSION**

***In re* WASILESKA**

**Judgment No. 80**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the Staff Superannuation and Benevolent Funds of the International Telecommunication Union, and against the Union itself, drawn up by Miss Edwige Wasilewska on 2 August 1963, the Union's reply dated 29 November 1963, the additional statement of the complainant dated 15 March 1964, the Union's further reply of 19 May 1964 and the additional information lodged by the Union on 15 March 1965;

Considering articles II, paragraph 5, and VII, paragraph 2, of the Statute of the Tribunal and articles 3 and 40 of the Regulations for the Staff Superannuation and Benevolent Funds (S.S. and B. Funds) of the International Telecommunication Union, 1960;

Having heard Mr. Jean-Flavien Lalive, legal adviser of the complainant, assisted by Mr. J.F. Heyman, and Mr. Charles-Edouard Muller, agent of the International Telecommunication Union, in public sitting on 5 April 1965;

Considering that the material facts of the case are as follows:

A. The complainant, who entered the service of the International Telecommunication Union on 1 January 1949, became a member of the Pension Fund as defined in the Regulations for the Union's Staff Superannuation and Benevolent Funds on the terms of those Regulations as operative at that time. At its session in 1959, the Plenipotentiary Conference of the Union decided to assimilate the conditions of service of the staff of the Union to those of United Nations staff. After communicating those decisions of principle to the agents of the Union, the Secretary-General informed the complainant, individually on 1 March 1960, as he informed every agent of the Union, of her classification in the new salary scales introduced on 1 January 1960 for assimilation purposes, while on 25 March 1960, she received a detailed statement of her salary, which indicated the amounts deducted as contributions to the United Nations Joint Staff Pension Fund, of which staff in the category to which Miss Wasilewska belonged were to become members for the said purposes of assimilation.

B. At an unspecified date during the month of September 1960, the Secretary-General published the Regulations for the Staff Superannuation and Benevolent Funds of the Union, effective 1 January 1960, which laid down both the principle of and the conditions governing membership of the United Nations Joint Staff Pension Fund for officials who had belonged to the ITU S.S. and B. Funds on 31 December 1959, and the rights which such officials retained by virtue of their participation in the old Pension Fund of the Union. Thus, article 3 of the said Regulations provides that:

"With effect from 1 January 1960, all Union officials shall be transferred to the United Nations Joint Staff Pension Fund (abbreviated to the Joint Fund) as far as their future employment is concerned, with the exception of all members of the Provident Fund and of those members of the Pension Fund and members of the Savings Insurance Fund who were more than sixty years of age on that date. The conditions of validation with the Joint Fund of their years of membership of the S.S. and B. Funds are set forth hereinafter."

Article 40 of the said Regulations provides that:

"1. The Complement Fund shall guarantee payments of benefits:

(a) for members of the Pension Fund actively employed, under sixty on 1 January 1960;

(b) for members of the Savings Fund actively employed, under sixty on 1 January 1960, who chose membership of the Complement Fund.

2. The Complement Fund shall ensure payment to the member of the larger of the benefits he can claim as a result of his membership of either the S.S. and B. Funds or the Joint Fund. This benefit can be paid in full or as a supplement to that obtained from the Joint Fund.

3. The guarantee afforded by the Complement Fund shall be based on the salary class occupied by the member on 31 December 1959, and on the step within that class he would have occupied in the normal way at the time the right to a benefit arose.

C. The service of the complainant having finally terminated on 30 June 1962, settlement of her pension rights was undertaken and, in a letter dated 5 November 1962, the Acting Chairman of the Management Board of the ITU Staff Superannuation and Benevolent Funds informed Miss Wasilewska that, in conformity with the seventh edition (1961) of the Regulations of the Funds the said Board had granted her an annual pension of 7,233 Swiss francs, plus a cost-of-living allowance equal to 10 per cent. of the amount of that pension, to be borne by the ITU budget. In a letter dated 21 December 1962 Miss Wasilewska claimed that the said decision did not respect the pension undertakings she had been given when she had accepted employment with the Union, and claimed an annual pension of 9,998 Swiss francs. She stated that, in her opinion, while her pension should indeed amount to 44 per cent. of her salary, it should be based on the higher amount of pensionable remuneration which she had received during her last year of service, and that she was prepared, if necessary, to pay the balance of contributions which that basis of calculation might require. On 6 May 1963 the Acting Chairman of the Management Board of the Fund replied that, in setting the amount of her pension, the Board had merely acted in strict compliance with the Regulations of the Funds which were effective on the date of its decision. He added that the cost-of-living allowance payable from the ITU budget had been raised from 10 to 15 per cent. of the pension settlement, while the question of equalising pensions was under study.

D. In a letter to the Secretary-General of ITU dated 18 June 1964 Miss Wasilewska stated that the fact that the Management Board had confined itself in her case to applying the Regulations of the Funds effective on the date of its decision, these Regulations having been drawn up by another authority, implied that the Board did not consider itself competent to examine the principle of her claim. That claim was based mainly on the fact that she had acquired certain pension rights under the system in effect in 1949, and that those rights were not respected if the system applicable to officials recruited after 1 January 1960 were applied in her case. The provisions concerning the increased cost-of-living allowance were irrelevant to her claim, and the complainant requested the Secretary-General to take the necessary administrative action to ensure that her pension be paid in accordance with the regulations on the basis of which she had been appointed, citing the figure mentioned in her original claim and repeating her offer to pay any additional contributions which might be required for that purpose. Those claims were rejected in a letter dated 26 June 1963, which stated that it appeared impossible to determine how the complainant had arrived at the figure quoted, whatever edition of the Regulations for the Staff Superannuation and Benevolent Funds she might be referring to.

E. In the present complaint, dated 2 August 1963, against the Staff Superannuation and Benevolent Funds of the Union and against the Union itself, Miss Wasilewska's conclusions are that the Tribunal be pleased to quash the decision dated 6 May 1963 and draw all necessary conclusions from such quashing, if necessary after expert valuation or additional information. After asserting that the Tribunal was competent and the complaint receivable, she contests the validity of the impugned decision in so far as it is based on the Regulations for the Staff Superannuation and Benevolent Funds in effect on the date of that decision instead of those in effect on the date of her engagement.

F. The conclusions of the Staff Superannuation and Benevolent Funds and of the Union are that the Tribunal be pleased to dismiss the complaint; while the former declares that it is bound by its present Regulations the Union submits that, by failing to contest the decisions taken in her case in 1960, the complainant is now precluded and that, by accepting a salary reckoned in accordance with those decisions, she implicitly accepted them.

#### CONSIDERATIONS:

As regards the competence of the Tribunal:

1. By virtue of article II, paragraph 5, of its Statute, the Tribunal is competent to hear complaints submitted by the officials of international organisations which have recognised its competence. Such organisations include the International Telecommunication Union which, in Chapter XI of its Staff Regulations and in article 18, paragraph

2, of the Regulations for its Staff Superannuation and Benevolent Funds, expressly recognises the Tribunal's competence. Since the present complaint emanates from a former official of ITU and concerns the settlement of her pension rights, the Tribunal is competent to hear it.

On the receivability of the complaint:

2. Article VII, paragraph 2, of the Statute of the Tribunal lays down that any complaint must be filed with the Tribunal within 90 days after notification or publication of the decision contested. In the present case the decision was notified to the complainant on 6 May 1963. Having been lodged on 2 August 1963, i.e. within the required time, the present complaint was filed in good time. It is of little consequence that the decision impugned confirms a decision dated 5 November 1962. In accordance with article 18, paragraph 2, of the Regulations for the Staff Superannuation and Benevolent Funds the decision of 5 November was subject to reconsideration by the Management Board and thus could not be placed before the Tribunal.

On the substance:

3. Under article 3 of the Regulations for the ITU Staff Superannuation and Benevolent Funds, the complainant became a member, as from 1 January 1960, of the United Nations Joint Staff Pension Fund, into which were paid, both by the complainant and by the Union, at the rates and in the amounts specified in the Statutes of that Fund, the contributions reckoned on the basis of the claimant's pensionable remuneration from that date. However, in view of the fact that the pension payable to the complainant under that system would have been less than the pension payable under the system applicable to agents of ITU prior to their becoming members of the United Nations Joint Staff Pension Fund, Miss Wasilewska was entitled to receive a pension reckoned in accordance with article 40, paragraph 3, of the Regulations for the Staff Superannuation and Benevolent Funds. That pension was granted in the decision contested. In reality, her complaint is designed to secure recognition of her right to a pension reckoned in accordance with the system in effect on the date of her appointment, particularly as regards the rate of accumulation of the pension, the proportion of contributions payable by the complainant and by the Union respectively, their rates and bases and the period of reference for the calculation of earnings at end of service, but taking account of the amount of pensionable remuneration for the purpose of the Joint Fund paid as from 1 January 1960.

4. Thus, far from citing any non-compliance with the Regulations for the Staff Superannuation and Benevolent Funds in effect on the date when her pension became payable, the complainant asserts that the impugned decision is illegal in that it makes her subject to a system which alters the balance of contractual obligations with respect to her and infringes the conditions which induced her to accept service with the Union. The complainant thus necessarily questions the validity of articles 3 and 40 of the Regulations for the ITU Staff Superannuation and Benevolent Funds with respect to the conditions of her appointment and the legality of the decision by virtue of which these decisions were made applicable to her individually.

5. It should be noted that, by itself, the impugned decision, which was simply an act of execution, merely applies previous decisions adopted with regard both to the incorporation of agents of ITU as members of the United Nations Joint Staff Pension Fund in accordance with article 3 of the Regulations for the ITU Staff Superannuation and Benevolent Funds of 1 January 1960, and to the right to a minimum pension by virtue of article 40 of the said Regulations. Such decisions could be contested before the Tribunal only within the period of 90 days specified in article VII, paragraph 2, of the Statute of the Tribunal. Whether this period is reckoned from 1 March 1960, from 26 March 1960 or from 30 September 1960, the said decision were not contested within the required time; they became final so far as the complainant is concerned and irrevocably modified, prior to the date on which her pension rights were settled, both the terms of her contract of appointment and the regulations applicable in her case. Since it was not claimed that the decision of 6 May 1963, stipulating the amount of the pension payable to the complainant, did not constitute a faithful application of the methods of calculation resulting from the provisions of the contract of appointment and of the regulations applicable, which were thus modified, the criticisms of this decision can only be rejected.

6. As these arguments must necessarily result in dismissal of the complaint, there is no point in considering whether the complainant implicitly accepted the aforementioned decisions.

DECISION:

The complaint is dismissed.

In witness of this judgment, delivered in public sitting in Geneva on 10 April 1965 by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto attached their signatures, as well as myself, Lemoine, Registrar of the Tribunal.

(Signed)

M. Letourneur  
André Grisel  
Devlin  
Jacques Lemoine

Updated by PFR. Approved by CC. Last update: 7 July 2000.