Registry's translation, the French text alone being authoritative

NINETY-EIGHTH SESSION

Judgment No. 2398

The Administrative Tribunal,

Considering the ninth complaint filed by Mr T. B. against the Universal Postal Union (UPU) on 13 June 2003 and corrected on 12 August, the Union's reply of 14 November 2003, the complainant's rejoinder of 24 February 2004 and the UPU's surrejoinder of 5 April 2004;

Considering Articles II, paragraph 5, and VII 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 relating to this case are given in Judgment 2397, also delivered this day, concerning the complainant's eighth complaint.

The Disciplinary Committee, to which the Director General had forwarded new material on 30 October 2002, issued its second confidential report on 29 November 2002. That same day the Director General wrote to the complainant informing him that the Disciplinary Committee had recommended his dismissal for very serious misconduct on the grounds that he had improperly taken 23 days of leave in the course of his missions and had received subsistence allowances to which he was not entitled. The complainant was thus dismissed for serious misconduct, subject to a period of three months' notice ending on 28 February 2003. The Director General also informed the complainant of the arrangements that would be made concerning his accrued leave.

On 21 December 2002 the complainant sent the Director General an "internal appeal" which was also a "request for review" of the decision of 29 November 2002. He did not appeal directly to the Tribunal, as the Director General had proposed, but instead filed an appeal with the Joint Appeals Committee on 6 February 2003. The latter issued a report on 6 March 2003 in which it explained that since the disputed decision was a disciplinary measure the complainant should have submitted an application to the Joint Appeals Committee no later than 29 December 2002, in accordance with Rule 111.3, paragraph 3, of the Staff Rules of the International Bureau of the UPU. It therefore considered his appeal to be irreceivable. By a letter dated 17 March 2003, which constitutes the impugned decision, the Director General informed the complainant that his internal appeal was irreceivable.

B. With regard to receivability the complainant denounces the "tactical manoeuvres" of the Joint Appeals Committee and the Director General, whose intention, he contends, was to mislead him as to his rights of appeal. He accuses the Director General of having snared him in a "procedural trap", particularly by not informing the Committee that he had filed an "appeal" in December 2002. According to him, the Committee was guilty of "random manipulations of the regulations". The complainant argues moreover that, considering that the Director General gave him until 17 January 2003 to decide whether to appeal directly to the Tribunal, the one-month period within which the matter could be referred to the Joint Appeals Committee started to run from that date. Since he applied to the Committee on 6 February 2003, he considers that his appeal was lodged in a timely manner.

On the merits, the complainant begins by drawing attention to eight procedural flaws. As in his eighth complaint, he asserts that the Director General took an active part in what in his view constitutes the "third administrative inquiry" initiated against him. He also reiterates that the principles applicable within the international civil service were breached because the Director General entrusted the inquiry to two officials who should have been disqualified owing to their involvement in the case, namely his direct supervisor and the Deputy Director General. He adds that the Director General denied him the possibility of seeking their disqualification and did not allow him to attend the hearings. He notes that the Head of Legal Affairs also took part in the third inquiry.

The complainant also alleges that the Director General deliberately denied him his statutory right to object to at least one member of the Disciplinary Committee. In this case, one of the members was vulnerable to pressure from

the Administration.

According to the complainant, a procedural flaw arose from the fact that the bank statements he had produced during what he describes as the "first disciplinary procedure" were improperly used in the course of the second procedure. Since these documents had a decisive impact, the complainant deplores the fact that the Disciplinary Committee did not inform him that it had decided to use them and did not ask for his comments. He accuses it of having seriously impaired the fairness of the procedure.

He submits that, prior to notifying him of the decision to dismiss him, the Director General did not give him a clear indication of what accusations were held against him. Since the Administration constantly altered its accusations and even refused to let him have the Disciplinary Committee's report of 6 September 2002, his right to be heard was disregarded.

He also contends that the Disciplinary Committee could not validly issue an opinion before 29 November 2002, which was the deadline he had been given to avail himself of the right to be heard. Yet it was on that day that he was notified of the dismissal decision. He assumes that the Disciplinary Committee and the Director General had already reached their conclusions beforehand. He fails to understand how it was possible for the Director General, in less than two hours, to complete a detailed study of the report – which was itself dated 29 November and ran to 108 pages – prepared by the Committee, find and correct a mistake, put in place a complicated arrangement regarding his accrued leave and have a typed version of his decision mailed at the post office at 11.36 a.m. on the same day.

Next, the complainant puts forward six "major grievances". He considers, first, that the Administration failed to take account of some "important elements". For instance, he undertook 19 missions in 14 months but the UPU denied him any administrative assistance. For that reason, he devoted the greater part of the leave he took in December 2001 to checking the documents relating to his official travel, thanks to which he was able to identify a number of administrative errors. The conditions in which he travelled – i.e. his having to search for the cheapest fares – made it difficult for him, nearly two years after the events, to produce firm evidence establishing his travel dates and routes. The only valid evidence was the laissez-passer which he always produced for the customs services but which the UPU "misplaced".

The complainant further argues that the Administration has not proved beyond doubt that he took even one day of leave which could be considered unjustified. Since the concept of unjustified absence does not appear in any statutory provision, the allegedly unjustified 23 days of leave, which had in fact all been formally approved by the competent authorities, cannot be used as grounds for his dismissal.

In the complainant's view, the Administration drew clearly erroneous conclusions from its consideration of the facts. He maintains that he never received any payment he was not entitled to for his travel expenses. On the contrary, as some of the expenses he incurred in the course of his missions were not reimbursed, it is the Administration which owes him 1,604 Swiss francs.

The complainant points out that for the Administration's convenience he invariably included the bills of the hotels he stayed at with his claims for reimbursement. Considering all the prescribed checks and approvals, he feels that a strict application of the "impressive administrative procedures governing official travel" is sure to defeat any attempt at fraud. In his view, however, such procedures have in fact given way to the "totally unsupervised" practices of underlings.

The complainant further notes that the Disciplinary Committee, from one disciplinary procedure to the other, introduced "disturbing changes of opinion", which in his view justifies his doubts as to its impartiality and independence in the second disciplinary procedure. On the basis of the "new" evidence gathered by the Administration during the third administrative inquiry the Committee recommended his dismissal, whereas three months earlier it had recommended a token sanction. Yet, according to the complainant, the evidence in question is "extremely far-fetched" and in no way proves irrefutably that he gave false dates in his claim for reimbursement.

Lastly, he concludes that, in his case, the Administration resorted to an "extraordinary number of tactical manoeuvres, false statements, reversals of opinion, false testimonies, false evidence and defamatory statements […] for the sole purpose of giving effect to the prejudgement made long beforehand by the Director General".

The complainant asks the Tribunal to quash the dismissal decision of 29 November 2002 and to "decide" his immediate reinstatement with restoration of his career and full payment – with interest on arrears at the rate of 6 per cent per annum – of all salaries and allowances due between the date of his dismissal and that of his reinstatement, "including the [UPU]'s share of his health insurance costs". He claims 1 million Swiss francs by way of "deterrent" damages and "fair compensation", and 40,000 francs in costs.

C. In its reply the defendant contends, first, that a minimum submission of fact and law is a basic requirement for any complaint. Yet when he filed his complaint with the Tribunal the complainant did not submit a brief. The Union considers that the basic conditions of receivability were therefore not met and asks the Tribunal to reconsider its case law regarding the correction of complaints since, as in the present case, it leads to abuse. It considers that in this ninth case, as in several others, the complainant took advantage of the deadline for correction in order to "gain enough time to write his many briefs". It adds that the complainant's brief for the present case is an "unconnected jumble of facts and pleas, set out in a repetitive, imprecise and vague manner, on which it is practically impossible to find firm ground". In its view such briefs are unacceptable and should be sent back to their authors to be corrected.

The UPU contends that the complaint is irreceivable on several grounds. Noting that in disciplinary matters a staff member must apply to the Joint Appeals Committee within one month of the notification of the disputed decision, it refers to the Tribunal's case law, according to which a time limit is a matter of objective fact and exceptions are allowed only where a complainant has been prevented by *force majeure* from learning of the decision or has been misled by the defendant. It considers that none of those exceptions applies in this case, the failure to meet the time limit for internal appeal being due solely to the complainant's behaviour. Since the complainant, moreover, has extended the scope of his claims before the Tribunal, all claims other than his request that the decision of 29 November 2002 be quashed are irreceivable. The defendant makes it clear, lastly, that the relations of trust have been broken and that reinstatement of the complainant is out of the question.

On the merits the Union recalls that, according to the Tribunal's case law, an intent to defraud an organisation is a most serious offence and there is nothing disproportionate about dismissing an official for the misconduct he has committed. It maintains that here the complainant deliberately defrauded the organisation and abused its trust. In view of his seniority, of his knowledge of the procedures applicable to the refunding of mission expenses and the management of absences, and of the "ingenious" system he set up to prevent any effective checks, his misconduct appears all the more serious and his dismissal was fully justified.

The UPU contends that the complainant's plea relating to the "second referral" to the Disciplinary Committee is merely a further indication of his bad faith and of the manoeuvres he has employed to delay the outcome of the procedure. While the further inquiry caused him no injury, it did provide incontrovertible evidence of occurrences of fraud. The Union believes that no formal or substantive flaw can be held against it.

It further submits that it is undeniably entitled to check whether a staff member really was "at the places of the reported mission on the dates for which he was refunded". The Director General, furthermore, was free to appoint any competent person to undertake a further investigation. The fact that the Deputy Director General and the complainant's immediate supervisor took part in it is not sufficient to prove there was bias. Moreover, since there was only one disciplinary procedure, there was no reason to grant the complainant a further opportunity to object to the appointees, since he had already availed himself of that opportunity on 10 June 2002. It points out that some of the evidence supplied by the complainant has shown that his presence in certain places did not tally with the dates appearing in his mission accounts, which clearly illustrated his manipulations and his bad faith.

With regard to the breach of the right to be heard, the UPU says it made considerable efforts to give the complainant every opportunity to refute or explain the various irregularities and contradictions which led to his dismissal. Yet he constantly endeavoured to seek refuge in procedural matters and refused to be drawn on the merits of the case. It adds that no witnesses were heard during the disciplinary procedure, apart from the complainant himself, and that the latter was perfectly aware of what irregularities and fraud he had committed. It notes that the complainant sent his comments on 28 November 2002 to the Disciplinary Committee, which received them only on 2 December. Since the complainant did not observe the time limits, the UPU rejects any responsibility in that respect. In its view, the Disciplinary Committee's report of 29 November 2002 would not take long to examine, since it contained only 14 pages and since the Director General did not need to scrutinise all its annexes in detail in order to agree with its conclusions. The possible outcomes of the disciplinary procedure having already been considered, the dismissal decision could be drafted very quickly the same day.

According to the defendant, the complainant has failed to establish, even on a balance of probabilities, that he suffered any injury. It recalls that the complainant was constantly endeavouring to "abuse the system and obtain undue benefits by fraud". It considers that it is in its interest to combat such abuse and that its interest obviously takes precedence over the need to protect the alleged legitimate interests of the complainant. It contends that it suffered injury as a result of the abusive, fraudulent, harmful and querulous behaviour of the complainant. It considers the complaint abusive and asks the Tribunal to order the complainant to pay the costs of the present proceedings.

D. In his rejoinder the complainant points out that he could not file claims relating to his reinstatement and to the payment of damages until after the impugned decision became final. He considers that the UPU failed to seize the opportunity it was offered during the internal appeal procedure to reach an amicable settlement to the dispute and that it must accept the consequences, including the financial ones, of the choices it made.

Otherwise, the complainant reiterates, with certain qualifications, all the procedural flaws and grievances mentioned in his complaint. He points out that his official travel commitments were unusually frequent and that he had to complete many strictly administrative tasks with no assistance.

E. In its surrejoinder the UPU presses its arguments. It adds that the complainant rejected the administrative assistance he was offered and decided upon the frequency of his missions himself.

CONSIDERATIONS

1. The complainant, a former grade P.5 official of the UPU, who undertook many missions abroad, was suspended from duty on 16 May 2002 following an investigative report concerning his travel expenses and the leave he had taken, and a disciplinary procedure was initiated against him. In a fifth complaint he challenged the suspension decision without success before the Tribunal, which dismissed the complaint in Judgment 2365 delivered on 14 July 2004.

2. The Director General referred the matter to the Disciplinary Committee, which sent him a first confidential report dated 6 September 2002. The Committee recommended imposing sanctions on the complainant consisting of a reduction in salary step and delayed advancement to the next salary step. Following a further investigation, the Director General, considering that new material showed that other irregularities had been committed during the complainant's missions abroad, forwarded the new evidence to the Committee, which in a second confidential report dated 29 November 2002 found that the complainant had been guilty of "repeated fraud" and recommended his dismissal for very serious misconduct.

3. By a decision taken the same day, the Director General notified the complainant that he was dismissed for serious misconduct, subject to three months' notice. The reasons given for this decision are as follows:

"[The Disciplinary Committee] finds that in the course of your missions you took 23 days of leave to which you were not entitled. It notes that you unduly received CHF 2,711.25 in subsistence allowances, but it omitted to add the subsistence allowance received for the mission to Cameroon in March 2001 to which you were not entitled (CHF 263.76), which makes a total of CHF 2,975.01. It stresses that by comparing information from different sources it has been able to ascertain that in several cases fraudulent manipulations were involved, rather than mistakes.

Owing to the fact that you are a senior official of the organisation, that you have yourself performed the duties of Head of the Finance Section and that you are thus fully familiar with the administrative procedures applying to mission accounts and the management of leave, I consider that your misconduct is particularly serious.

The systematic and repetitive nature of the fraud committed shows that your behaviour was not accidental but that you acted in a wilful and deliberate manner."

The Director General then drew attention to the obstacles created by the complainant during the procedures and to his "negative attitude" towards the organisation. He concluded as follows:

"The file establishes beyond any doubt that you defrauded or attempted to defraud the organisation and that as a

result you no longer fulfil the conditions of trust, loyalty and honesty that are required on the part of an international civil servant."

4. By a letter of 21 December 2002, the complainant filed an "internal appeal" which was also a "request for review" of that decision. On 8 January 2003 the Director General informed him that he was prepared to authorise him to file a complaint directly with the Tribunal and that, if he received no reply from him by 17 January 2003, he would refer the internal appeal to the Joint Appeals Committee. On 21 January 2003 the Director General wrote again to the complainant. The Director General noted that the complainant had not replied to his letter of 8 January and advised him to refer his case personally to the Joint Appeals Committee since, as he said, "I cannot refer the matter to the Committee on your behalf" under the terms of Staff Rule 111.3, paragraph 3. On 6 February 2003 the complainant submitted an appeal to the Chairman of the Joint Appeals Committee and objected to the three titular members of the Committee. On 6 March 2003 the Committee issued a report in which it found the appeal irreceivable on the grounds that, since the appeal challenged a disciplinary measure, the complainant should have applied directly to its Chairman within one month of the decision of 29 November 2002, which he had failed to do.

5. The Director General, on the basis of the Joint Appeals Committee's recommendation, informed the complainant on 17 March 2003 that his internal appeal was irreceivable. That is the impugned decision. The complainant's claims are set out under B, above.

6. The defendant's first objection to the receivability of the complaint is that the complainant did not refer the matter to the Chairman of the Joint Appeals Committee in good time, but that objection fails.

7. It is true that according to Staff Rule 111.3, paragraph 3: "[i]f the staff member wishes to appeal against a decision on disciplinary action taken by the Director-General, he shall address an application to the Chairman of the Joint Appeals Committee within one month from the date on which he received notification of the decision in writing". It is also true that Rule 111.3, paragraph 3, appears to treat the procedure applicable to disciplinary action as an exception to the general rule given in Rule 111.3, paragraph 1, which concerns appeals against administrative decisions that cannot be challenged by internal appeal until a request has been made to the Director General for the administrative decision to be reviewed. In this case, however, the letter of 21 December 2002, though addressed to the Director General under the two headings "Internal appeal" and "Request for review of the disputed decision", indicated as follows:

"On the basis of current regulations, I wish to lodge an internal appeal against that decision on the following grounds:

· Improper procedure.

· Clearly erroneous conclusions drawn from the file.

· Essential facts overlooked.

· Misuse of authority.

· Prejudgement.

· Bias, partiality and malice.

· Errors of law and of fact."

Despite its ambiguous title and the fact that it was addressed to the wrong person, this letter did constitute an internal appeal, and indeed the Director General recognised it as such since he replied to the complainant that after 17 January 2003 he would forward the internal appeal to the Joint Appeals Committee, but he subsequently changed his mind and informed the complainant that he should apply directly to the Committee. As the Tribunal has found time and again (see, for example, Judgment 1832, under 6), rules of procedure "must […] not set traps" and an appeal sent to the wrong body of an organisation but filed in time must be forwarded to the correct appeal body. The defendant cannot therefore consider the complainant's appeal as time-barred, since the appeal was filed within one month from the time the complainant received notification of the decision to dismiss him. It is true that it was only on 6 February 2003 that he formally filed his duly substantiated internal appeal with the Joint Appeals Committee, but he could reasonably believe that his appeal had been filed in time by virtue of his letter of 21

December 2002.

8. The defendant also maintains that the complaint is irreceivable on the grounds that the complainant, who submitted only a complaint form on 13 June 2003, corrected his complaint, within the time allowed by the Registrar, with a voluminous brief of 476 pages which the UPU describes as “an unconnected jumble of facts and pleas, set out in a repetitive, imprecise and vague manner, in which it is practically impossible to find firm ground”. The Union considers that the case law, as expressed for example in Judgment 1500, whereby the Registrar is authorised under the Rules of the Tribunal to allow complainants time to correct their complaints, provided that the entries in the complaint form suffice to identify the decision impugned and the relief claimed, leads to abuse and unfair results. The Tribunal will not, for the sake of one particular case, reconsider its case law that protects the interests of international civil servants as a whole; it notes that the complaint in question was corrected within the time limit allocated by the Registrar, on the understanding that the claims are all receivable.

9. Since all internal remedies may be considered to be exhausted, contrary to the view put forward by the defendant, and since the complaint filed before the Tribunal is receivable, the many formal and substantive pleas put forward by the complainant must now be examined.

Procedural flaws

10. The first procedural flaw mentioned by the complainant is based on the fact that the Director General, who took the disputed disciplinary action against him, participated actively in the “third administrative inquiry” underpinning what the complainant describes as the “second disciplinary procedure” against him. As the Tribunal has made clear in Judgment 2397 also delivered this day, the Director General was entitled to order a further investigation after receiving the Disciplinary Committee’s first report. The fact that he is authorised by the regulations to initiate disciplinary action did not prevent him taking whatever administrative measures were required in the interest of the smooth running of the service, in order to supplement the information needed by the Disciplinary Committee and to enable him to reach a decision in full knowledge of the facts.

11. The second alleged procedural flaw relates to irregularities said to have affected the further investigation decided by the Director General. The complainant believes that the further investigation was tainted with bias owing in particular to the participation in the procedure of the Deputy Director General, his immediate supervisor and the Union’s Head of Legal Affairs, and to the lack of adversarial procedure. These accusations are not supported by the evidence on file, as held by the Tribunal in Judgment 2397.

12. The complainant also complains that he was unable to avail himself of his right to object to members at the time of what he considers to be the second referral to the Disciplinary Committee. The defendant is quite right to recall that the complainant had already objected to one of the members of this Committee in June 2002 and that, since the same disciplinary procedure was involved, there was no reason to modify the composition of the Committee, which had been properly constituted. The rights which the complainant enjoys under Staff Rule 110.2, paragraph 5, have therefore not been breached in this case, and there is no specific evidence to support the complainant’s allegations that the Administration was in a position to bring pressure to bear on one of the members of the Disciplinary Committee.

13. The fourth formal flaw concerns the use, during the disciplinary procedure which led the Disciplinary Committee to recommend the complainant’s dismissal, of evidence produced in the course of what the latter refers to as the “first disciplinary procedure”. In actual fact, there were not two disciplinary procedures but only one, and the Committee was legally entitled to base its recommendation on all the evidence appearing in the file and not only on the items provided by the Union on 30 October 2002.

14. The fifth procedural flaw is based on the allegation that the defendant improperly obtained information which supposedly had a decisive effect on the outcome of the case. The Disciplinary Committee allegedly used the account statements relating to a credit card belonging to the complainant, which he had supplied on 18 July 2002 after blotting out the parts that, according to him, concerned only his private life and after being assured that the statements would be treated as confidential. Curiously enough, the ink used to blot out the information concerning his private life became “discoloured”. Regardless of how the ink – which was supposed to bar the Disciplinary Committee’s access to certain information – became discoloured, the upshot was that the documents supplied by the complainant himself could thus be used as evidence in support of the Committee’s findings that the dates of the complainant’s presence in some places did not tally with those he had indicated in his mission accounts. Having

obtained that information from the case file, the Committee was at liberty to draw its own conclusions in order to arrive at an opinion.

15. The sixth procedural flaw relied on by the complainant is derived from the previous plea. The complainant accuses the Disciplinary Committee of having failed to let him know what information was extracted from his credit card statements despite it having a decisive effect on the outcome of its findings, and denying him an opportunity to comment on that information, thus seriously impairing the fairness of the procedure. On this point it may be observed that the complainant could not be unaware of what his credit card statements might reveal, since he had himself provided them, even though he had been authorised to occult certain parts; also, the Disciplinary Committee had invited him on 13 November 2002 to put forward whatever further evidence he wished in his defence in view of the new material which could be used against him; and lastly he had refused to attend the interview he was offered for 21 November. He cannot therefore complain that there was a breach of due process.

16. The seventh procedural flaw raised by the complainant is that he was given no clear and comprehensible indication of the accusations levelled at him. On this point he notes quite rightly that these accusations changed in the course of the procedure, but this fact in itself is not sufficient to invalidate the procedure that led to his dismissal. It appears from the file that the complainant was perfectly aware of what he was accused of by the defendant, that is, that he made false statements concerning the dates of his missions and that, as a consequence, he received subsistence allowances and took days of leave to which he was not entitled. The report of the Disciplinary Committee dated 29 November 2002 takes up these points, which were in no way excluded from the adversarial procedure sought by the complainant, subject to what is said under 17 below.

17. The eighth procedural flaw mentioned is more serious and is based on the fact that the Disciplinary Committee's report was issued and the dismissal decision notified to the complainant on the last day of the time allowed by the Committee for the complainant to submit his comments in defence of his rights. It is true that in a letter of 21 November 2002 to the complainant, the Chairman of the Disciplinary Committee had taken note of the fact that the complainant had preferred not to avail himself of the opportunity he was offered to express his views before the Committee. With that letter the Chairman sent the complainant several documents, among which were the items annexed to the report of 6 September, and the credit card statements which the complainant had asked to have returned to him. The Chairman also said:

"Should you wish to avail yourself of your right to be heard by the Disciplinary Committee concerning the above-mentioned documentation, the Committee would be grateful if you would send it your comments not later than 29 November 2002."

The complainant replied by registered letter dated 28 November, which was in fact posted at 11.47 a.m. that same day, giving his comments on the documents he had been sent on 21 November, but without asking to be heard. However, for reasons which remain unknown, this letter was not received by its addressee until 2 December 2002. Meanwhile, on 29 November, the Disciplinary Committee had issued its report, and that same day the Director General had taken his decision to dismiss the complainant in accordance with the Committee's recommendation. He had notified the complainant of that decision by a letter handed in at a post office at 11.36 a.m.

This time sequence indicates that the Disciplinary Committee issued its report before the expiry of the deadline that it had given the complainant to hand in his comments and to request to be heard, if he so wished. Similarly, the dismissal decision – which was taken immediately after the Director General received the report, which had undoubtedly already been drafted – shows that the outcome of the disciplinary procedure was a foregone conclusion, regardless of the new arguments the indicted official might have put forward. These facts constitute a breach of due process and cannot remain without consequence for the organisation. It is nevertheless true that the complainant had had many opportunities to put forward arguments in his defence and that his letter of 28 November 2002 did not contain any substantially new element; nor did it express a request for a hearing. In the circumstances, the flaw is not such as to warrant the quashing of the dismissal decision, but it does entitle the complainant to compensation for moral injury. The dismissal decision may be upheld, however, only insofar as the substantive pleas fail. These pleas must therefore now be considered.

Justification for the dismissal

18. After giving a detailed review of the evidence on which the Union had based its conclusion that he had made false statements on several occasions, the complainant raises several issues. For one thing, he queries the

impartiality and independence of the Disciplinary Committee, whose inferences from identical facts varied from one of its reports to the other, as well as the "prejudgement" on the part of the Director General, who in his view displayed bias throughout the procedure. Also, he alleges that the organisation overlooked important elements, that it wrongly considered as unjustified certain days of leave which had in fact been officially approved, that it drew clearly erroneous conclusions from the facts and that it laid the blame on the complainant for its administration's malfunctioning.

19. On none of these points do the complainant's lengthy arguments carry any conviction. His allegations of bias by the Director General are not substantiated, even though it is clear that for some time the complainant no longer enjoyed the trust of his superiors and that the Director General wanted him to leave the organisation following his suspension. The complainant objected to the many items of evidence, that were included in the file and accepted both by the Disciplinary Committee and by the Director General. But those objections are not such as to invalidate the conclusions of the report of 29 November 2002. The complainant took days of leave to which he was not entitled under the regulations – even though the profusion of applicable texts and the authorisations given by his poorly informed immediate supervisor do provide him with some excuse. He also received subsistence allowances to which he was not entitled because they were "claimed and received in respect of travel days which were later shown to be fictitious", as specified in the above-mentioned report. It is not for the Tribunal, as the complainant would wish, to re-investigate in detail a case which has given rise to voluminous adversarial exchanges between the parties. It is sufficient for the Tribunal to note that, even though for some journeys the file still reflects inconsistencies between the dates used to determine the duration of his visits and the dates of the complainant's returns, the complainant himself bears much of the responsibility for any lingering uncertainties. It is clear, in any event, that in many cases the dates he gave did not correspond with the facts and that the Union was correct in considering that the attempts made by this senior official to deceive it amounted to serious misconduct.

20. In consequence whereof, without any need to accede to the defendant's requests for the Tribunal to produce all the files relating to the complaints filed by the complainant, the Tribunal considers that the claim for the quashing of the decision of 29 November 2002, and hence the claims for reinstatement, must be dismissed.

21. On the other hand it is ascertained, as explained in consideration 17, that the defendant did not fully respect the complainant's right to due process. Even though, in the circumstances outlined above, the resulting flaw is not such as to warrant the quashing of the dismissal decision, it did cause the complainant moral injury, for which compensation is due. The Tribunal considers that this injury may be fairly compensated by an award of 10,000 Swiss francs in favour of the complainant.

22. Since he partially succeeds, the complainant is entitled to costs, which are set at 2,000 francs. The counterclaim submitted on this point by the defendant is dismissed.

DECISION

For the above reasons,

1. The UPU shall pay the complainant 10,000 Swiss francs in compensation.

2. It shall pay him 2,000 francs in costs.

3. The complainant's other claims are dismissed.

4. The UPU's counterclaim is dismissed.

In witness of this judgment, adopted on 18 November 2004, Mr Michel Gentot, President of the Tribunal, Mr Seydou Ba, Judge, and Mr Claude Rouiller, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 2 February 2005.

Michel Gentot

Seydou Ba

Claude Rouiller

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 17 February 2005.