

## SEVENTY-SIXTH SESSION

### *In re SAUNDERS (No. 8)*

#### **Judgment 1303**

THE ADMINISTRATIVE TRIBUNAL,

Considering the eighth complaint filed by Mr. Yann Harris Saunders against the International Telecommunication Union (ITU) on 30 April 1993 and corrected on 19 May, the ITU's reply of 23 June, the complainant's rejoinder of 23 August and the Union's letter of 16 September 1993 saying that it did not wish to file a surrejoinder;

Considering Articles II, paragraph 5, and VII, paragraphs 1 and 3, of the Statute of the Tribunal and Regulation 2.1 and Rule 3.4.2.3 of the ITU Staff Regulations and Staff Rules;

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's career at the ITU has been summed up under A in Judgments 970, 988, 989, 1018, 1093, 1171 and 1281. The origin of his dispute with the Union lies in the Secretary- General's decision of 8 October 1985 to regrade his G.5 post to P.2 as from 1 January 1986 and the common feature of his complaints is his objections to consequent loss of current earnings and future pension entitlements.

In a memorandum dated 12 August 1992 to the Secretary- General he alleged breach of the rule requiring equal pay for work of equal value on the grounds that his pay for July 1992 was lower than that of another staff member, whom he did not name, and who he said had been employed at the same grade and in the same administrative situation but from a later date. The Deputy Secretary-General replied in a memorandum of 28 September that since he was not in the same position as those he wanted to be compared with the comparison would not be a valid one; the Secretary-General therefore declined to reconsider the matter of his pay for July 1992.

The complainant appealed on 2 October to the Appeal Board. In its report of 12 February 1993 the Board held that although his appeal was receivable he could get no redress in law; it recommended "a pragmatic solution". The Secretary- General having taken no further express decision, the complainant infers rejection from expiry of the sixty-day time limit in Article VII(3) of the Tribunal's Statute.

B. The complainant submits that the ITU was in breach of the rule about equal pay for work of equal value and the broader principle of equal treatment. His pay was some 20,000 Swiss francs a year lower than that of another official in like case. Although both of them were recruited at grade G.4 and worked their way up to P.2, he himself was paid at step 12 and his colleague at a "fictitious" step that was numbered 23. As a result his own "income ceiling" was only 7 per cent higher than the G.4 ceiling while the other official's was 44 per cent higher. That was in breach of Regulation 2.1, which says that grading "is based upon the principle of equal pay for substantially equal work". It also flouted the principle of seniority inasmuch as the complainant reached P.2 twelve years before his colleague, whose name he withholds so as to forestall any protest from the Union against what it described in its pleadings on his second complaint as "unacceptable" naming of other officials.

He wants the Tribunal (1) to quash his pay slip for July 1992 and all later payments at step 12 of grade P.2; (2) to grant him pay and pensionable remuneration at "fictitious step 27" on the ITU's "special P.2 scale" as from July 1992; and (3) to order (a) the review of his "remuneration ceiling" to bring it into line with the increments he would have had "if he had advanced by five full grades in a single category" or if each promotion had been "correctly cumulated" and (b) the review of Rule 3.4.2.3 on salary policy to ensure that anyone promoted to the Professional category or granted a special post allowance should get either the "same lasting pay differential" as if he had got promotion within the same category or a "percentage increase in the income ceiling" equivalent to the sum of the percentage increases he would have got by moving from grade to grade in successive categories. He also claims moral damages and costs.

C. In its reply the Union observes that the complainant was aware as long ago as February 1990 of the injury he now alleges, since he then wrote to the chairman of the Appeal Board objecting to "a short-payment of salary". Not

having filed an internal appeal within the prescribed time limits, he has failed to exhaust the means of redress available to him within the organisation and his complaint is therefore irreceivable under Article VII(1) of the Tribunal's Statute.

Moreover, since he failed to submit claim (3)(b) to the Appeal Board it is irreceivable for that reason too. In any event the Tribunal may not entertain applications for the amendment of a staff rule.

On the merits the ITU points out that the complainant is relying on unproven allegations and on pleas that the Tribunal has already entertained. The Tribunal ruled in Judgment 1093, on his third complaint, that he was promoted to P.2 from G.5, not G.7. So his claim to "step 27" in P.2 is groundless. As for his charges of discriminatory treatment, the Union is not accountable for his failing to support his contentions with substantive evidence. Only on the strength of "objective, factual, administrative or legal elements" will the Union treat a case differently from another seemingly identical one.

D. In his rejoinder the complainant presses his pleas and offers to provide whatever supporting evidence the Tribunal may want. In his submission the facts show that his present pay does not "correctly" reflect promotion spanning six grades over some 20 years of service. So great is the injury that promotion has caused him that he has sought reassignment to a G.7 post.

#### CONSIDERATIONS:

1. The complainant has held grade P.2 since 1985. He contends that he has been paid less since July 1992 than another, unnamed, ITU staff member who is also performing P.2 duties and that that is in breach of the principle of equal pay for work of equal value; that he reached grade P.2 twelve years before the other official and by reason of his seniority should be paid at a higher step; and that certain general principles of law which international organisations in the United Nations system are required to respect may override the express provisions of staff regulations.

2. In its reply the Union points out that he was promoted from G.5 to P.2 and his basic salary at P.2 was to be determined by the rules governing promotion from the General Service to the Professional category. In answer to his argument that there is a body of principles which may override the express provisions of staff regulations the Union submits that the Tribunal has no competence to order the Union to amend its Staff Regulations or Staff Rules.

3. Article II, paragraph 5, of the Tribunal's Statute confers competence to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials and of such provisions of the Staff Regulations as are applicable to the case. The complainant has been unable to show any failure to observe the terms of his appointment or any breach of the ITU Staff Regulations or Rules. As to pay the factual situation of the other staff member is not the same as his own inasmuch as the other was promoted from grade G.7 and his pay at grade P.2 was determined accordingly.

4. The claim to an order for review of Rule 3.4.2.3 must fail because the Tribunal does not have competence to make such an order. The rejection of the principal claims entails that of the claims to damages and costs.

#### DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Mr. José Maria Ruda, President of the Tribunal, Sir William Douglas, Vice-President, and Mr. Mark Fernando, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 31 January 1994.

José Maria Ruda  
William Douglas  
Mark Fernando  
A.B. Gardner

