

EIGHTY-FIRST SESSION

In re SAUNDERS (No. 17)

(Application for review)

Judgment 1529

THE ADMINISTRATIVE TRIBUNAL,

Considering the application filed by Mr. Yann Harris Saunders on 22 August 1995 for review of Judgment 1421;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Article 7 of its Rules;

Having examined the written submissions;

CONSIDERATIONS:

1. The complainant, an official of the International Telecommunication Union (ITU), has lodged a series of complaints arising out of its decision to promote him at 1 January 1986 from a post in the General Service category of staff, at grade G.5, to one in the Professional category, at grade P.2. Because the pay of staff in the General Service category is expressed in Swiss francs, whereas the pay of Professional staff is set in United States dollars, the steady depreciation in the dollar against the franc since 1986 has had an adverse effect on the differential in pay between the two grades.

2. There is an explanation of the ITU's policy in Judgments 989, on Mr. Saunders' third complaint, under A, and 1093, also on his third complaint, under 5. Its Secretary-General set out the policy in a paper - CA 43/6729-E - submitted to its Administrative Council in 1988. The policy was to guarantee for staff promoted from the General Service to the Professional category that the salary differential resulting from the promotion would be equivalent to at least one step in the new grade as reckoned in local currency during the year following promotion. In Judgment 1093 the Tribunal held that that policy had been duly applied to the complainant in the year after his promotion, in which he had had an increase in pay higher than the equivalent of one step in grade P.2.

3. By 1991, however, he found that his pensionable remuneration at grade P.2 had fallen to a figure much lower than what it would have been had he not been promoted but had remained at grade G.5. He then asked that his pensionable remuneration be set at the higher figure. Rule 3.4.2.3 b) (formerly 3.4.2 c) of the ITU Staff Regulations and Staff Rules provides:

"Where promotion from the General Service category to the Professional category results in a decrease of a staff member's pensionable remuneration, he shall keep his pensionable remuneration at the level which it had reached immediately prior to the promotion, until that level is exceeded as a result of advancement or further promotion."

The question was whether that Rule applied only to an immediate fall in pensionable remuneration at the time of promotion, or also to a subsequent decline in pensionable remuneration in the new post below what it would have been but for the promotion.

4. On that issue the Tribunal held in Judgment 1171, on Mr. Saunders's sixth complaint:

"Since the complainant's promotion as from 1 January 1986 resulted in a decrease in his pensionable remuneration the Union was right to grant him the benefit of that rule. He was accordingly entitled to keep his pensionable remuneration at the level it had reached immediately prior to promotion until that level was exceeded as a result of advancement or further promotion. He may not properly object if since 1 January 1986 his pensionable remuneration has not increased, because he was appointed to P.2 at the highest step and has not received any advancement or further promotion since then."

5. In Judgment 1421 the Tribunal dismissed the complainant's ninth complaint, in which he applied for review of Judgment 1171.

6. In this complaint he is applying for review of Judgment 1421. He cites Judgments 257 (in re Grafström), 460 (in re Rombach) and 1370 (in re Sigrist) and contends that the Tribunal has not followed those precedents. In other words, what he is alleging is a mistake of law.

7. In Judgment 442 (in re de Villegas No. 4) and in many later judgments the Tribunal has declared an alleged mistake of law to be an inadmissible plea for review. To allow an application for review on the grounds that the Tribunal's legal reasoning was wrong would be to let anyone who was dissatisfied with a decision question it indefinitely in disregard of the res judicata rule.

8. The conclusion is that the application must be summarily dismissed as clearly irreceivable under Article 7 of the Tribunal's Rules.

DECISION:

For the above reasons,

The application is dismissed.

In witness of this judgment Sir William Douglas, President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Mark Fernando, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 11 July 1996.

William Douglas
Mella Carroll
Mark Fernando
A.B. Gardner