

SEVENTY-FIFTH SESSION

***In re* TALLON**

Judgment 1256

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Renatus Clement Lodewijk Tallon against the Universal Postal Union (UPU) on 31 July 1992, the Union's reply of 3 September, the complainant's rejoinder of 18 September and the Union's surrejoinder of 20 October 1992;

Considering Articles II, paragraph 5, and VII, paragraph 1, of the Statute of the Tribunal, Regulations 4.9 and 12.3 of the Staff Regulations and Rule 111.3 of the Staff Rules of the International Bureau of the UPU;

Having examined the written submissions and decided not to order hearings, which neither party has applied for;

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

A. The complainant, a Belgian citizen, joined the staff of the International Bureau of the Universal Postal Union in 1968 at grade P.1 and is now an assistant counsellor at grade P.4. On 6 May 1991 he submitted applications for three posts as head of Section C (Quality of Service and Transport), Section E (Logistics) and Section G (Development Cooperation: Americas, Asia-Pacific and Europe), all graded P.5.

By an office notice dated 24 July 1991 the Director-General of the Bureau announced the appointment of three other officials to the P.5 posts. The Director-General also informed the complainant in a letter of 6 August 1991 that his applications had been unsuccessful and at an interview with him on 5 August that the reasons related to geographical distribution.

On 6 November 1991, as a member of the Joint Appeals Committee that had met to hear an appeal by another applicant for one of the posts, Mr. Tony Der Hovsépian, he learned that the Appointment and Promotion Committee had ranked him first in the short list for head of Section E. He therefore wrote the Director-General a letter on 6 December 1991 asking him to review the decision announced on 24 July.

In the Director-General's absence the Deputy Director-General replied in a letter of 20 December that his request for review had not been submitted within the one-month time limit set in Staff Rule 111.3.1, and that in any event the Director-General had merely acted on the recommendation by the Appointment and Promotion Committee by appointing one of the three applicants it had proposed for head of Section E.

In a letter of 18 January 1992 the complainant again asked the Director-General to review his decision. In a letter of 29 January the Director-General confirmed what the Deputy Director-General had said in the letter of 20 December 1991.

The complainant went to the Joint Appeals Committee on 26 February 1992. In its report of 21 April the Committee held unanimously that his request for review had failed to meet the time limit in Rule 111.3; that in any event the Director-General's decision was the outcome of due process; and that there was therefore no reason to question his choice. By a letter of 7 May the Director-General informed him of the rejection of his appeal as irreceivable.

B. The complainant is challenging the Director-General's decision, notified to him on 6 August 1991, not to appoint him head of section. He explains that not until 6 November, when the Joint Appeals Committee met to hear Mr. Der Hovsépian's appeal, did he learn that the Appointment and Promotion Committee had made him its first choice for head of Section E. The discovery of that fact entitled him to apply for review under Rule 111.3, and the fact itself afforded evidence of the Union's bad faith and hostility towards him. By way of corroboration he recounts several incidents in which he was implicated as staff representative.

He submits that the decision of 24 July 1991 was unlawful. In other organisations that belong to the United Nations common system recommendations by appointment and promotion committees are binding on executive heads, who thus escape charges of arbitrary choice, and cites Regulation 12.3:

"In case of doubt as to the interpretation or application of the Staff Regulations and Rules, the Director-General shall be guided by the practice of the United Nations and of the other specialized agencies belonging to the United Nations family."

The complainant asks the Tribunal to recognise that his case warranted waiver of the time limit for appeals laid down in the Staff Rules, quash the Director-General's decisions of 24 July 1991 and 29 January 1992, order his appointment to grade P.5 or the grant to him of the status, pay and pension entitlements pertaining to that grade, as from 1 January 1992 and award him 25,000 Swiss francs in moral damages and 10,000 francs in costs.

C. In its reply the Union cites Rule 111.3.1, which sets a time limit of one month for addressing to the Director-General a request for review of an administrative decision. The complainant made his request for review on 6 December 1991, after the one month had elapsed. So his complaint too is irreceivable because he failed to exhaust the internal means of redress.

The reason he gives for being out of time with his request for review is that he learned only later that the Appointment and Promotion Committee had put him first on the short list for head of Section E; that, he says, is a "new fact". But there was nothing new about it, the Director-General being already aware of the Committee's order of preference. The Director-General was not bound by the Committee's choice and was free to make his own, which the complainant then accepted unreservedly.

The Union submits that the three vacant posts were filled by due process. The Appointment and Promotion Committee met on 19 July 1991 to look at the applicants' records and advise the Director-General. As a rule it draws up for each vacancy a short list of three candidates in order of preference and submits it to the Director-General for appointment. The complainant was first on the short list for head of Section E, third on the one for head of Section G and not on the list at all for head of Section C.

The Union denies that the Director-General was hostile to the complainant and observes that the successful applicant was even more active than he in staff union affairs.

D. In his rejoinder the complainant develops his pleas and presses his claims. He points out that the Union has not produced the Appointment and Promotion Committee's report of 19 July 1991 and that the Committee has not established its own standing orders as required by Regulation 4.9.3.

On the issue of receivability he says that he was unable to challenge the Director-General's decision of 6 August 1991 anyway because he was never told the reasons for it. And he was none the wiser for reading the excerpt from the Committee's report at the hearing of Mr. Der Hovsépian's appeal by the Joint Appeals Committee. He submits that the Joint Appeals Committee ought to have waived the time limit for appeal because of the "exceptional circumstances" of his case in accordance with Rule 111.3.4.

E. With its surrejoinder the Union submits the text of the standing orders of the Appointment and Promotion Committee, established on 21 February 1991, and the full minutes, with appendices, of its meeting of 19 July 1991.

It points out that, though Rule 111.3.4 allows waiver of the time limit in exceptional circumstances, it applies only to an appeal to the Joint Appeals Committee, not to the request for review that must first go to the Director-General. Here the appeal was against the Director-General's decision of 29 January 1992 not to reconsider his decision of 6 August 1991. The Joint Appeals Committee was called upon to review only the decision of 29 January 1992, not the one of 6 August 1991. So Rule 111.3.4 was immaterial.

CONSIDERATIONS:

1. In February 1991 the International Bureau of the Universal Postal Union advertised three grade P.5 posts for head of section. The complainant, a P.4 official, applied for all three on 6 May 1991. An office notice of 24 July 1991 announced the names of the successful applicants and the complainant was not among them. The Director-General confirmed by a letter to him of 6 August 1991 that his applications had been unsuccessful.

After seeing him the Director-General upheld the decision not to promote him. He did not then object in writing to the Union's decision. Not until 6 December 1991 did he make a request to the Director-General for review in the light of what he regarded as a new fact. The Deputy Director-General refused his request on 20 December 1991 and the Director-General confirmed that refusal on 29 January 1992. He went to the Joint Appeals Committee. The Committee held that he had forfeited his right of appeal because he had failed to exercise it in time and according to the procedure laid down in the material provisions of the Staff Rules. On the Committee's recommendation the Director-General informed him by a letter of 7 May 1992 that there were no grounds for reviewing the decision not to appoint him to the posts he had applied for.

2. The complainant is asking the Tribunal to treat his case as exceptional and warranting a derogation from the usual time limits, to set aside the decisions not to promote him, to hold that the appointments actually made were unlawful, to order his appointment to grade P.5 as from 1 January 1992 or at least grant him the status and rights pertaining to that grade and to award him damages for moral injury and costs.

The Union maintains that his request to the Director-General for review was irreceivable and asks the Tribunal to rule accordingly.

3. The main issue is whether the complainant's request for review was in time.

Article VII(1) of the Tribunal's Statute reads:

"A complaint shall not be 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."

According to precedent a complainant may not be deemed to have exhausted the means of redress at his disposal within the organisation unless he has followed the prescribed internal procedure for appeal and in particular observed the time limits. So if his internal appeal was out of time his complaint to this Tribunal will also be irreceivable under Article VII(1).

4. The material provisions are the first two paragraphs of Rule 111.3, which read:

"1. Before appealing against an administrative decision a staff member shall, as a first step, address a letter to the Director-General requesting that the administrative decision be reviewed. Such letter must be sent within one month from the time the staff member received notification of the decision in writing.

2. If the staff member wishes to make an appeal against the decision notified by the Director-General in his reply to the request referred to in paragraph 1, he shall submit an application in writing to the Chairman of the Joint Appeals Committee within one month of the date of receipt of the Director-General's decision. If no reply has been received from the Director-General within one month of the date the letter was sent to him, the staff member shall, within the following month, submit his application in writing to the Chairman of the Joint Appeals Committee."

5. Not until 6 December 1991 did the complainant send the Director-General his request for review of the challenged decision although it had been notified to him by a letter dated 6 August 1991. He therefore failed to respect the one-month time limit in 111.3.1.

6. To escape the time bar he relies on 111.3.4, which allows waiver in exceptional circumstances. It reads:

"An appeal shall not be receivable by the Joint Appeals Committee unless the time limits specified in paragraphs 2 and 3 have been met, provided that the Committee may waive the time limits in exceptional circumstances."

As the Union observes, the time limit which the Committee may waive is not the one in 111.3.1 - the one month for submitting a request for review to the Director-General - but only the one for appeal to the Committee against the decision rejecting such request.

Insofar as the complainant is challenging the decision of 6 August 1991 his complaint fails because it is irreceivable.

7. But is it also irreceivable insofar as it seeks the quashing of the decision of 29 January 1992 that there were no grounds for review of the decision not to appoint the complainant to any of the posts?

The complainant pleads that he did not find out until November 1991 that for one of the posts he had applied for he had ranked first in a list of three names which the Appointment and Promotion Committee had put to the Director-General to choose from. But since the decision he is challenging merely confirmed the one of 6 August 1991, which had become final, the time limit was not extended by the circumstances he is relying on.

8. The conclusion is that his claim to the quashing of the final decision is irreceivable, and so too are his claims to damages and to costs. The Tribunal may not order the Union anyway to appoint him to grade P.5.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Sir William Douglas, Vice-President of the Tribunal, Mr. Edilbert Razafindralambo, Judge, and Mr. Michel Gentot, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 14 July 1993.

(Signed)

William Douglas
E. Razafindralambo
Michel Gentot
A.B. Gardner