

## SEVENTIETH SESSION

### *In re* UNNINAYAR (No. 2)

#### (Application for interpretation)

#### Judgment 1064

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for interpretation of Judgment 972 filed by Mr. Sushel Unninayar on 3 April 1990, the reply of 2 May from the World Meteorological Organization (WMO), the complainant's rejoinder of 6 June and the WMO's surrejoinder of 10 July 1990;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written evidence;

#### CONSIDERATIONS:

1. This is an application for the interpretation of point 2 of the Tribunal's decision in Judgment 972, which reads:

"The Organization shall pay the complainant the equivalent of two years' salary and allowances at the rates that obtained at the date of his separation as damages for material injury."

The Organization contends that the term "rates" refers to the rate of exchange between the United States dollar and the Swiss franc, whereas the complainant argues that it refers to rates of salary and allowances.

#### Receivability

2. The Organization submits that the application was not made in time: Judgment 972 was delivered on 27 June 1989 and the complainant did not file his application until 3 April 1990. In the Organization's view ninety days should be considered a reasonable time.

In determining what constitutes a reasonable time the Tribunal will look at the circumstances in which the claim is made. The Organization paid into the complainant's account on 24 July 1989 what it considered to be the principal sum due. It forwarded a reckoning of that sum to the complainant's counsel on 20 September 1989 and counsel protested on 13 December 1989 that it was wrong. On 14 February 1990 the Organization informed counsel that it maintained its position and the complainant filed his application on 3 April 1990.

No time limit is set in the Statute of the Tribunal or in its Rules of Court for the filing of such an application. In Judgment 538, (*in re* Djoehana No. 2), for example, the Tribunal granted an application filed on 2 April 1982 for interpretation of a judgment it had delivered on 13 November 1978.

In the instant case the complainant is not guilty of such delay as to make his application irreceivable.

3. The Organization raises the further objection that, according to what the Tribunal said in Judgment 802 (*in re* van der Peet No. 10), an application for interpretation is receivable only if the operative part of the judgment is ambiguous or otherwise unclear.

The present application is about the meaning of the term "rates" and therefore qualifies under the rule as stated in that judgment.

#### The merits

4. The complainant's salary and allowances were denominated in United States dollars and during his employment with the WMO he had them converted into Swiss francs and paid into his salary account at a Geneva branch of a Swiss bank. On 28 June 1989 his counsel instructed the Organization to pay the amounts due to him under Judgment 972 into that account.

In the absence of any stipulation that the amount due under point 2 of the Tribunal's decision should be paid in United States dollars and of any indication that the complainant's account was or had become a dollar account, the only reasonable interpretation to be put on counsel's instructions was that the amount should be paid in Swiss francs. That view is borne out by the fact that counsel drew no distinction as to the method of payment between what was due in damages for material injury and what was due in damages for moral injury, the latter sum being stated in Swiss francs in point 3 of the Tribunal's decision.

The only meaning the term "rates" in point 2 can bear is "rate of salary" and "rate of allowances". Nowhere in the judgment is there any allusion to a "rate of exchange", and the clear intent is that the complainant should receive by way of damages for material injury a lump sum to be calculated by reference to the salary and allowances he was entitled to at the date of separation.

Judgments speak from the date at which they are delivered and, to comply with point 2 of the decision, the Organization was under an obligation to pay the complainant a lump sum totalling "two years' salary and allowances" in the currency in which his salary and allowances were denominated, converted on his instructions into Swiss francs at the rate of exchange prevailing at 27 June 1989, the date of the judgment.

#### DECISION:

For the above reasons,

1. The Organization shall reckon the amount due to the complainant as set out in 4 above.
2. It shall pay him interest on the amount not yet paid at the rate of 10 per cent a year from 24 July 1989 up to the date of payment.
3. It shall pay him 5,000 Swiss francs in costs.

In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, Tun Mohamed Suffian, Vice-President, and the Right Honourable Sir William Douglas, Deputy Judge, have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 29 January 1991.

Jacques Ducoux  
Mohamed Suffian  
William Douglas  
A.B. Gardner