

**SIXTY-SIXTH SESSION**

***In re* RANAIVOSON**

**Judgment 976**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Henri Ranaivoson against the Universal Postal Union (UPU) on 15 November 1988 and corrected on 21 November, the UPU's reply of 16 February 1989, the complainant's rejoinder of 20 March and the UPU's surrejoinder of 24 April 1989;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Rule 107.19 of the Staff Rules of the International Bureau of the UPU;

Having examined the written evidence, oral proceedings having been neither applied for by the parties nor ordered by the Tribunal;

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

A. Rule 107.19.5b reads:

"in the case of authorized air travel of a staff member and his family members, the charges for unaccompanied shipment of baggage by sea or rail may be reimbursed up to a maximum of 50 kg [kilograms] or 0.35 m<sup>3</sup> [cubic metres] per person in respect of each journey. If the staff member does not make use of this option, he may obtain reimbursement of the charges for shipment of 10 kg of accompanied excess baggage in addition to the normal allowance by first class;"

Rule 107.19.7 further provides that:

"... conversion to air freight shall be authorized on the basis of one-half of the weight or volume of the authorized surface entitlement: (a) when a staff member elects to convert the whole surface entitlement to air freight ..."

The complainant, a citizen of Madagascar and member of the Union staff stationed in Berne, was granted home leave in 1987 in Madagascar for himself and for his wife and two children. The charge for transporting his baggage came to 4,757.25 Swiss francs, made up as follows:

on the outward journey to Madagascar:

for 294 kilograms of unaccompanied baggage by air freight: 3,226.45 francs;

for 19 kg of accompanied excess baggage: 821 francs;

on the return journey to Switzerland:

for 100 kg of unaccompanied baggage by air freight: 709.80 francs.

The Union repaid him the sum of 2,628.25 francs, made up as follows:

on the outward journey:

for 100 kg of unaccompanied baggage by air freight: 1,097.45 francs;

the full cost of the 19 kg of accompanied excess baggage: 821 francs.

on the return journey:

the full cost of the 100 kg of unaccompanied baggage by air freight: 709.80 francs.

The complainant having sought an explanation, the UPU confirmed the amount due in a letter of 3 March 1988, signed on the Director-General's behalf, which said that under 107.19.5b and 7a he was entitled, for each person and each journey, to the cost of (1) 10 kg of accompanied excess baggage by air and (2) 50 kg of unaccompanied baggage sent by sea or rail, or 25 kg sent by air freight, or else a further 10 kg of accompanied excess baggage. It was against the rules both to combine the weight allowances for the two journeys and to convert the allowance of the first 10 kg of excess baggage, if unused, into air freight or into unaccompanied baggage.

On 17 March 1988 the complainant appealed against the Union's reading of 107.19 and asked for review of the decision, but the Director-General confirmed it by a letter dated 6 June 1988. On 6 July the complainant appealed to the Joint Appeals Committee. In its report of 26 July the Committee recommended allowing his appeal, but by a letter to him of 18 August 1988, the decision challenged, the Director-General rejected it.

B. The complainant submits that according to 107.19.5b he and the three members of his family are entitled to the cost of transporting (a) 4 x 10 kg, or 40 kg, of accompanied baggage, the difference between the normal weight allowances of four passengers for air travel in first and economy class; and (b) a further 4 x 10 kg, or 40 kg, of accompanied excess baggage, the option allowed under 107.19.5b, making a total of 80 kg of accompanied baggage on the outward journey and the same on the return journey. His unused weight allowances for accompanied baggage are therefore 61 kg (80 less 19) for the outward journey and the full 80 kg for the return, or a total of 141 kg. Converting that weight of accompanied baggage into unaccompanied baggage by air freight, he makes a total of 352.5 kg (141 x 2.5). Since on the two journeys taken together he had a total of 394 kg unaccompanied baggage by air freight the sum he has to pay himself is the cost of sending only 41.5 kg (394 less 352.5) of unaccompanied baggage by air freight.

He believed in good faith that his unused entitlements to accompanied excess baggage would be converted into air freight and that the allowances for outward and return journeys would be combined, as indeed they had been when he had taken leave in 1985. The United Nations Office in Geneva allows conversion of the full excess baggage allowance and, for "hardship" posts, combination of the allowances for outward and return journeys. The International Telecommunication Union (ITU) has a rule that the staff member will recover the cost of sending 35 kg of unaccompanied baggage by air freight if he has not used his entitlement to excess baggage. The rules in the UPU do not expressly preclude such a practice. The Union has in fact changed its interpretation of the rule without informing the staff and unbeknownst to him, and the new interpretation should not apply as from 1987.

He asks the Tribunal to quash the decision of 18 August 1988 and award him the cost of transporting 352.5 kg of baggage by air freight, or 1,673.55 Swiss francs, and his costs.

C. The Union replies that the repayment it made to the complainant for his home leave in 1987 is in keeping with the rules in force. Though not expressly authorised by those rules, the conversion of the accompanied excess baggage allowance into air freight squares with practice in the United Nations in Geneva and the ITU: it holds good for the first 10 kg of excess baggage, but only if the staff member has not used his entitlement to excess baggage on the journey. So conversion could not be allowed on the complainant's outward journey, whereas on the return the matter did not arise since he did not exceed the maximum allowance of unaccompanied baggage by air freight.

Neither do the rules allow the combination of baggage allowances for outward and return journeys. The allowances in 107.19 apply "per person in respect of each journey" and are to be reckoned separately for the outward and for the return journey. Contrary to what the complainant submits, the United Nations Office in Geneva and the ITU do not allow such combination, and though the former makes an exception for hardship posts Berne is not one of them.

As regards its earlier practice, the Union observes that only the complainant and one other staff member have had preferential treatment on home leave. A service minute, No. 25/1985 of 13 May 1985, informed the whole staff that the Union was to enforce its written rules strictly and that any application for a derogation would call for a management decision. So there was no new interpretation of the rule in 1987, just a strict application of 107.19, and the complainant had no right to the continuance of a practice at odds with the rules in force. Since he presented the Union with a *fait accompli* he cannot be deemed to have been in good faith.

D. In his rejoinder the complainant enlarges on his arguments about the good faith of his claim, which he founds on

UPU practice, pointing out that he never relied on any particular provision of the Staff Regulations or Staff Rules. In his submission restrictions on conversion into air freight and on the combination of weight allowances for two journeys were not issued until 14 December 1988, when the Bureau published administrative circular No. 10 (Add. 4). That circular informed the staff of the new interpretation to be put on 107.19 and may not apply retroactively to his case. Service minute No. 25/1985 gives no clear information about any change in practice.

E. In its surrejoinder the Union submits that the impugned decision is strictly in keeping with the rules in force and with practice at the United Nations in Geneva and at the ITU. All that the circular of 14 December 1988 did was to make quite clear to the staff rules that were already in force: there is no question of retroactive application. Weight allowances have never been combined for two journeys: a few exceptions to that rule were allowed in favour of the complainant and another official, but since 1985 none has been authorised. CONSIDERATIONS:

1. The material issue is whether in reckoning the amount to be refunded to the complainant towards the cost of transporting his baggage when he took home leave in 1987 the Universal Postal Union should have converted his unused allowance of excess baggage into air freight ("conversion") and combined his baggage allowances for the outward and the return journeys ("combination"). The Union rejects his claim on the grounds that there is no provision for such conversion or for such combination.

2. The complainant's case is that until 1987 the Union's consistent practice was to authorise conversion of the first 10 kg of excess baggage into 25 kg of air freight and pay the difference between the baggage allowances for economy-class and first-class passengers and to combine the allowances for the outward and the return journey. In his submission the Union's new interpretation of the rules should not be retroactively applied to his detriment because he did not know about it but acted in good faith on the strength of the old interpretation.

3. The Union concedes that on three home leave trips the complainant did get what it calls a "double privilege", presumably meaning thereby that until 1987 he was allowed the benefits of both conversion and combination. But it argues that that was not a practice and that even if it had been it would have been against the rules, which allow neither conversion nor combination. It adds that its own rules are patterned on those of the International Telecommunication Union and of the Office of the United Nations in Geneva, which do not provide for combination.

#### Conversion

4. Rule 107.19.5(b) of the Staff Rules of the International Bureau of the Union reads:

"in the case of authorized air travel of a staff member and his family members, the charges for unaccompanied shipment of baggage by sea or rail may be reimbursed up to a maximum of 50 kg or 0.35 m<sup>3</sup> per person in respect of each journey. If the staff member does not make use of this option, he may obtain reimbursement of the charges for shipment of 10 kg of accompanied excess baggage in addition to the normal allowance by first class."

Rule 107.19.7(a) provides that conversion of the 50 kg to air freight "shall be authorized on the basis of one-half of the weight or volume of the authorized surface entitlement when a staff member elects to convert the whole surface entitlement to air freight".

5. Conversion is therefore allowed under the UPU rules, and it is the option the complainant chose.

The evidence also shows that the Office of the United Nations in Geneva does allow conversion to air freight of all or some of the unused excess baggage allowance, even though it does not allow combination.

So the practice of conversion which the complainant is relying on and which was followed when he took home leave before 1987 is both recognised by the United Nations in Geneva and fully in keeping with the Union's own rules.

#### Combination

6. Combination is a different matter and, as the Union says, is not covered by its rules. That is why after issuing service minute No. 25/1985 on 13 May 1985, it allowed the complainant only conversion when he took home leave in 1985. Indeed he does not take issue with it on the point.

7. As to his contention that practice comprised both conversion and combination and that he benefited therefrom until 1985, the Tribunal is satisfied that, as the Union says, that was a "double privilege" granted to the complainant, but it was not a practice binding in law. Yet, as the Joint Appeals Committee acknowledged, he acted in good faith, and when he went on home leave in 1987 was free to assume, for want of clear and explicit instructions to the contrary, that as in the past he would at least get the benefit of a favourable interpretation of the rules on conversion.

The only text that precludes conversion is administrative circular No. 10 (Add. 4) of 14 December 1988, which bans both conversion and combination. But since it was issued after the date of the impugned decision it can have no effect on the lawfulness of that decision.

8. The impugned decision must therefore be set aside but only insofar as it refused conversion to air freight of the complainant's unused excess baggage allowances on the outward journey.

#### DECISION:

For the above reasons:

1. The Director-General's decision is quashed insofar as it refused conversion to air freight of the complainant's unused excess baggage allowances on the outward journey.
2. The Union shall pay the complainant the value of his unused entitlements to excess baggage converted to air freight on the outward journey.
3. It shall pay him 2,000 Swiss francs in costs.
4. His other claims are dismissed.

In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Edilbert Razafindralambo, Deputy Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 27 June 1989.

(Signed)

Jacques Ducoux  
Mella Carroll  
E. Razafindralambo  
A.B. Gardner