Registry's translation, the French text alone being authoritative

NINETY-EIGHTH SESSION

Judgment No. 2399

The Administrative Tribunal,

Considering the tenth complaint filed by Mr T. B. against the Universal Postal Union (UPU) on 6 August 2003 and corrected on 10 September, the Union's reply of 12 December 2003, the complainant's rejoinder of 17 March 2004 and the UPU's surrejoinder of 13 May 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 Judgments 2397 and 2398, also delivered this day, concerning the complainant's eighth and ninth complaints.

Rule 105.1, paragraph 3, of the Staff Rules of the International Bureau of the UPU provides that "not more than twelve weeks (sixty working days) of [annual] leave shall be carried forward beyond 1 January of any year".

In the course of a disciplinary procedure, the complainant was suspended from duty as from 16 May 2002. Noting that he would have accumulated 85.5 days of annual leave by the end of 2002, the Director General ordered him on 11 October 2002 to take at least 25.5 days of leave by the end of the year, failing which he would not be allowed to carry forward that leave and the balance of his annual leave carried forward at 1 January 2003 would therefore amount to 60 days.

In a letter of 29 November 2002 the Director General informed the complainant that the Disciplinary Committee had recommended his dismissal for very serious misconduct on the grounds that he had taken 23 days of "unjustified" leave in the course of his missions and had received subsistence allowances to which he was not entitled. The decision taken by the Director General with regard to the complainant was drafted as follows:

"1. You are dismissed for serious misconduct, subject to three months' notice, that is, taking effect on 28 February 2003.

2. The sum of CHF 2,975.01, representing the amount of subsistence allowances incorrectly paid to you, shall be deducted from the outstanding balance of your remuneration.

3. After deduction of the 23 days of improperly taken leave and rest time from the 65 days of annual leave to which you would theoretically be entitled until the end of your appointment at the UPU, the outstanding balance of leave does not exceed the period of notice.

4. You are released from duty for the remainder of the working days you would still owe the organisation after deducting the balance of your annual leave.

[…]"

The Director of Human Resources, in a letter dated 25 February 2003, sent the complainant a statement of account giving "details of the payment of [his] salary" for the period December 2002 to February 2003. The statement showed that the subsistence allowances that were at issue had been recovered from the complainant by means of three deductions from his pay, starting from December 2002. On 27 February 2003 the complainant filed an internal appeal on the grounds that his salary for the month of February did not include the amount corresponding to the days of leave he had accumulated but not taken prior to the date when his employment ended. On 17 March 2003 the Director General replied that, further to the decision of 29 November 2002, as at 28 February 2003 he had

no more accrued leave left to be paid.

On 17 April 2003 the complainant applied to the Joint Appeals Committee, asking it to recommend the quashing of the "decision concerning the final statement of [his] pay". The Committee handed in its report on 6 May. It took the view that neither the letter of 25 February 2003 nor the statement it contained constituted an administrative decision since they were only intended to provide the complainant with details of his salary payments for the period from December 2002 to February 2003, calculated on the basis of the decision of 29 November 2002. It recommended dismissing the appeal as irreceivable. In a letter dated 12 May 2003, which constitutes the impugned decision, the Director General informed the complainant that his appeal was irreceivable.

B. The complainant considers that he has exhausted the internal means of redress, and that his complaint is receivable under Article VII of the Tribunal's Statute.

He sets out to demonstrate the "deliberate and unremittingly intentional nature of the financial spoliation" to which he was subjected and which was "meticulously planned" by the UPU.

He recalls that he was ordered on 11 October 2002 to take 25.5 days of accrued leave. Because he refused to take the said days, they were not carried forward to 2003. This had the effect of reducing the number of days of statutory leave that he would have accumulated by 28 February 2003 to 65 – that is, 60 days of leave carried over from 2002 plus five days of leave due for the months of January and February 2003. He deduces from paragraph 2 of Staff Rule 105.1 that only the "exigencies of the service" could lead the Director General to order a staff member to take leave during a certain period. In his case no "exigency of the service" could apply since he had been suspended from duty since 16 May 2002.

The complainant also asserts that the UPU arbitrarily decided to deduct the 65 days of leave accumulated at 28 February 2003 from the pay due to him for January and February 2003, and that he has received no compensation in that respect. He sets the amount he was deprived of at 46,507.50 Swiss francs and denounces the "stratagem" set up by the Union. In fact, the UPU began already in December 2002 to recover the sums it was claiming from him for subsistence allowance. Consequently, citing Staff Rule 105.1, paragraph 4, he submits that the 23 days of leave he allegedly took without valid reason (although they had all been formally approved by the competent authorities) should also have been deducted from December 2002 onwards from the days of statutory leave accrued as at 30 November 2002. Instead, the 23 days were deducted from the 65 days of leave accrued by 28 February 2003, thus reducing the number of days' leave accrued by that date to 42. According to the complainant, the Director General had no intention of reimbursing him for the outstanding 42 days of leave and so decided that the last two months of his period of notice, which comprised 42 working days, would be entirely deducted from the outstanding balance of leave, which as a result was reduced to nothing.

The complainant deplores the fact that no reasons were given by the Union. Nonetheless, he points out that the latter indicated in its brief in reply to his fifth complaint, that he could not continue to be employed owing to the fact that his work involved contacts with senior representatives of member countries. He deduces that it was only to prevent him renewing those contacts, which would have given him the opportunity to find out about the UPU's "secret goings-on", that it decided not to extend his appointment beyond 29 November 2002, the date at which the decision to dismiss him was taken.

The complainant asks the Tribunal to quash the decision of 25 February 2003 which was confirmed on 12 May 2003. He claims 46,507.50 Swiss francs, plus interest at the rate of 8 per cent per annum as from 1 March 2003, for the 65 days of statutory leave that had accrued to him by 28 February 2003 and for which the Union paid him no compensation; as well as 20,000 francs in damages for the injury caused by the failure to pay that compensation by 1 March 2003. He also claims 20,000 francs in damages for the Union's "tactical manoeuvres" aimed at preventing him from renewing his professional contacts; 50,000 francs in "deterrent" damages as a penalty for the "obviously planned and coordinated [nature] of the stratagem" set up by the UPU; and 5,000 francs in costs.

C. In its reply, the defendant contends firstly that a minimum submission of fact and law is a basic requirement for any complaint. Yet, when he applied to the Tribunal, the complainant merely filled in the complaint form and did not submit a brief. The Union considers that the basic conditions of receivability were therefore not met and suggests that the Tribunal review its case law regarding the correction of submissions since, as in the present case, it leads to abuse. It considers that in this tenth 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".

The UPU contends that the complaint is irreceivable on several grounds. Since internal remedies were not exhausted with regard to items 2, 3 and 4 of the decision of 29 November 2002, that decision has become final and enforceable on these three points and no further compensation is due to the complainant. As for the letter of 25 February 2003, it merely confirms the content of the above-mentioned decision, and purely confirmative decisions do not have the effect of setting a new time limit for appeal. Furthermore, the complainant has extended the scope of his claims in his complaint before the Tribunal. The defendant also argues that the claim for the payment of 20,000 francs for its so-called tactical manoeuvres is completely unrelated to the subject matter of the complaint. It points out that the letter of 11 October 2002 is the subject of a complaint pending before the Tribunal (see Judgment 2397 also delivered this day), particularly as regards the order given to the complainant to take 25.5 days' leave.

Subsidiarily, the UPU explains that paragraph 2 of Rule 105.1 does not apply in this case. That provision covers arrangements for taking leave, whereas the complainant is seeking compensation for 65 days of accrued annual leave. Only paragraph 3 of that rule is relevant. By 28 February 2003 the complainant had accumulated 65 days of leave, from which 23 days of unauthorised leave were deducted. Since the balance of 42 working days amounted to less than the period of notice, no payment was due for accrued leave at the time his appointment came to an end.

The UPU considers moreover that the complainant's argument regarding the breach of Rule 105.1, paragraph 4, is not very clear but that in any case the above-mentioned 23 days constituted "absences contravening the applicable rules". Noting that the complainant disagrees with the calculation of the balance of the leave remaining at the end of his appointment, as contained in the decision of 29 November 2002, it asserts that since that particular decision is not at issue in this case his argument is unfounded. Moreover, the question of leave could be and was immediately settled in the decision of 29 November; only the payments resulting from the decision were spread out in instalments for the sake of fairness.

The defendant contends that, since the decisions taken in this case are lawful, the complainant cannot claim any compensation. Furthermore, he has failed to establish, even on a balance of probabilities, that he suffered any injury. His claims for the payment of damages are clearly abusive. Lastly, the UPU 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, in particular in terms of damage to its reputation, as a result of the complainant's behaviour. Considering the complaint abusive, it asks the Tribunal to order the complainant to pay the costs of the present proceedings.

D. In his rejoinder the complainant argues that the measures taken by the Administration with regard to the practical arrangements made for his dismissal did not merely confirm the decision of 29 November 2002. With regard to the charge that he extended his claims before the Tribunal, he maintains 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 full consequences, including the financial ones, of the choices it made.

The complainant deduces from the fact that the Union has produced many annexes that are unconnected to the subject matter of his complaint that it is trying to take advantage of the circumstances surrounding his separation from service in order to justify its fraudulent practices. He points out that the UPU refused him the benefit of Staff Regulation 9.14, paragraph 1, according to which "[i]f upon separation a staff member has accrued annual leave, he shall be paid in lieu thereof a sum of money equivalent to his salary for the period of such accrued leave up to a maximum of 60 working days". In so doing it subjected him to an "additional" disciplinary measure not provided for in Regulation 10.2, which left him in an unmanageable financial position.

Otherwise the complainant presses his pleas. He adds that there is no provision in the Regulations that authorises the Director General to deduct all or part of the period of notice from the leave accumulated by a staff member on separation. He denounces the Union's bad faith and maintains that the latter deliberately set out to humiliate him.

E. In its surrejoinder the defendant presses all its former arguments. It submits that, in ordering the complainant to take 25.5 days' leave, the Director General was acting in accordance with Rule 105.1. The order was justified insofar as the complainant was not entitled to carry forward more than 60 days' leave beyond 1 January 2003 and had also been suspended from duty.

CONSIDERATIONS

1. The complainant was dismissed by a decision of 29 November 2002. He was sent a final statement giving "details of the payment of [his] salary" for December 2002, January 2003 and February 2003 by a decision notified to him on 25 February 2003. He filed an internal appeal against that decision. In his tenth complaint before the Tribunal he challenges a decision of 12 May 2003 which, in accordance with the opinion of the Joint Appeals Committee of 6 May, rejected his internal appeal as irreceivable. He contends that the Union wrongly deducted 23 days of absence from the leave he had accumulated up to 28 February 2003 on the grounds that it considered that these days were improperly taken. In his view, the Administration could not lawfully deduct the remainder of his accrued leave from the three-month notice period that he had been granted. He also appears to complain that, by a decision of 11 October 2002, the Director General ordered him to take 25.5 days of leave by the end of the year, although on this point his claim is no different from one contained in his eighth complaint dismissed in Judgment 2397.

2. The UPU considers the complaint to be irreceivable on the grounds that the letter of 25 February 2003 merely confirms the contents of the decision of 29 November 2002. It argues that the practical arrangements made for the deductions from the complainant's pay do not make any difference to the figures mentioned in that decision.

3. The decision of 29 November 2002 stated as follows:

"[…]

3. After deduction of the 23 days of unauthorised leave and rest time from the 65 days of annual leave to which you would theoretically be entitled until the end of your appointment at the UPU, the outstanding balance of leave does not exceed the period of notice.

4. You are released from duty for the remainder of the working days you would still owe the organisation after deducting the balance of your annual leave.

[…]

The outstanding balance of your remuneration until 28 February 2003 will be shown in a separate statement by the Directorate of Human Resources. […]"

4. It is ascertained that the statement of account sent to the complainant on 25 February 2003 merely spells out the implications of the decision which had been notified to him on 29 November 2002. The latter decision could not be considered as final, however, since the complainant had expressly challenged it, in the circumstances described in Judgment 2398, even though he did not contest the details of the payments he still owed the UPU. This may be explained by the fact that the complainant was hoping to have the main points of the decision concerning his dismissal set aside.

5. As regards the defendant's challenge of the Tribunal's case law concerning the correction of complaints, the objection to receivability raised by the UPU calls for the same answer as that which is given in Judgment 2398.

6. The complaint is therefore receivable. But it is unfounded.

7. In maintaining that the defendant was wrong to deduct 23 days of leave which it alleges were improperly taken, the complainant is challenging the very facts which led the Director General to decide his dismissal, yet he submits no further element of a nature that could invalidate the conclusions reached by the UPU, which were accepted by the Tribunal in Judgment 2398.

8. The Union was therefore right to deduct those 23 days of absence from the complainant's accrued annual leave of 65 days, which comprised 60 days carried over from 2002 and five days due for the months of January and February 2003. Considering firstly that the complainant was given three months' notice which the organisation was not in the circumstances obliged to grant him, and secondly that he was authorised to stay away from work for those three months, the Administration could lawfully consider that the leave which he had accumulated did not need to be paid in addition to the salary he had received for the three-month notice period that followed the dismissal decision. This solution does not breach the provisions of the Staff Rules mentioned by the complainant or any general principle of the law of the international civil service.

9. As no abuse of authority has been established, the complainant's claim for the quashing of the impugned decision must be disallowed, as must his claim for the refund of sums allegedly owed to him, as well as his claim for damages. The defendant's counterclaim for the complainant to bear the costs of the proceedings is likewise dismissed.

DECISION

For the above reasons,

The complaint and the UPU's counterclaim are 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.