

G. (No. 8)

v.

UPU

132nd Session

Judgment No. 4438

THE ADMINISTRATIVE TRIBUNAL,

Considering the eighth complaint filed by Mr D. G. against the Universal Postal Union (UPU) on 14 December 2020 and corrected on 14 January 2021;

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

Having examined the written submissions;

CONSIDERATIONS

1. In Judgment 3928, delivered in public on 6 December 2017, the Tribunal examined the complainant's claims regarding the abolition of his post and the termination of his employment. The complainant was successful, the post abolition decision and the termination decision were set aside, the Tribunal ordered the UPU to reinstate the complainant and awarded him moral damages and costs.

2. Following the public delivery of that judgment, during a discussion in the Council of Administration in April 2018, certain statements were made by the Director General and by the UPU's Legal Adviser, amongst others, which the complainant describes as defamatory and calumnious. The complainant initiated an internal appeal in which he primarily sought compensation for the resulting damage to his reputation. In August 2020 he filed his seventh complaint with the Tribunal, impugning what he considers to be the implied rejection of that appeal.

However, on 17 September 2020 the Director General rejected the appeal by an express decision, which the complainant impugns in these proceedings. In the present complaint, the complainant claims compensation for moral harm caused by the aforementioned statements.

3. In the impugned decision, the Director General endorsed the recommendation of the Appeals Committee and pointed out that the issue of the alleged defamation had already been discussed before the Tribunal, which had awarded moral damages on that account in Judgment 4077.

4. This observation is correct. In Judgment 4077, dealing *inter alia* with the complainant's application for execution of Judgment 3928, the Tribunal noted, in consideration 5, that the complainant asked the Tribunal, among other things, "to order the UPU to provide him with a written apology acknowledging the falsity of the allegations made by the Director General and the Legal Adviser against him during the meetings of the Council of Administration of 23, 24 and 27 April 2018 [...]". The Tribunal found that the UPU's delay in fully executing Judgment 3928 had caused the complainant moral injury for which it awarded him damages. In consideration 25 of Judgment 4077, the Tribunal stated:

"[...] In awarding moral damages the Tribunal takes into particular account the following: [...] the misleading presentation by the International Bureau of the case to the Council of Administration, alleging misconduct on the part of the complainant as well as noting his complaints to the Tribunal as reasons for not wanting to reinstate him. The proper exercise by a staff member of her or his right to bring a complaint to the Tribunal should not be held against her or him or found criticism of her or his conduct. Moreover, the International Bureau could not refer to the complainant's alleged misconduct as a reason not to reinstate him as no disciplinary proceeding has occurred in that regard, so misconduct has never been proven. It is all the more grave when considering that the alleged reason for the abolition of the posts was because of financial constraints. The abolition of a post can never be based on a staff member's conduct, as that would constitute a hidden sanction. The International Bureau's presentation before the Council of Administration constituted a breach of the duty of care and of the adversarial principle, as the complainant was not given any opportunity to defend himself and his reputation from the allegations. The UPU must respect the dignity of its staff and preserve their reputation."

The harm resulting from this behaviour was taken into account by the Tribunal in its award of 25,000 Swiss francs for moral damage.

5. In light of the above, the Tribunal considers that the complainant's claims related to the statements made before the Council of Administration have already been ruled on by the Tribunal. As the Tribunal's decision in Judgment 4077 has *res judicata* authority, the issue cannot be reopened in new proceedings. It follows that the present complaint must be summarily dismissed in accordance with the procedure set out in Article 7 of the Rules of the Tribunal.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 14 June 2021, Mr Patrick Frydman, President of the Tribunal, Ms Dolores M. Hansen, Vice-President of the Tribunal, and Mr Giuseppe Barbagallo, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 7 July 2021 by video recording posted on the Tribunal's Internet page.

PATRICK FRYDMAN

DOLORES M. HANSEN

GIUSEPPE BARBAGALLO

DRAŽEN PETROVIĆ