

TIP OF THE MONTH

July 2007

ILOAT UPHOLDS ITU STAFF REGULATIONS AND RULES DISCRIMINATING BASED ON FAMILY STATUS AND SEXUAL ORIENTATION

On 11 July 2007, the ILO Administrative Tribunal issued its rulings for the 103rd session: not good news for staff members who work for organizations that discriminate on the basis of family status and sexual orientation. The case (Judgment No. 2643) involved a staff member (a British citizen) of the ITU who entered into a Civil Solidarity Pact under French law in 2003. In 2004, Great Britain passed a reciprocity law which gave such Pacts the legal status as parties to a civil marriage. In 2005, he made a request for home leave for his partner as an “accompanying dependant”. The request was rejected on the grounds that the staff regulations and rules clearly defined the term spouses as pertaining to a “conventional marriage in its traditional form, i.e., between two persons of opposite sex”. The internal appeal board noted that the issue of same sex partnerships and discriminatory treatment had been resolved by the UN and other international organizations, and that the Secretary-General should refer the matter to the ITU Council leading “rapidly to an amendment of the Staff Rules so as to afford the requisite protection against any form of discrimination on family status and sexual orientation.” The Secretary-General rejected the appeal without addressing the recommendations of the appeal board.

The Tribunal held that the Secretary-General was bound to apply the regulations and rules as they stand, and therefore the decision “cannot be held to be discriminatory”. The Tribunal set aside the decision since the Secretary-General did not address the appeal board’s recommendation to refer the matter to the ITU Council: small comfort for the staff member.

The Tribunal has thus settled the question whether a general principle of law (non-discrimination) will trump the internal law of an international organization; at least in the area of family status and sexual orientation. The Tribunal makes it clear by this conservative ruling that it will not legislate for international organizations and that it will limit its review to the language contained in the staff regulations and rules. The ruling does not affect organizations who have adopted the UN policy and/or that have not defined the term spouse in their regulations and rules. (For more information, see my *April 2007 Tips and Information Newsletter* available on my website).

I am pleased to report on two (2) other cases decided by the Tribunal where I represented the complaining staff members.

First, in Judgment No. 2662, the Tribunal reversed the decision of the former Director-General of UNIDO to change the release of the former Staff Council President in 2003 from full-time to half-time without first consulting staff representatives. UNIDO had argued that

the issue was essentially a political issue that could not be decided by the Tribunal, and that the President had failed to invoke purportedly mandatory consultative procedures with respect to release of staff representatives. On the merits, UNIDO argued that the correspondence between the Staff Council and the administration officials after the decision was taken satisfied the duty to consult. The Tribunal found a breach of the freedom of association, and in order to send a signal that it was not pleased with UNIDO's behaviour it awarded €15,000 in moral damages to be paid within 21 days of its judgment, and €5,000 in costs. This case will be revisited in part when the Tribunal decides whether the decision also constituted a pattern of harassment, intimidation and retaliation against the former President for among other things assisting staff members with their appeals. A decision on this follow-up appeal is expected in 2008.

Second, in Judgment No. 2643, the Tribunal held that the CTBTO had not followed several written administrative procedures relating to a staff member who joined the organization in 2002 and had requested upon taking up the post an updated job description. The CTBTO argued that the delay in completing the job description (it was never completed) was justified and that the issue was rendered moot because the staff member separated from service before the process could be completed. It also argued that the classification consultant reached the proper results even though the desk audit was not completed and the job description was not updated. The Tribunal reaffirmed the principle that former staff members retain the right to challenge administrative decisions affecting their employment: to "accept that the Commission has no obligation to deal with the complainant's request would be to set a precedent encouraging organisations to ignore the claims of their employees until the date of their separation in order to avoid dealing with any problems submitted to them." The Tribunal also found that the classification consultant based the review on an incomplete desk audit and an incomplete job description, and therefore the assessment was not valid. The Tribunal remitted the case to the organization to "review the complainant's job description and reassess the classification of the complainant's post in accordance with the rules, standards and procedure that were applicable at the time the request was made in 2002." It awarded €10,000 in moral damages and €3,000 in costs.

* I specialize in the representation of international civil servants, and serve as legal advisor to several staff unions/associations of international organizations, some of which are based in Vienna, Austria. For further information, please send me an e-mail or visit my website.