

*Registry's translation,  
the French  
text alone  
being authoritative.*

**105th Session**

**Judgment No. 2748**

The Administrative Tribunal,

Considering the second complaint filed by Mr A. J. against the Universal Postal Union (UPU) on 19 March 2007 and corrected on 4 June, the UPU's reply of 31 August, the complainant's rejoinder of 8 October and the Union's surrejoinder of 14 December 2007;

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 given in Judgment 2747 concerning the complainant's first complaint.

The complainant had been holding the post of Manager of the Programme "Postal Economics" at grade P 5 in the Economic and Regulatory Affairs Directorate since 1 September 2001 when he was informed in writing on 8 June 2006 that the Director General had decided to transfer him to the newly created post of Coordinator of the Programme "Acts of the Union" with effect from 1 August 2006. On 10 July 2006 the complainant applied for the grade P 5 post of Coordinator of the Programme "Economic Affairs", since he considered that the duties attached to this post matched those of his job at the time. On 23 August the Director General notified him that he had not been selected. On 20 September the complainant requested reconsideration of the matter. The Director General turned down this request on 6 October, pointing out that it was his prerogative to assign officials, according to their abilities, to any of the duties or posts in the International Bureau. The complainant filed an appeal against this decision with the Joint Appeals Committee. The Committee issued its report on 18 December 2006 in which it recommended that the Director General should maintain his decision. By a letter of 1 February 2007, the Director General followed this recommendation and maintained his decision to reject the complainant's candidature for the post of Economic Affairs Coordinator. That is the impugned decision.

B. The complainant states that the description of the post advertised does not comprise any new duty not initially included in or subsequently added to the job specification of the Postal Economics Programme Manager. Moreover, he emphasises that he has always carried out his duties to everyone's satisfaction, as the Director General expressly acknowledged in his letter of 6 October 2006. The complainant alleges that his transfer, which is the subject of his first complaint, and the subsequent advertising of the post he had been holding since 2001, albeit with a new title, were obviously not a response to objective needs, and he contends that the rejection of his candidature stems from an abuse of authority. In addition the complainant states that the Director General's main aim was to secure the appointment of one of his friends, whose experience is narrower than his own. He alleges that the successive decisions to transfer him and to advertise his post had the effect of excluding him from participating in important activities of the Economic and Regulatory Affairs Directorate.

The complainant requests the Tribunal to quash the decision of 1 February 2007 and to order the UPU to disclose his full personal file. He claims compensation for moral injury in the amount of 10,000 Swiss francs and a further 10,000 francs in costs.

C. In its reply the UPU challenges the receivability of the complaint, insofar as the complainant altered the amount of damages claimed when he corrected his submissions. It notes that the complainant has submitted a brief common to the three complaints which he filed together and infers from this that he would like them to be joined. It states its objection to this.

The Union explains the objective organisational reasons for the Director General's decision to create a new post and to transfer the complainant to it, emphasising that he was the official best qualified to hold the post, given its strategic and political nature and the level of responsibility involved. In its opinion, if the Director General could transfer the complainant to the new post in the higher interests of the Union, it could plainly advertise the post that the complainant had vacated. The UPU objects to the allegation that the Director General had found a job for a friend and it rejects the serious accusation of personal prejudice. Furthermore, the post was advertised in accordance with the Staff Regulations. In describing the complainant's new post, the Union emphasises that the purpose of the decisions which have been taken is not to exclude him from participating in important activities of the Economic and Regulatory Affairs Directorate.

D. In his rejoinder the complainant explains that he is claiming an overall sum of 10,000 Swiss francs in moral damages and 10,000 francs in costs for all three complaints pending before the Tribunal and that, if the Tribunal does not join them, this works out at 3,333.30 francs in compensation and the same sum in costs for each case.

The complainant notes that the UPU does not dispute the fact that his former post and the post advertised have the same job specification. He comments that the only reason put forward by the Union to justify the advertising of the post he had held since 2001 is the alleged need to transfer him to the post of Acts of the Union Coordinator. He maintains his allegations of abuse of authority and produces an internal memorandum of 2007 concerning the results of a working environment survey, which shows that he is not the only official to complain of favouritism.

E. In its surrejoinder the UPU maintains its position and denies the complainant's allegations.

## CONSIDERATIONS

1. The complainant's career path is set out in Judgment 2747, also delivered this day, to which reference should be made. The complainant impugns the decision of 1 February 2007 by which the Director General confirmed the appointment of another official to the post of Economic Affairs Coordinator and the rejection of the complainant's application for this post. His claims are set forth under B above.

2. As part of a restructuring exercise, the grade P 5 post of Economic Affairs Coordinator was advertised and the complainant was transferred to the post of Acts of the Union Coordinator (see the above-mentioned judgment).

The complainant applied for the advertised post by a letter of 10 July 2006. He was notified by letter of 23 August that he had not been selected. On 20 September he requested that the Director General review the decision to reject his application. By letter of 6 October the Director General informed him that he refused to review his decision. On 3 November 2006 the complainant filed an appeal against the Director General's refusal with the Joint Appeals Committee. In its report of 18 December 2006 the Committee recommended that the Director General maintain his decision, which he did on 1 February 2007.

3. The complainant requests the joinder of these proceedings with those concerning the other two complaints he filed on the same day. The Tribunal will not order such joinder for the reasons explained in Judgment 2747.

4. He asks the Tribunal to invite the Union to produce his full personal file. The Tribunal rejects this request without further examination because it "has consistently held that it will not order the production of documents on the speculative basis that something might be found to further the complainant's case" (see Judgment 2510, under 7).

5. The complainant submits that the rejection of his application for the post of Economic Affairs Coordinator "stems from abuse of authority on the part of the Director General". In his opinion the advertising of his former post, which had been given a new title, was obviously not a response to objective needs. He holds that he has shown, without ever being contradicted by the Director General or the Joint Appeals Committee, that the duties attached to the post of Economic Affairs Coordinator were identical to those of the post of Postal Economics Programme Manager; that most of these duties already formed part of the job specification drawn up in 2001 when he was appointed to that post; that the allegedly new duties not included in that job specification had already been entrusted to him in practice; and that he had always performed them to everyone's satisfaction, as the Director General expressly recognised in his letter of 6 October 2006.

He infers from the foregoing that the Director General's decision to advertise the post he had held since 2001, with

a new title but with an unchanged job specification, amounts to an abuse of authority and that the Director General was obviously determined to appoint a friend to that post. Moreover, he points out that the Director General has not refuted his comment that “from the point of view of the organisation’s interests, his experience acquired in that post made him preferable to the candidate who was ultimately selected”.

6. The Union replies that the complainant has been unable to furnish any proof that there were no objective grounds for advertising the post of Economic Affairs Coordinator, or for the selection of the successful candidate.

7. The Tribunal notes that in his internal appeal of 3 November 2006 the complainant challenged the Director General’s decision to reject his application for the post of Economic Affairs Coordinator and that, in recommending that the Director General should maintain that decision, the Joint Appeals Committee took the view that “[he] ha[d] complied with the procedures in force when appointing someone other than the [complainant] to the post of Economic Affairs Coordinator, as the latter had just been transferred from the post in question to that of Acts of the Union Coordinator”.

Since the Tribunal has decided, in Judgment 2747 on his first complaint, to quash the decision transferring the complainant to the post of Acts of the Union Coordinator, the *status quo ante* must be restored. The complainant must therefore be reinstated in his previous job irrespective of its title. There was therefore no reason to advertise the job of Economic Affairs Coordinator.

Hence the claim seeking the quashing of the decision not to select the complainant for the post which he held before the disputed transfer no longer shows any cause for action and there is no need to rule on it.

The appointee, who accepted his appointment in good faith, must be shielded from any injury which might ensue from the setting aside of the complainant’s transfer.

8. In the event that no joinder of proceedings is ordered, the complainant claims 3,333.30 Swiss francs in compensation for the moral injury suffered and the same amount in costs.

9. The Tribunal considers that the injury suffered by the complainant, which is conflated with that caused by his unlawful transfer, has been equitably compensated by Judgment 2747. Nevertheless, it considers it fair to award the complainant costs in the amount of 3,000 francs.

## DECISION

For the above reasons,

1. There is no need to rule on the claim that the impugned decision should be quashed.
2. The UPU shall pay the complainant costs in the amount of 3,000 Swiss francs.
3. All other claims are dismissed.

In witness of this judgment, adopted on 8 May 2008, Mr Seydou Ba, President of the Tribunal, Mr Claude Rouiller, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 9 July 2008.

Seydou Ba

Claude Rouiller

Patrick Frydman

Catherine Comtet

Updated by SD. Approved by CC. Last update: 14 July 2008.