

EIGHTY-SIXTH SESSION

In re Weiss (No.2)

(Application for execution)

Judgment 1797

The Administrative Tribunal,

Considering the application filed by Mr. Gian Mario Weiss on 30 April 1998 for the execution of Judgment 1632, the reply of the World Health Organization (WHO) of 16 July, the complainant's rejoinder of 26 August, the Organization's surrejoinder of 19 October, the complainant's further brief of 30 October and the Organization's comments thereon of 12 November 1998;

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

Having examined the written submissions;

CONSIDERATIONS

1. This is an application for the execution of Judgment 1632. The relief that it granted to the complainant was either reinstatement or an award of damages. According to 23, if the Organization reinstated him it was to pay the salary, allowances and benefits due under his contract less any indemnity or earnings he might have received or would receive until either his appointment was terminated on completion of the reduction-in-force procedure or he was redeployed under that procedure. According to the alternative option set out in 24 the Organization was to pay him damages equivalent to the same amounts, but without actually reinstating him, and carry out the procedure under the same conditions. He was also awarded interest at the rate of 8 per cent a year on the sums due and 2,000 Swiss francs in costs.

2. He now seeks the following relief:

(1) reinstatement as the "first step of the execution";

(2) recognition of "excessive and unjustified delay" in carrying out the reduction-in-force procedure, "resulting practically in a renewed termination, without a prior reinstatement";

(3) compensation for "the inordinate delay" in execution;

(4) "prompt payment" of arrears, including the WHO's contributions for him to the United Nations Joint Staff Pension Fund; and

(5) "reconsideration by the WHO Management of a new appointment for ... reinstatement in a multi-programme user-oriented service".

3. Judgment 1632 was delivered on 10 July 1997. The Director of the Division of Personnel wrote to the complainant on 30 July to say that "immediate action" was "being taken" to pay the award of costs but that there were "a number of issues which must be examined and determined before any further actions are taken". The Director wrote again at length on 19 November 1997 to say that he would be "included in a reduction-in-force (RIF) exercise, in accordance with WHO Manual II.9.280-375"; "in carrying out the RIF procedure, offers of reassignment are made first, where possible, in accordance with ... II.9.290"; he would "soon receive post descriptions or copies of vacancy notices for all posts available for reassignment" at his grade "and below" and should then "indicate, in order of preference", the posts he wanted to be considered for; if unsuccessful at that stage, he would "take part in a competition" as a "candidate for retention (WHO Manual II.9.300)"; and, if successful, he would be "reinstated against an unassigned post", as from 1 June 1995 and until the date of reassignment to his new post, on "full pay status" at the grade and step he would have reached had he stayed with his old unit, the Programme on Substance Abuse, beyond May 1995. The Director went on to explain that, if altogether unsuccessful in the procedure, he would be paid the damages due as from 1 June 1995 - net basic salary

and post adjustment, dependent child and language allowances - less any occupational earnings; but the damages would not "entail reinstatement" in the Pension Fund or in health and accident insurance.

4. By a letter of 23 December 1997 the Director sent him "vacancy notices and/or post descriptions", asked him to state in order of preference the posts he was interested in, and again told him that, if unsuccessful, he would "take part in a competition" as a "candidate for retention (WHO Manual II 9.300)".

5. By a letter of 20 March 1998 the Director told him that he would get no offer of reassignment but had become a "candidate for retention in the competition phase of the Reduction-in-Force exercise". The Director wrote again on 30 March to say that, having got no offer of a post in the same occupational group as his old post, he could ask the Reduction-in-Force Committee for leave to "compete for posts in a different occupational group", but would be considered only if "obviously well-suited for work" in that group. He might compete for posts in more than one group, but must then list the groups in order of preference. It was, said the Director, "essential" for him to know the complainant's wishes by 2 April. The deadline was extended to 6 April and by a fax letter of that date the complainant asked for leave to compete for posts in four other occupational groups.

6. The Director sent another letter on 16 April 1998. The Reduction-in-Force Committee had, he said, found the complainant "obviously well-suited" for work in only one of those groups; but, having applied the procedure set out in Manual paragraphs II.9.330 to 350, the Committee had found him "unsuited for posts" available in that group at the grade he had held in his old unit at 31 May 1995 and there was none at one grade lower in that group; for him the whole exercise was over and, not being reinstated, he would get the award of damages instead.

Claim (1)

7. The complainant argues that the facts of his case do not warrant applying to him the alternative option the Tribunal offered in Judgment 1632 under 24. He says that posts in the Programme on Substance Abuse did not - to quote the term in 24 - suffer "decimation". To his mind the sequence that the judgment required was, first, his reinstatement and payment of the sums due under 23, then the application of the reduction-in-force procedure. Instead the Organization began by applying the procedure. It failed to explain which option it was taking and not until he got its letter of 16 April 1998 did he realise it was limiting execution of the judgment to the option in 24, i.e. the award of damages. He objects to inordinate delay in execution and to the shortness of the deadline he was given for identifying other occupational groups.

8. The complainant may not properly contend that what the judgment said in 24 does not apply to him: it referred to the decimation of posts, not in his old unit, but in the WHO at large.

9. Nor did the judgment require the Organization to begin by reinstating him. It had merely to choose between two options, reinstatement and payment of damages, and also to apply the reduction-in-force procedure to him. Since it did not choose to reinstate him immediately, it made a reasonable decision in preferring to hold the reduction-in-force exercise first and then, according to the outcome, either reinstating him, if he was successful, as from the date of termination or paying him the award of damages. The Director's letter of 19 November 1997 explained as much to him, and in terms that were quite clear.

Claims (2) and (3)

10. In answer to his plea of inordinate delay the Organization points out that there were sixty-one serving and former staff members covered by the reduction-in-force exercise. They included the eight on whose cases the Tribunal delivered judgment on the same day as on the present complainant's, as well as the eleven interveners and "late claimants". The Organization sets out the chronology of the whole reduction-in-force procedure. It started with the setting up of a "task force" in July 1997. It included the sending of letters to former staff of the Global Programme on AIDS (GPA) all over the world about the Tribunal's rulings. The reassignment phase of the exercise began on 23 December 1997 and was not completed for General Service category staff until 27 February 1998 and for Professional staff not until 6 April 1998. The competition phase for General Service staff ran from 19 February until 21 April 1998 and for Professional staff from 23 March to 5 May 1998. The deadline of two days that the complainant was given on 30 March 1998 was extended by four days. As early as 16 April 1998 the Director of Personnel wrote to tell him he had been unsuccessful and on 15 June sent him the detailed reckoning of the amount due to him in damages. On 13 July 1998 the amount so calculated - though he had objected to the reckoning of his step increments - was paid into his account, together with interest.

11. The Tribunal is satisfied on the evidence that the Organization acted with reasonable speed in carrying out the large exercise that Judgment 1632 and the related ones called for. Although the two days the complainant was allowed in which to answer the Director's letter of 30 March 1998 were too short, they were extended to six, and the complainant did manage to reply in time. Besides, the Organization has compensated him for the time it took to carry out the reduction-in-force procedure by paying him interest on the sums due up to the date of payment. The conclusion is that it was not guilty of any inordinate delay and that no further compensation is due on that score.

Claim (4)

12. The Organization pleads that it is under no duty to pay contributions for him to the Pension Fund or to the staff health insurance plan and would have had such duty only if he had been reinstated, participation in the Fund and the plan being restricted to staff.

13. The Tribunal ruled on a similar issue in Judgment 1338 (*in re* Manaktala No. 3), in which it held that its award in Judgment 1133 of damages equivalent to "the amount of the salary, allowances and other entitlements [the complainant] would have received" had not required reinstatement in the Pension Fund or health insurance. Though the language of Judgment 1632 was not the same, the intent was. The Tribunal did not order the Organization to reinstate the complainant in the Pension Fund or health insurance plan since it did not reinstate him in employment. His claim under this head too therefore fails.

Claim (5)

14. There are no grounds for ordering the WHO to consider granting him a new appointment. The relief he is entitled to was set out in Judgment 1632: neither more nor less.

The reckoning of damages

15. Since 30 April 1998, when the complainant filed this application, there has been constant dispute between the parties about the reckoning of damages. By a letter of 12 July 1998 to the Director of Personnel the complainant objected to the "table of calculations" the Director had sent him by letter of 15 June 1998. By a letter of 11 September 1998, which the Organization appends to its surrejoinder, the Administration admitted to an "oversight" and enclosed a "revised calculation sheet". In its surrejoinder the Organization says:

"The complainant accepted his final payment on 12 October 1998, without any dispute as to the accuracy of the calculation."

In a further statement invited by the Tribunal the complainant disputes the date of payment and denies accepting any payment in final execution of Judgment 1632.

16. Although the matter of reckoning the damages is therefore not closed, the Tribunal has ruled on the issues raised in this complaint. But its ruling does not prevent the complainant from challenging the reckoning.

DECISION

For the above reasons,

The application is dismissed.

In witness of this judgment, adopted on 13 November 1998, Mr. Michel Gentot, President of the Tribunal, Miss Mella Carroll, Vice-President, and Mr. James K. Hugessen, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 28 January 1999.

Michel Gentot

Mella carroll

James K. Hugessen

