

EIGHTY-THIRD SESSION

***In re* Milicua de Rabino**

Judgment 1643

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs. Dalila Milicua de Rabino against the Universal Postal Union (UPU) on 23 August 1996, the UPU's reply of 27 September, the complainant's rejoinder of 1 November and the Union's surrejoinder of 10 December 1996 as supplemented on 25 March 1997;

Considering Articles II, paragraphs 5 and 7, and VII, paragraph 1, of the Statute of the Tribunal;

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 Uruguayan, used to serve in Montevideo as a translator in the Spanish Translation Service (STES) in the General Secretariat of the Postal Union of the Americas, Spain and Portugal (UPAEP). That service was run by the Spanish Language Group (GLES) of UPU. The STES in Montevideo used to send a translator to the UPU in Bern to do urgent translation work. The Director-General of the International Bureau of the Universal Postal Union is the agent of the Spanish Language Group of the Union. Acting in that capacity and by a letter of 6 October 1992, he appointed her to the STES in Bern. He did so in accordance with a system of rotation that had been in force for some years. She got an appointment as a translator at grade P.4 from 1 January 1993 to 31 December 1996. For financial reasons, and mistakenly believing that her contract was to expire at 31 December 1995, the GLES decided to send her back to Montevideo thereafter and to suspend the work of the STES in Bern. By a letter of 17 November 1995 she agreed "to return, as from 1 January 1996, to [her] permanent post as a translator at grade P.2, step 12, with the General Secretariat of the UPAEP".

By a "resolution" of 1 April 1996 the Secretary-General of the UPAEP told her that her appointment would end at 8 April 1996. On 26 April she made an appeal against that decision to the Director-General of the International Bureau of the UPU, who said on 13 May 1996 that he did not wish to "meddle in matters outside [his] own competence". By a letter of 28 May she appealed to the Joint Appeals Committee of the UPU, but in its report of 7 June the Committee held that it was not competent to hear her case. The Director-General sent her the report under cover of a letter of 10 June 1996 in which he endorsed the Committee's conclusions. She filed another appeal with the Uruguayan Postal Administration, the supreme supervisory body of the UPAEP's General Secretariat, but that too was rejected on 1 July 1996. And an appeal she put to the UPAEP's Consultative and Executive Council was dismissed in March 1997. She is impugning the Director-General's decision of 10 June 1996.

B. The complainant submits that, though smaller postal unions like the UPAEP have legal personality, they are the offspring of the UPU. So, according to the general principles of law, they must abide by the administrative rules of the UPU. Since her complaint is about the validity of her contract with the UPU, the Tribunal is competent to entertain it.

When she left Bern she was given promises of reinstatement in her post in Montevideo. But they were not kept: though immediately reinstated in the STES in Montevideo, she was dismissed three months later. She contends that the decision to end her appointment in Bern was flawed because she did not consent and so her contract with the UPU holds good.

She asks the Tribunal to quash the termination of her appointment with the UPU in Bern and to reinstate her in the same post; to set aside the "resolution" of 1 April 1996 giving her notice of dismissal and to order

her reinstatement also in her permanent post as translator with the STES in Montevideo. She seeks awards of damages and costs.

C. In its reply the UPU submits that her claims concerning her contract with the STES in Montevideo, a service of the UPAEP run by the GLES and independent of the UPU, are irreceivable because the Tribunal is not competent to hear them. Her claims to the quashing of the termination of her appointment with the UPU and to reinstatement are new and therefore irreceivable because she has failed to exhaust internal means of redress.

In subsidiary argument the UPU denies that it acted without her consent: she knew what she was about when she agreed to the shortening of her contract. It fulfilled the condition on which, she says, her return to the STES in Montevideo depended. What happened afterwards does not invalidate her consent.

D. In her rejoinder the complainant denies that the STES is independent of the UPU. In her submission the means of redress afforded by the UPAEP do not guarantee impartiality since she may appeal only to the very body that approved her dismissal. She maintains that lack of consent has been established, since the original decision, which the GLES took on the strength of wrong information, is unlawful. She agreed to go back to Montevideo a year early out of a sense of loyalty and to help the STES when it was in financial straits. But the UPAEP showed bad faith and broke its promises of reinstatement in Montevideo by terminating her appointment three months later. The complainant presses her claims. She seeks an award of at least 50,000 Swiss francs in damages and terminal entitlements for the three periods of her secondments to Bern and for all the years she served in Montevideo.

E. In its surrejoinder the UPU maintains that it has no legal ties with the staff of the STES and did not ask the UPAEP to guarantee stable jobs for translators on secondment to Bern. It objects to the complainant's making new claims in her rejoinder. It adds that her last contract in Bern was shortened by mutual consent and that it did not dismiss her since her appointment at the GLES was maintained. As to her separation from the STES in Montevideo the UPAEP has already granted her terminal entitlements.

CONSIDERATIONS

1. The complainant, a Spanish translator with the General Secretariat of the Postal Union of the Americas, Spain and Portugal (UPAEP), was assigned by a letter of 6 October 1992 for the period from 1 January 1993 to 31 December 1996 to the Spanish Translation Service (STES) with the International Bureau of the Universal Postal Union (UPU) in Bern. The letter was signed by the Director-General of the International Bureau in his capacity as agent of the Spanish Language Group (GLES) of the Union. It said that she would enjoy "conditions of service similar to those of staff members of the International Bureau, the relevant provisions of the Staff Rules and Regulations of the International Bureau of the UPU applying by analogy". At the request of the GLES it was decided that the secondment of another translator to the International Bureau at Bern would be suspended. The complainant having given her consent on 17 November 1995, the Director-General of the International Bureau told her on 12 December 1995 that her employment with the STES in Bern would end on 31 December 1995 instead of 31 December 1996. She thereupon went back to her post at the UPAEP but three months later, on 1 April 1996, was given notice of termination of her appointment.

2. She has filed appeals with several bodies, to no avail. She is now asking the Tribunal to set aside a decision of 10 June 1996 by the Director-General of the International Bureau of the UPU endorsing the conclusion of its Joint Appeals Committee that, having gone back to her post in Montevideo, she was no longer covered by the UPU Staff Regulations and the Union was not competent to entertain her appeal.

3. She is also asking the Tribunal to quash the termination of her contract of 6 October 1992 with the UPU, to order the Union to reinstate her in the post she held before the termination, to quash the decision terminating her appointment as a translator in Montevideo and to order her reinstatement in that post as well.

4. The complaint raises the issue of the Tribunal's competence, and on that score the Tribunal refers to Judgment 1644, also delivered this day on the complaint of Mrs. Marina Rubio. As a staff member of the STES in Montevideo she comes under the sole authority of the UPAEP, an international organisation that

has not recognised the Tribunal's jurisdiction. So the Tribunal may not entertain her claim to the quashing of the decision of 1 April 1996 by the Secretary-General of the UPAEP terminating her appointment.

5. The Tribunal will, however, entertain her complaint insofar as she is challenging the decision by the Director-General of the International Bureau to curtail her appointment with the STES in Bern. The UPU submits that that claim is irreceivable, but it is in any event devoid of merit. She argues that the purportedly agreed termination of her contract with her agreement was flawed for lack of her own consent. It is true that, as she says, the original decision by the GLES to seek suspension of the work of the Spanish Translation Service in Bern as from 1 January 1996 was based on a mistake about the date of expiry of her contract. The Secretary-General of the UPAEP, who is the "spokesman" of the GLES, acknowledged the mistake in a letter of 6 November 1995 in which he admitted that "the unilateral decision to send the translator back to Montevideo at the end of 1995 was contrary to the terms of the contract". As is plain, however, from her letter of 17 November 1995 to the Secretary-General of the UPAEP, she was aware of the mistake and so she knew full well what she was doing when she agreed "to return, as from 1 January 1996, to [her] permanent post as a translator at grade P.2, step 12, with the General Secretariat of the UPAEP". So she may not plead lack of consent. It is true again that, as the Joint Appeals Committee pointed out, the Director-General consented to her early departure "provided that she is reinstated in the STES of the UPAEP in Montevideo as from the day after her termination in Bern". And it is obvious that neither the UPU nor she expected her to be dismissed three months later. But, as was said above, the decision to dismiss her was not taken by the UPU and does not fall within the Tribunal's competence. There being no need to rule on the receivability of her claims under this head, the Tribunal holds that the decision to end her secondment to Bern was taken with her consent and so in any case may not be set aside.

DECISION

For the above reasons,

The complaint is dismissed.

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

Delivered in public in Geneva on 10 July 1997.

(Signed)

William Douglas
Michel Gentot
Julio Barberis
A.B. Gardner