

NINETY-SEVENTH SESSION

Judgment No. 2332

The Administrative Tribunal,

Considering the fifth complaint filed by Mr W. J. K. against the International Telecommunication Union (ITU) on 20 September 2002, and the ITU's reply of 29 November 2002;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

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

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

A. Facts relevant to this case are to be found in Judgment 2130, delivered on 15 July 2002, on the complainant's third case. As explained in that judgment, in 1999 the complainant applied for a D.2 post within the ITU but his application was not successful. His appointment was terminated with effect from 24 December 1999.

In a letter faxed to the Secretary-General on 23 April 2002, the complainant said he was willing to "waive [his] rights to appointment as Chief [of the] Strategic Planning Unit (SPU)". He said he would instead accept a "partial settlement payment for 73 days Special Leave With Pay at the D-2 level for [his] third complaint" provided that a cheque was despatched to him by post no later than the following day – 24 April.

As no action was taken, he wrote again to the Secretary General on 27 May, seeking a review of the "defendant's 24 April 2002 administrative decision". Having received no response, on 14 July 2002 he wrote to the Chairman of the Appeal Board, requesting a review of the implied decision of 24 April under Staff Rule 11.1.1(2)(b). He is challenging the implied rejection of the request submitted on 14 July.

B. The complainant's argument is that since the defendant organisation has consistently failed to comply with its own administrative rules and regulations and with the case law of the Tribunal concerning "the importance of prior notice and an internal appeal process" it has "waived" any right to oppose his request.

He therefore claims 73 days' special leave with pay, at D.2 level.

C. The ITU contends that the complaint is irreceivable on several grounds. It does not fall within the scope of application of Article II(5) of the Statute of the Tribunal since it does not establish in "an indisputable or even reasonable manner" the existence of a decision which could be considered as "non-observance, in substance or in form" of the terms of his appointment or of the provisions of the ITU's Staff Regulations and Rules. The ITU emphasises that the complainant's service ceased in late 1999, and he has not had another contract of employment with the Union since then. Moreover, the decision to appoint another candidate to the post of Chief of SPU was taken on 19 August 1999, and the complainant has already brought a complaint against his non-appointment to the post and it was ruled on by the Tribunal in Judgment 2130. He has no "right" to appointment to that post and therefore none that can legitimise the offer contained in his letter of 23 April to "waive his rights". His action of that date was in any event time-barred. Furthermore, in its judgment on his third case, the Tribunal ruled on a similar claim to special leave with pay; it found that there was no basis for such a claim as the complainant was no longer on the staff. For the reasons given, the ITU submits that this fifth complaint has no legal basis and is therefore devoid of merit.

The Union also submits that the complaint is frivolous and vexatious, adding that the absurdity of the claim shows the complaint to be "trifling" and an "abuse of process". It asks the Tribunal to declare that it is an obvious abuse of the right of appeal under the Tribunal's Statute. It seeks an award of costs against the complainant.

CONSIDERATIONS

1. In his fifth complaint the complainant asks for 73 days' special leave with pay, at D.2 level, in exchange for a waiver of his rights to appointment as Chief of the Strategic Planning Unit (SPU), with certain conditions, an offer he first made to the ITU on 23 April 2002.
2. In its reply the ITU points out that it is the Secretary General's implied rejection of the offer of waiver that constitutes the impugned decision.
3. The Union recalls that in Judgment 2130, on the complainant's third complaint, the Tribunal dismissed claims whereby the complainant sought: the revision of a decision taken by the Secretary General on 19 August 1999 not to appoint him to the D.2 post he had applied for; and special leave with pay for the months of November and December 1999, and January 2000.
4. The complainant has no right whatsoever to appointment to the post in question and none which could possibly legitimise his offer of 23 April 2002 to "waive his rights". As said in Judgment 2130, under 2 and 3, his appointment was terminated as of 24 December 1999 and it was undisputed that he received his regular salary up to such date. Obviously, he could not claim special leave with pay for the period when he was receiving his regular salary. Furthermore, from 24 December 1999 to the end of January 2000 he was no longer on the staff and there could be no basis to his claim for special leave with or without pay.
5. The claim of the complainant having been previously ruled upon and dismissed by the Tribunal, the complaint fails.
6. In the circumstances, there is no need to allow the Union's counterclaim.

DECISION

For the above reasons,

The complaint is dismissed as well as the Union's counterclaim.

In witness of this judgment, adopted on 19 May 2004, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Vice President, and Mrs Florida Ruth P. Romero, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 14 July 2004.

Michel Gentot

James K. Hugessen

Florida Ruth P. Romero

Catherine Comtet

