

**SIXTY-THIRD SESSION**

***In re ZAYED***

**Judgment 868**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Ezzat Fayez Zayed against the Universal Postal Union (UPU) on 3 December 1986, the UPU's reply of 27 February 1987, the complainant's rejoinder of 26 March and the UPU's surrejoinder of 19 May 1987;

Considering Articles II, paragraph 5, and VII, paragraphs 1 and 2, of the Statute of the Tribunal, Regulations 3.4, 9.1, 9.5, 9.6 and 11.1 of the Staff Regulations of the International Bureau of the UPU and Rule 111.3 of the Staff Rules;

Having examined the written evidence and disallowed the complainant's application for oral proceedings;

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

A. The Arab Language Group of the Union is an autonomous body headed by the Secretary-General of the Arab Postal Union (APU), which is in Dubai, and it has its own budget. It is the Secretary-General of the APU that as "spokesman" appoints, promotes and dismisses the staff of the Group, and the Director-General of the International Bureau of the Union merely passes on his decisions to the staff.

The complainant, who was born in 1930, is an Egyptian. As a member of the Arab translation service of the Bureau in Berne he was an official of the Group. He began under a temporary appointment in 1976 as a translator and from 1 May 1979 he held a permanent one at grade P.2. In 1982 he asked for promotion and agreed to undergo a test. The Secretary-General of the APU found him well able to translate into French and Arabic and, with a letter of congratulation of 29 April 1983 from the Director-General of the Bureau, he was promoted to grade P.3 as from 1 January 1983.

In a letter of 11 October 1985, however, the Director-General told him his annual increment would be withheld from 1 January 1986 on the grounds of poor performance and he must take another test. He took it in the Secretary-General's presence during a session which the Executive Council of the Union held in April/May 1986. On 17 June the Director-General gave him written notice of a decision by the Secretary-General to dismiss him on 30 September 1986 in accordance with Regulation 9.1.1a of the Staff Regulations because his services were unsatisfactory. On 21 August he appealed to the Joint Appeals Committee. In its report of 10 September the Committee recommended settling with him unless he could be kept on until the age of sixty. But by a letter of 15 October 1986, the decision he impugns, the Director-General informed him that the Secretary-General had confirmed the decision to dismiss him.

B. The complainant observes that the Joint Appeals Committee held that evaluations of his work by the Secretary-General of the APU were inconsistent; that it was not made clear to him beforehand that the purpose of the test was to decide whether to keep him on; that the circumstances in which it took place were unsatisfactory; and that the Secretary-General overlooked his age and record of service. He submits that after ten years of rendering texts on postal matters anyone would have the right experience. If he could translate well enough by 1982 how could he not in 1986? It was wrong to test him after ten years' service, and unfair besides, because an employer can choose any text at all and use the results as a pretext for dismissal. He seeks the quashing of the dismissal and reinstatement, or else damages equivalent to what he would have got had he been kept on until the age of sixty.

C. In its reply the Union gives its own version of the facts and explains the relationship between the Group and the UPU. It says that the reason for taking the complainant on was not so much a belief in his skills at translation - he has no formal qualifications for it - as a wish to let him be with his wife, who was already on the staff. There was talk of letting him go in 1979, when savings were needed in the cost of translation, because he was incompetent

and rather lazy. Out of sheer kindness he was allowed to stay on in the hope that his work would get better, but it proved as careless and inaccurate as ever. That was why his step increment was blocked and he had to undergo the test. The circumstances he took it in were of the kind a translator is ordinarily expected to put up with. It showed up his shortcomings, especially his poor grasp of French.

The Secretary-General of the APU exercised his discretion correctly in dismissing the complainant. The promise offered by the test in 1982 which led to his promotion was not fulfilled: his work and even his attitude grew worse notwithstanding constant admonishment from his supervisors. All things considered, he was well treated.

D. In his rejoinder the complainant observes that Regulation 9.1.4 requires the Director-General to "obtain the advice of the Joint Advisory Committee" before terminating any appointment. The Committee was not consulted on his case and there was therefore a formal flaw.

His academic qualifications were, he submits, more than adequate, and anyway none of the other translators into Arabic at the Bureau had formal training in translation. He was not recruited for personal reasons - he was already living with his wife in Berne - but because the Secretary-General knew him to be qualified. The only reason why he was nearly dismissed in 1980 was that he is Egyptian and Egypt had been driven out of the APU in 1979. Why was he promoted in 1983 if his work was as poor as the Union makes out? And why should any employer keep an incompetent employee for ten years out of "sheer kindness"? There was nothing wrong with his work - let alone with his "conduct" - since he continued to get his yearly increments until 1985 and was chosen to attend a congress in Hamburg in 1984. As the Appeals Committee pointed out, the alleged findings of the 1982 and 1986 tests are contradictory. He was made to take the 1986 one in a meeting room in very difficult conditions. It is said he cannot translate into French, but United Nations translators are never expected to translate into languages other than their own.

The decision was taken for trumped-up reasons that are extraneous to the Union's interests. He presses the claims in his complaint. He also asks the Tribunal to award costs against the defendant organisation.

E. In its surrejoinder the Union enlarges on its arguments.

As to the allegation of a formal flaw it observes that the complainant was an official of the Group, not of the Bureau, and was dismissed by the Secretary-General of the APU, not by the Director-General of the Bureau: Regulation 9.1.4 therefore did not apply. The Regulations apply to translation staff only by analogy, and the Joint Advisory Committee does not advise the Director-General on the staffing of the Group. According to point 11 of the Executive Council's decision CE 7/1966 the conditions of service of translators fall within the language groups' exclusive competence.

The Union therefore asks the Tribunal to reject the complainant's claims in their entirety.

## CONSIDERATIONS:

### Competence

1. In accordance with Article II(5) of the Statute the Universal Postal Union has recognised the Tribunal's jurisdiction, which holds good for the Arab and other language groups of the Union as well.

Although the Union alone has personality in law and may defend a case before the Tribunal, the Director-General of the International Bureau does no more than to pass on to the staff member a decision taken by the spokesman of the Arab Language Group. Thus the decision impugned is a letter of 15 October 1986 from the Director-General which notifies to the complainant the decision taken by the spokesman of the Group to dismiss him.

The Tribunal is therefore competent to hear the complaints under Article II(5).

### Receivability

2. By a letter of 17 June 1986 the Director-General informed the complainant that the Secretary-General of the Arab Postal Union had decided to end his appointment on 30 September 1986. On 21 August the complainant lodged an internal appeal under Rule 111.3 of the Staff Rules against the decision notified on 17 June. The appeal was referred to the Joint Appeals Committee under Regulation 11.1 of the Staff Regulations. In its report of 10

September the Committee recommended "trying to find a solution agreed between the Group and Mr. Zayed ... unless it proves possible or acceptable to extend his appointment ... until he reaches the age of 60". But by the impugned decision of 15 October 1986 the Director-General told him that the Secretary-General of the Arab Postal Union upheld the earlier decision.

The complainant has thus exhausted the internal means of redress available to him under the Staff Regulations and therefore satisfied the requirement in Article VII(1) of the Statute.

The complaint was also filed, on 3 December 1986, within the time limit in Article VII(2).

It is therefore receivable. The material rules

3. The complainant submits that the decision of 15 October 1986 was in breach of the Staff Regulations of the Union.

The Union informed him by a letter of 15 July 1976 on his appointment to the Arab Language Group that the Staff Regulations and Staff Rules of the International Bureau of the Union would apply to him "by analogy" and that he would therefore have the same terms of service as the officials of the Bureau. Moreover, a letter of 19 April 1979 that informed him he would hold a permanent appointment from 1 May 1979 stated: "The material provisions of the Staff Regulations and Staff Rules of the International Bureau of the Universal Postal Union shall continue to apply to you by analogy and as they may be amended from time to time".

The Tribunal holds that the Staff Regulations apply by analogy in this case.

The merits

4. The Director-General's letter of 17 June 1986 informed the complainant that Regulations 9.1, 9.5 and 9.6 of the Staff Regulations applied by analogy in dismissing him.

5. Regulation 9.1 says that a permanent staff member may be dismissed where, among other reasons, "his services or his conduct prove unsatisfactory".

Although the reason is not explicit in the complainant's case the letter of 17 June 1986, which speaks of the results of the test the complainant had to take, and the impugned decision of 15 October 1986 imply that the reason was indeed unsatisfactory performance.

Regulation 9.5 prescribes notice of termination, and Regulation 9.6 the termination indemnity.

6. In a letter of 11 October 1985 the Director-General wrote to the complainant: "The spokesman of the [Arab Language Group] objects to the poor quality of your translations, particularly from Arabic into French, to your general lack of application and to your proneness to error. It has therefore been decided to stop your within-grade increments until further notice in accordance with Regulation 3.4 of the Staff Regulations, which applies to you by analogy".

The complainant later had to take a proficiency test in the course of a session of the Executive Committee of the Union in April/May 1986 and the result was described in the letter of 17 June 1986 as unsatisfactory.

7. Yet only a few years earlier the complainant had taken another test and in a letter of 15 November 1982 the Secretary-General of the Arab Postal Union had said the test had "given good results" and described him as "qualified to do translations into Arabic and into French". Moreover, his later promotion as from 1 January 1983 to grade P.3 suggests that at the time his work was found to be up to standard.

8. It is plain from the foregoing that in exercising his discretionary authority in this case the Secretary-General of the APU overlooked essential facts and that the impugned decision is therefore tainted with a fatal flaw.

As the Joint Appeals Committee held in its unanimous report of 10 September 1986, the inconsistent evaluations of the complainant's work by the spokesman of the Group cast doubt on the correctness of the decision to dismiss him on the grounds of unsatisfactory performance; the arrangements made for the later test were improper, and the importance of it was not clearly made known to him; and, thirdly, the spokesman of the Group disregarded his age

and earlier career in the Union.

9. The Tribunal will not replace an administration's opinion of a staff member's qualifications and performance with its own: according to Article II(5) of its Statute and established precedent it may do no more than determine whether the impugned decision was correct in law. It will therefore refer the case back to the Union for review by the spokesman of the Arab Language Group.

#### Costs

10. The complainant claims an award of costs. Since the impugned decision is set aside, he is entitled to an award, and the Tribunal sets the amount at 1,000 Swiss francs.

#### DECISION:

For the above reasons,

1. The decision notified by the Director-General's letter of 15 October 1986 is set aside.
2. The case is referred back to the Union for a new and properly substantiated decision which applies by analogy all the material provisions of the Staff Regulations of the Bureau.
3. The complainant is awarded 1,000 Swiss francs in costs.

In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, Miss Mella Carroll, Judge, 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 10 December 1987.

(Signed)

Jacques Ducoux  
Mella Carroll  
H. Gros Espiell  
A.B. Gardner