

SIXTY-NINTH SESSION

In re ENGVALL

Judgment 1051

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Lars Olof Engvall against the International Telecommunication Union (ITU) on 28 July 1989, the ITU's reply of 26 October, the complainant's rejoinder of 15 December 1989 and the Union's surrejoinder of 9 January 1990;

Considering Article II, paragraph 5, of the Statute of the Tribunal, Regulations 3.11.I.a) and former 3.11.II.C.1 and Rule 11.1.1.2a) and b) of the ITU Staff Regulations and Staff Rules;

Having examined the written evidence and decided not to order oral proceedings, which neither party has applied for;

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

A. A staff member of the ITU who is not locally recruited is entitled under Regulation 3.11 of the ITU Staff Regulations to an education grant for a child "in full-time attendance at a school, university, or similar educational institution". Regulation 3.11.II.C.1, which is about the amount of the grant, read at the material date as follows:

"In the case of attendance at an educational institution outside the area of the duty station, the amount of the grant shall be:

a) where the institution provides board for the child, the amount of the grant shall be 75 per cent of the cost of attendance and board in respect of expenses up to a maximum of 6,000 [United States dollars] per year, with a maximum grant of \$ 4,500 a year for each child.

b) where the institution does not provide board, the amount of the grant shall be a flat sum of \$ 1,500 for board plus 75 per cent of the cost of attendance in respect of expenses up to \$ 4,000, with a maximum total grant of \$ 4,500 a year for each child."

The complainant, a Swedish staff member of the Union, qualified for the payment of a grant for his son Markus, who in 1987-88 was attending a college for further education in Stockholm, the Norra Real School. The complainant accordingly put in a claim to the grant, which he said should be determined according to clause a) of 3.11.II C.1: in other words, he was seeking payment of 75 per cent of the costs of his son's "attendance and board".

It is not common practice in Sweden for educational institutions to provide board and lodging, and in a memorandum to him of 21 December 1988 the Chief of the Personnel Department pointed out that "only boarding facilities which have been certified and billed by the educational institution can be reimbursed in accordance with the relevant rules. In the case of your son I regret therefore that you will only be entitled to 75% of educational expenses and US\$1,500 flat rate up to a maximum of US\$4,500". The sums the complainant was entitled to were reckoned, not under clause a), but under clause b) of the Regulations, and he was paid those sums.

On 24 January 1989 the complainant wrote a letter to the Secretary-General of the ITU requesting review of that decision under Rule 11.1.1.2a) of the Staff Rules. The Secretary-General replied on 8 February rejecting his request and on 27 February he submitted an appeal to the Appeal Board under 11.1.1.2b). He provided certificates including one dated 30 January 1989 from the college in Stockholm which declared that "payment for boarding facilities for Markus Engvall ... at the home of [X] has been made by us in the form of a cheque" to cover the period from August to December 1988. In its report of 8 May 1989 the Appeal Board recommended rejecting his appeal but giving his case exceptional consideration since there was a precedent for doing so. By a memorandum of 12 May 1989, the impugned decision, the Secretary-General informed him that the decision of 21 December 1988 stood.

B. The complainant cites the case of another Swedish staff member who made a similar claim in 1982 and was

paid the education grant as reckoned in clause a) after supplying papers in support. He himself on 1 February 1989 supplied similar papers, namely the certificate from the college in Stockholm and a bill and a receipt from his son's landlord for payment for board and lodging. Yet the Secretary-General in his memorandum of 8 February 1989 merely remarked that the other case was not parallel, "the exceptional treatment having been justified on economic and other circumstances" which did not exist in the complainant's case. The complainant demurs on the grounds that there has been no inquiry into the "economic and other circumstances" of his own case.

In his submission the application of the rules on education grant should not be discriminatory and their effect should not vary from country to country. It is unfair that his son Markus should not get the same financial aid as another of his sons who is at school in England.

He seeks the quashing of the impugned decision.

C. The Union observes that, as the complainant has acknowledged and the certificates confirm, the college his son Markus was attending in Stockholm did not provide board and lodging for students. That being so, the material rule is clause b).

The rules have been in force in the ITU and in other United Nations agencies for over twenty years and have stood the test of time. They apply, without distinction, to children of officials studying in any country and are in no way discriminatory. The grant due for the complainant's other son was differently reckoned because the school in England finds lodgings for students and includes the cost of them and of lodging services in the fees it charges.

There are no grounds for preferential treatment. Though the records do not show why an exception was made in favour of the other Swedish official in 1982, he had a much lower grade than the complainant and that presumably explains the reference to "economic grounds".

D. In his rejoinder the complainant says that the University of Stockholm, which his son Markus is now attending, has agreed that the costs of board and lodging and administrative costs may as from August 1989 be charged directly to the University and he trusts that he will then qualify for payment under clause a). He nevertheless presses his claim, which relates to 1987-88.

He submits that it is immaterial how long the rules have been in force and that the reply does not take his point that the certificates he has offered are like those the other Swedish official had produced in 1982.

E. In its surrejoinder the Union observes that any arrangements the complainant may make with the University of Stockholm for the future are immaterial and that it has already answered his plea about the exceptional treatment of the other official.

CONSIDERATIONS:

1. The complainant, who is a Swedish citizen and is a member of the Technical Co-operation Department of the International Telecommunication Union, has a son Markus who was attending a college for further education in Stockholm. In 1988 he applied for an education grant for Markus for the school year 1987-88 and for an advance against the grant for 1988-89.

2. Regulation 3.11.I.a) of the ITU Staff Regulations reads:

"An education grant shall be available to a staff member who is not locally recruited and whose child is in full-time attendance at a school, university, or similar educational institution of a type which will, in the opinion of the Secretary-General, facilitate the child's re-assimilation in the staff member's recognized home country. ..."

At the material date the text of Regulation 3.11.II.C.1 was the following:

"In the case of attendance at an educational institution outside the area of the duty station ...

a) where the institution provides board for the child, the amount of the grant shall be 75 per cent of the cost of attendance and board in respect of expenses up to a maximum of \$ 6,000 per year, with a maximum grant of \$ 4,500 a year for each child.

b) where the institution does not provide board, the amount of the grant shall be a flat sum of \$ 1,500 for board plus 75 per cent of the cost of attendance in respect of expenses up to \$ 4,000, with a maximum total grant of \$ 4,500 a year for each child."

3. The Norra Real School in Stockholm, which Markus attended in 1987-88, does not provide board for its students.

The case of Markus therefore comes under 3.11.II.C.1b), which covers the contingency in which "the institution does not provide board".

4. The complainant submits that the case should nevertheless be treated under 3.11.II.C.1a) on the grounds that 1b) discriminates against citizens of a country like his own where schools hardly ever provide board. He also cites the case of another ITU official who was in circumstances like his own and who, he says, did get the benefit of 1a).

The answer to the first plea is that 3.11.II.C.1 is in no way discriminatory: the distinction it draws is between two contingencies that do occur and it lays down rules on payment that are calculated to make fair allowance for the difference between them and that apply the same maximum amount in all cases.

As for the other plea, the handling of the other official's case is an isolated instance that is irrelevant in determining how to apply the rules.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, the Right Honourable Sir William Douglas, Deputy Judge, and Mr. Pierre Pescatore, Deputy Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 26 June 1990.

Jacques Ducoux
William Douglas
P. Pescatore
A.B. Gardner