

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**M.**  
**v.**  
**ITU**

**134th Session**

**Judgment No. 4517**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms C. M. against the International Telecommunication Union (ITU) on 21 June 2021 and corrected on 2 August, ITU's reply of 9 November, and the email of 21 December 2021 by which the complainant informed the Registrar of the Tribunal that she did not wish to file a rejoinder;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

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

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

The complainant seeks restoration of her entitlements to healthcare and health insurance.

The complainant, who is 90 years old, is a former ITU staff member who retired in 1992. Owing to her frail health, she has lived in a nursing home in Switzerland since 2013. Between 2013 and 2019 the costs incurred were reimbursed by the successive health insurance funds to which ITU subscribed.

With effect from 1 January 2020, ITU joined the United Nations Staff Mutual Insurance Society (UNSMIS), thereby changing its health insurance partner once again. This resulted in a reduction in the level of benefits received by the complainant since accommodation, meals and

similar costs in nursing homes could no longer be reimbursed. Insured persons were notified of this change in health insurance cover in an email of 4 September 2019, and several information sessions (which could be attended remotely) were then held between September and November 2019.

After receiving the six-monthly statement of benefits and noticing a considerable difference in the amount reimbursed for accommodation in the nursing home compared to what had been received before January 2020, one of the complainant's daughters contacted the new insurance scheme on 2 June 2020. She stated that she did not understand this difference and that, as she was not responsible for the change in insurance scheme, the "error" in question should be corrected. On 10 June she was told that reimbursements were effected according to the new insurance scheme's internal rules, which excluded the costs of accommodation in nursing homes from the benefits covered.

On 27 June 2020 both the complainant's daughters wrote to the administration of ITU, in a letter they described as a "claim", asking it to find a solution to the worrying situation of their mother – whose state of health had made her completely dependent on accommodation and care provided in a nursing home – and to maintain her rights. As no response was received, on 26 January 2021 the complainant's counsel wrote to the Secretary-General seeking a final decision on the reimbursement and restoration of her client's healthcare and health insurance entitlements within a maximum of two months. She requested the same social care insurance coverage as before 2020 together with the reimbursement of costs not covered since January 2020. No reply was received to this request and, on 21 June 2021, the complainant filed a complaint with the Tribunal against the implied decision rejecting the request that arose, according to her, pursuant to Article VII, paragraph 3, of the Statute of the Tribunal.

The complainant asks the Tribunal to find that the decisions to change insurance schemes resulted in a violation of her acquired rights. On that basis, she requests that ITU be ordered to restore her entitlements as applicable before the change in health insurance scheme on 1 January 2020 and since her entry into a nursing home, to reimburse

all financial losses suffered since that change and to ensure that all her entitlements are covered by the new insurance scheme or, if they are not, that ITU compensate her for future loss. She also claims moral damages for the stress caused by the Organisation's conduct, which she assesses at 10,000 Swiss francs, and an award of costs.

ITU, which submits that the complainant has not exhausted internal remedies and has misinterpreted the exception under Article VII, paragraph 3, of the Statute of the Tribunal, asks the Tribunal to dismiss the complaint as clearly irreceivable and unfounded in any event.

#### CONSIDERATIONS

1. The complainant, a 90-year-old former ITU staff member, has lived in a nursing home in Switzerland since 2013. The file shows that, owing to her extremely poor health, she is entirely dependent on the care provided by such institutions.

Due to a change in ITU's health insurance partner, which took effect on 1 January 2020, the coverage of costs relating to residence in a nursing home considerably decreased compared to what was previously provided. In contrast to the relevant provisions of the previous health insurance schemes to which the Organisation had subscribed, the internal rules of the new partner, the United Nations Staff Mutual Insurance Society (UNSMIS), only provide for medical or paramedical care in nursing homes to be reimbursed, and not accommodation, meals and other non-medical costs incurred by residents in such homes.

On 21 May 2020 the complainant's daughters received the first notice of reimbursement from UNSMIS, which showed a reduction of almost half in the amount of reimbursement of the complainant's costs of residence in a nursing home, compared to the sum of approximately 5,600 Swiss francs which she had previously been paid monthly in this respect. They contested this reduction in benefits on her behalf in a letter sent to the Director of ITU's Human Resources Management Department on 27 June 2020.

The complainant now impugns before the Tribunal the implied decision of rejection which, she contends, arises under Article VII, paragraph 3, of the Statute of the Tribunal from the failure to reply to the “request for a final decision” put in a letter sent by her representative to the Secretary-General on 26 January 2021. In particular, she criticises what she considers to be a breach of her acquired rights and serious financial difficulties caused by the sudden change in the level of reimbursement of her costs of residence in a nursing home. She principally seeks restoration of her previous entitlements to reimbursement for the months since 1 January 2020 and for the future.

2. ITU submits that, under Article VII, paragraph 1, of the Statute of the Tribunal, the complaint is irreceivable because the complainant has not exhausted the internal means of redress available to her under ITU’s Staff Regulations and Staff Rules.

The examination of this objection to receivability, which is of crucial importance for the outcome of the present dispute, leads the Tribunal to make the following observations.

3. Contrary to what the complainant contends, the internal remedies provided for in Chapter XI of the Staff Regulations and Staff Rules are available to former staff members. While it is true that, as the Tribunal observed in Judgment 2892, considerations 6 to 8, and reaffirmed in several more judgments, only serving staff members previously had recourse to these remedies, in 2016 Staff Regulation 11.1 was amended specifically to extend access to former staff members. The previous case law is therefore obsolete and, in the present case, where the dispute concerns a decision dated 21 May 2020, the complainant was entitled to challenge that decision before ITU’s internal appeal bodies, which she therefore should have done, in accordance with the abovementioned Article VII, paragraph 1, of the Statute of the Tribunal, before filing a complaint.

4. In these circumstances, the complainant is mistaken in believing that she can impugn before the Tribunal an implied decision of rejection that allegedly arose under Article VII, paragraph 3, of the

Statute upon the expiry of the 60-day period following ITU's receipt of the abovementioned letter of 26 January 2021. Under the Tribunal's settled case law, the provisions of Article VII, paragraph 3, must be read in the light of paragraph 1 of that article and are not applicable unless, as required under paragraph 1, the official concerned has first exhausted the internal remedies available to her or him (see, in particular, Judgment 185 and Judgment 2631, considerations 3 to 5).

5. The complainant therefore had to challenge the adverse decision contained in the notice of reimbursement of 21 May 2020 by pursuing the remedies provided for in ITU's Staff Regulations and Staff Rules.

To that end, she ought to have first submitted a request for reconsideration of the decision under Staff Rule 11.1.2 and, if that request were rejected, brought the matter to the Appeal Board under Staff Rule 11.1.3.

It is undisputed that the internal appeal procedure was not completed.

6. However, the Tribunal observes that the first stage of the procedure was in fact initiated by the abovementioned letter of 27 June 2020, in which the complainant's daughters, acting on her behalf, challenged with ITU the reduction in the amount reimbursed for the nursing home's services.

Indeed, contrary to ITU's submissions, the letter in question, describing itself as a "claim", clearly sought a review of the impugned decision and set out the grounds therefor. It thus had to be regarded as a request for reconsideration within the meaning of the abovementioned Staff Rule 11.1.2.

Although it is true that the request was sent to the Director of the Human Resources Management Department and not to the Secretary-General as Staff Rule 11.1.2 requires, under the Tribunal's settled case law according to which rules of procedure must not be construed too pedantically, an internal appeal submitted to the wrong authority is not irreceivable on that account and it is for that authority, in such circumstances, simply to forward it to the one which is competent to

hear it (see, for example, Judgments 1832, consideration 6, 3027, consideration 7, or 3424, consideration 8(b)).

Furthermore, this request for reconsideration was submitted within 45 days of receipt of the notice of reimbursement of 21 May 2020, in compliance with Staff Rule 11.1.2(1).

7. The fact remains that, as the Secretary-General did not reply to the request for reconsideration within the 45-day time limit prescribed in Staff Rule 11.1.2(2), there was an implied decision of rejection. In order to pursue the procedure, the complainant should normally have challenged that decision under Staff Rule 11.1.3(7)(a) and (b) by lodging an appeal with the Chairman of the Appeal Board within 60 days of the date on which the implied decision arose.

Clearly that requirement was not met, given that the abovementioned letter of 26 January 2021 – assuming that it can be regarded as an appeal – was not, in any event, sent until long after that time limit had lapsed.

As it stands, the complaint must therefore be dismissed as irreceivable on the grounds that the complainant failed to exhaust the internal remedies provided for in the applicable Staff Regulations, it being recalled that, under the Tribunal's settled case law, to comply with this condition of receivability, the complainant must not only have exhausted the internal remedies but also duly complied with the applicable rules and time limits (see, for example, Judgments 1244, considerations 1 and 4, or 4101, consideration 3).

8. However, in the very specific circumstances of the case, the Tribunal considers that, in view of the complainant's advanced age and frail health, which plainly make it difficult in practice for her to access information concerning her rights, and the fact that, in this context, she could legitimately be unaware of the – still relatively recent – revision of the Staff Regulations extending the scope of the internal appeal procedure to former staff members, it was incumbent on ITU to ensure that the complainant was duly informed of the remedies and time limits for challenging the impugned decision, at least as from receipt of the

abovementioned letter of 27 June 2020. Although the Tribunal's case law does not ordinarily place such an obligation on organisations, ITU's duty of care towards this former staff member required it to provide her with the necessary information on this point (for a comparable case involving a failure to state the means of redress and applicable time limits in the notification of a decision sent to a former staff member with a serious disability, see Judgment 3012, consideration 6). That requirement was not met by ITU, since – somewhat shockingly from a human perspective – the Organisation simply failed to communicate with the complainant from the beginning of the present case and, in particular, did not reply to either of the abovementioned letters sent to it on her behalf.

In these circumstances, the Tribunal considers it appropriate, on an exceptional basis, to grant the complainant the opportunity to refer the matter to the Appeal Board within the 60-day period provided for in Staff Rule 11.1.3(7)(b), which will run from the date of the public delivery of this judgment (for a similar decision, see aforementioned Judgment 3012, consideration 6). Unless in the meantime the dispute is settled in another form, it will be for the complainant to lodge within this period an appeal with the Chairman of the Appeal Board challenging the decision implicitly rejecting the request for reconsideration submitted on 27 June 2020.

9. In view of the possible resumption of the internal appeal procedure or an amicable settlement of the dispute, the Tribunal considers it useful to point out, in the light of the highly specific circumstances of the case and by way of information only, that, under its case law, changes to rules or circumstances that cause a sudden reduction in a staff member or former staff member's financial resources may warrant at least partial compensation for the resulting injury, even where no criticism can be made of their legality as such, particularly in terms of respect for acquired rights. Under its duty of care, the organisation concerned is, as a rule, bound to ensure that the staff member concerned is not thereby forced suddenly to alter her or his standard of living or personal choices based on the legitimate hope that she or he will continue to receive the same resources as previously (see, in particular,

Judgment 4465, considerations 12 to 18, or Judgment 3373, considerations 5 to 11).

10. Lastly, in view of the complainant's advanced age, her state of health and the financial difficulties caused by the impugned decision, the Tribunal considers that it must recommend strongly that the competent bodies of ITU deal with the present case as soon as possible.

#### DECISION

For the above reasons,

1. The complaint is dismissed as irreceivable.
2. The complainant may refer the matter to the Appeal Board of ITU under the conditions set out in consideration 8 above.

In witness of this judgment, adopted on 29 April 2022, Mr Patrick Frydman, Vice-President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 6 July 2022 by video recording posted on the Tribunal's Internet page.

*(Signed)*

PATRICK FRYDMAN    JACQUES JAUMOTTE    CLÉMENT GASCON

DRAŽEN PETROVIĆ