

SIXTY-FIFTH SESSION

In re ODY

Judgment 928

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Miss Thérèse Ody against the Universal Postal Union (UPU) on 25 April 1988 and corrected on 2 May, the Union's reply of 2 August, the complainant's rejoinder of 14 September and the Union's surrejoinder of 11 October 1988;

Considering Article II, paragraph 5, of the Statute of the Tribunal, Regulations 9.1.1a, 9.1.3, 9.1.4, 9.4, 9.6.1, 11.1 and 11.2.1 of the Staff Regulations of the International Bureau of the UPU and Rules 104.5 and 112.5 of the Staff Rules;

Having examined the written evidence and disallowed the complainant's application for the hearing of witnesses;

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

A. The complainant, a Swiss citizen born in 1939, was granted a temporary appointment at the International Bureau of the Union in May 1971 as a shorthand-typist at grade G.2 and on 30 June 1972 a permanent one at grade G.3.

She was refused her step increment in 1977 because her services were unsatisfactory. From 1979 she was often ill. She was nevertheless promoted to G.4 in December 1984. On 9 June 1986, her supervisors having given her a bad report on 6 June that criticised in particular her low output, the Assistant Director-General proposed dismissing her in accordance with Regulation 9.1.1a "on the grounds of unsatisfactory services and for reasons of health". The Deputy Director-General agreed to termination in a minute dated 4 July. The Director-General warned her that her work would be "kept under review for six months".

Since her work had not improved, the Director-General decided on 21 May 1987, after consulting the Assistant Director-General and the Vice Director-General, to dismiss her. The head of Personnel saw her on 27 May, told her that the quality of her work and her output were "utterly inadequate" and suggested termination of her appointment by mutual consent. But the proposal came to nothing and in a letter of 17 June she objected to the appraisal of her performance. In a letter of 23 June the Director-General told her that he was starting the proceedings for termination for unsatisfactory services under Regulation 9.1.1a and asked her to state her views. She did so in a letter of 30 July to the Director-General. Her case was then put to the competent body, the Joint Advisory Committee. In its report dated 27 August the Committee was unanimous in recommending her dismissal on the grounds of unsatisfactory services. The staff representatives observed that some periods of service were apparently not covered by appraisal reports but the management representatives answered that her supervisors had time and again pointed out her shortcomings to her orally and that each of her reports covered the period since the date of the previous one.

By a letter of 4 September 1987 the Director-General informed the complainant that after consulting the Joint Advisory Committee he had decided to dismiss her on 15 December 1987. She wrote a letter of protest on 7 October, but on 14 October he confirmed his decision.

By a letter of 13 November the complainant lodged an internal appeal which was forwarded to the Joint Appeals Committee. In its report of 15 December the Committee held that the dismissal was warranted on the grounds of poor work and low output as borne out by many reports by her supervisors for over ten years. The Committee recommended that because of the complainant's age, the difficulty she would have in finding another job and her seniority the Director-General should negotiate termination of appointment by mutual consent including payment of the termination indemnity and the grant of a service certificate on condition that she waived any claim in law. But by a letter of 26 January 1988, the challenged decision, the Director-General informed the complainant that he stood by his decision. He added that in accordance with Regulation 9.6.1c he had decided that she would get no

termination indemnity.

B. The complainant denies that her work was poor. She maintains that the Union refused to give her enough to do, that she often had to ask for work, and indeed that she was not always allowed to carry out the duties she had been appointed to. She always got her step increments, except in 1977, when she was put on a post that did not suit her, and again in 1986, when she was ill. Though her capacity for work did decline, the reasons were an uncongenial atmosphere and difficult working conditions.

Her bad appraisal reports may not properly be held against her. They were not made in keeping with the prescribed procedure: contrary to the practice in other international organisations, they were not drawn up on standard report forms; nor were they all made known to her at the time, as Rule 112.5 requires. For example, the report written in 1977 was not shown to her until 1987. The quality of her work is just a pretext, the real reasons for her dismissal being reform of the structure of the Bureau entailing the abolition of her post, and her long illness, which was to some extent occupational. Her absences due to ill health, though justified, greatly influenced the decision which indeed was notified to her at a time when she was wearing a brace and therefore not fully able to work.

Her main claim is to the quashing of the dismissal and to reinstatement; her subsidiary claims are to the payment of 182,232.25 Swiss francs in termination indemnity; of 57,551.25 francs to her credit in the Social Fund; of a monthly allowance of 4,905.65 francs until she finds other full-time employment; of 7,500 francs in moral damages; of 750 francs to cover her own expenses and of 10,000 francs to meet her legal costs.

C. In its reply the Union gives an account of the complainant's career, explaining that although she was given several assignments so that she could improve, the quality and quantity of her work were well below par and she was off sick more and more often over the years. She was given promotion in 1984 as an incentive, but to no avail. She was offered termination by mutual consent, which would have given her the termination indemnity and a service certificate couched in indulgent terms. But she did not reply and the Director-General had no choice but to start proceedings for termination on the grounds of unsatisfactory services. She was dismissed after consultation of the Joint Advisory Committee. As the Joint Appeals Committee held, her first-level supervisors had for over 10 years been dissatisfied with her performance; her illnesses were not occupational; she was aware of the criticisms of her work; the Union was in no way at fault; and the dismissal procedure was correctly followed. Her dismissal was indeed due to her unsatisfactory performance and not, as she would have it, to any structural reform of the Bureau. The strict reporting practised in other international organisations is not suited to a small organisation like the Union.

As to the amounts she claims, since she did not agree to termination by mutual consent she is entitled neither to the termination indemnity nor to damages. Her entitlements from the Social Fund were as set out in a letter the Fund secretary wrote her on 27 October 1987. She has no right to any award of moral damages: in fact the Union showed forbearance and consideration.

D. In her rejoinder the complainant submits that the reason why she was promoted from G.2 to G.3 on obtaining her permanent appointment was that she had shown, to quote Rule 104.5, "the highest standards of efficiency, competence and integrity". She maintains that being assigned to duties she was not trained for disrupted her career, upset her and damaged her health. For example, her assignment to a finance section in 1975 was not a proper transfer; she was just a stand-in for someone else and the work made heavy demands on her. She presses her claims.

E. In its surrejoinder the Union seeks to refute several allegations of fact in the rejoinder. It develops its arguments on certain points and in particular maintains that it seriously considered termination by mutual consent, but that the complainant would have none of it.

CONSIDERATIONS:

The material facts

1. The complainant joined the staff of the Union in 1971 under a temporary appointment at grade G.2 and, upon being granted a permanent appointment in 1972, advanced to G.3, not by promotion as such, but because of a reclassification of her duties. By letters of 14 June 1977, 7 December 1982 and 13 December 1983 she was refused further advancement on the grounds that her work was poor, and when she did get promotion to G.4 in 1984 the

Union explained to her that it was despite her shortcomings and because of her age, her many years' service at low grades and a desire to afford her some incentive to improve.

Again a report dated 6 June 1986 stated that her work was not yet up to standard. The Assistant Director-General accordingly informed the Director-General on 9 June that in his view it was time to let her go. The Deputy Director-General agreed to her termination on 4 July 1986. The upshot was, however, that the Director-General informed her that her performance would be kept under review for six months.

On 19 January 1987 the Assistant Director-General and on 20 May the Deputy Director-General again recommended dismissing her, and on 21 May the Director-General gave instructions for her dismissal.

A letter of 23 June from the Director-General informed her of the intention of dismissing her and invited her to state her case. She did so on 30 July. Her case was referred to the Joint Advisory Committee, which includes four staff representatives. In its report of 27 August 1987 the Committee unanimously recommended dismissal for unsatisfactory services and the Director-General accepted its recommendation in his decision of 4 September. She wrote on 7 October seeking review of that decision, but he confirmed it on 14 October.

The complainant lodged an internal appeal on 13 November. In its report of 15 December 1987 the Joint Appeals Committee was unanimous that her dismissal was warranted and that there had been due process; and it was on the strength of that report that the final decision was taken on 26 January 1988.

Receivability

2. On 4 September 1987 the Director-General of the Bureau decided to dismiss the complainant. As is said in 1 above, she lodged her internal appeal on 13 November against that decision, but the Director-General confirmed it by his final decision of 26 January 1988.

3. The complainant has therefore exhausted the internal means of redress, as Regulation 11.2.1 of the Staff Regulations and Article VII(1) of the Tribunal's Statute require.

Moreover, since the final decision was notified to her on 29 January 1988 and she filed her complaint on 25 April 1988, she has respected the time limit of 90 days in Article VII(2) of the Statute.

The merits

4. According to Regulation 9.1.1a of the UPU Staff Regulations the Director-General, "giving his reasons therefor", may terminate the appointment of a permanent staff member whose services "prove unsatisfactory". Regulation 9.1.3 requires that an appointment shall be terminated with due regard to, among other things, "competence, efficiency and official conduct", and Regulation 9.1.4 that before terminating the appointment the Director-General shall consult the Joint Advisory Committee.

5. The grounds on which the complainant was dismissed were that her work had proved unsatisfactory, and they are stated in the decisions of 4 September 1987 and 26 January 1988. The Tribunal is satisfied on the ample evidence before it that for many years, indeed almost throughout her employment by the Union, the complainant's work was unsatisfactory and that the Director-General made a proper exercise of his discretion in deciding to dismiss her under Regulation 9.1.1a, the stated reasons being specific and based on accurate assessment of her performance.

The Tribunal is further satisfied on the evidence that her dismissal was not ordered on those grounds as a pretext to get rid of her because she was in poor health or because her post had been abolished. Although she was often off work for reasons of health and although the Union did carry out structural reforms, the decisive reason for her dismissal was the poor quality of her performance.

There is not a shred of evidence to suggest that in exercising his discretion under 9.1.1a the Director-General acted arbitrarily or committed any abuse or misuse of authority.

6. Furthermore, the dismissal proceedings fully respected the complainant's right to defend her interests, in particular in that the opinion of the Joint Advisory Committee had been sought and her appeal heard by the Joint Appeals Committee. The Union respected the safeguards in Regulation 9.4 for dismissal and in Regulation 11.1 for

the hearing of an internal appeal, and there is no procedural flaw that warrants setting the impugned decision aside.

7. Lastly, in his letter of 23 June 1987 to the complainant, which started the dismissal proceedings, the Director-General suggested termination by mutual consent, which would have entitled her to termination indemnity. But since she did not accept the proposal she is not entitled to the indemnity: no indemnity payments shall ordinarily be made to a staff member who is dismissed for unsatisfactory services, although he may still benefit, at the Director-General's discretion, under Regulation 9.6.1c.

In its report of 15 December 1987 the Joint Appeals Committee, though regarding the dismissal as correct, recommended that the Director-General negotiate with the complainant termination by mutual consent, including the grant of the indemnity. But in his letter of 26 January 1988 the Director-General told her that the payment of an indemnity was ruled out because of the reasons for her dismissal.

In so deciding the Director-General made a proper exercise of his discretion in the matter.

DECISION:

For the above reasons.

The complaint is dismissed.

In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, Tun Mohamed Suffian, Vice-President, and Mr. Héctor Gros Espiell, Deputy Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 8 December 1988.

(Signed)

Jacques Ducoux
Mohamed Suffian
H. Gros Espiell
A.B. Gardner