

**SEVENTY-SIXTH SESSION**

***In re* KIGARABA (No. 2)**

**(Application for execution)**

**Judgment 1310**

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for execution of Judgment 1228 filed by Mr. Richard Kigaraba on 3 August 1993, the reply of 6 September from the Universal Postal Union (UPU), the complainant's rejoinder of 30 September and the UPU's surrejoinder of 2 November 1993;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Rule 111.3 of the Staff Rules of the International Bureau of the Union;

Having examined the written submissions;

**CONSIDERATIONS:**

1. The complainant has been employed by the International Bureau of the Universal Postal Union (UPU) since 1983. He is now on a post as first secretary at grade P.3. Since 1990 he has been in dispute with the Union over the refund of expenditure in the 1989-90 school year on textbooks for his daughter and son.
2. Charges against him of having made a "false declaration" were referred to the Disciplinary Committee. The upshot was that on 13 November 1990 the Director-General ordered his "delayed advancement to the next salary step", a severer sanction than the "written warning" the Committee had recommended. On 21 December 1990 he appealed against the sanction to the Joint Appeals Committee. It too recommended a written warning, but by a decision of 19 April 1991 the Director-General upheld the sanction he had already imposed.
3. In an interlocutory judgment, No. 1188 of 15 July 1992, on Mr. Kigaraba's first complaint the Tribunal ordered the Union to produce the reports of the Disciplinary Committee and the Joint Appeals Committee. In Judgment 1228 of 10 February 1993 on that complaint it set aside the decision of 19 April 1991 and sent the case back to the UPU for a new decision on the grounds that the Joint Appeals Committee had failed to communicate the Disciplinary Committee's report to the complainant and had thereby infringed his right of defence.
4. On 12 March 1993 the Director-General sent him the report and invited him to lodge a new appeal. On 18 March he refused to do so, and the Director-General himself put the case to the Joint Appeals Committee. In a report of 18 June the Committee said that, since the complainant himself had lodged no formal appeal with it, it could not give an opinion on the case. The Director-General rejected that conclusion and on 14 July again called upon the Committee to take up the case.
5. Instead of awaiting the outcome of the proceedings the complainant came straight to the Tribunal by filing this complaint on 3 August 1993. The Committee commented again on the case in a note dated 20 August and in a report which was submitted to the Director-General on 27 September 1993.

**Receivability**

6. The complainant's main claims are to:

- (1) restoration of his right to step advancement as from 1 December 1990;
- (2) payment of a lump sum of 450 United States dollars against the cost of the textbooks for his children;
- (3) a fair award of damages for moral injury; and

(4) costs.

He makes subsidiary claims to damages for injury caused by the Director-General's refusal to take a new decision on his advancement, again with moral damages and costs.

7. The Union pleads that all his claims are irreceivable on the grounds that the quashed decision of 19 April 1991 must be replaced by a new one to be taken after due internal process, i.e. in accordance with prescribed UPU procedure and after the Joint Appeals Committee has again reported.

8. The plea succeeds. The Tribunal set aside the decision of 19 April 1991 because of the flaw in the Appeals Committee proceedings, namely the failure to disclose the Disciplinary Committee's report to the complainant. The effect of that was to restore the status quo ante. In other words, the Joint Appeals Committee still had before it the appeal which the complainant had filed on 21 December 1990, in accordance with Rule 111.3 of the Staff Rules, against the Director-General's decision of 13 November 1990. The proper execution of Judgment 1228 therefore required the Committee to take up that appeal once again. The complaint is therefore premature and irreceivable, and the claims fail in their entirety.

9. Besides, as the Union points out, he has put claim (2) - to the refund of the cost of the textbooks - for the first time to the Tribunal, and it did not specifically form part of any appeal to the Appeals Committee. For that reason alone it is in any event irreceivable because he has failed to exhaust the internal means of redress.

DECISION:

For the above reasons,

The application is dismissed.

In witness of this judgment Mr. José Maria Ruda, President of the Tribunal, Mr. Edilbert Razafindralambo, Judge, and Mr. Michel Gentot, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 31 January 1994.

(Signed)

José Maria Ruda  
E. Razafindralambo  
Michel Gentot  
A.B. Gardner