

The Administrative Tribunal,

Considering the application for interpretation of Judgment 2515 filed by Mr C. I. on 16 August 2006, the reply of the International Telecommunication Union (ITU) of 18 September, the complainant's rejoinder of 20 October and the ITU's surrejoinder of 13 December 2006;

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

Having examined the written submissions;

#### CONSIDERATIONS

1. Paragraph 3 of the decision in Judgment 2515 requires the ITU to pay the complainant, amongst other amounts:

“an amount equivalent to his full salary, including the salary increment, from 19 January 2004 until 25 October 2004.”

The complainant was employed by the Union as Executive Manager, TELECOM, until his contract was terminated with effect from 4 February 2004 before its expiry. The parties do agree that the amount referred to in paragraph 3 should be calculated from 5 February and not 19 January 2004. However, they are not in agreement as to the interpretation of paragraph 3.

2. The complainant now seeks interpretation of Judgment 2515, contending that paragraph 3 obliges the ITU to pay “pension fund contributions to the [United Nations Joint Staff Pension Fund (UNJSPF)] [...] as if [his] employment contract had continued from 5 February 2004 through 25 October 2004”. He also seeks interest and costs.

3. In support of his contention, he relies on paragraph 1 of the decision in Judgment 2515 which sets aside the Secretary-General's decision of 30 August 2004. That decision confirmed various earlier decisions, including the decision to terminate the complainant's contract before its expiry on 25 October 2004. Because paragraph 1 sets aside the decision confirming the termination of the complainant's contract, it is argued that the effect of paragraph 3 is “to put [him] in the same financial situation he would have been in if his contract had not been illegally terminated”, comprising the payment of “social benefits, including contributions to UNJSPF”.

4. The argument made by reference to paragraph 1 of the decision in Judgment 2515 overlooks the significance of paragraph 5. In the proceedings leading to that judgment, the complainant sought the quashing of the decision terminating his contract and, also, a declaration that he still held his post of Executive Manager, TELECOM. That relief was denied by paragraph 5 which otherwise dismissed the complaint. It follows that, in assessing material damages, the Tribunal proceeded on the basis that his contract had been terminated and that he had received whatever termination benefits were due to him, including, as the ITU points out, a termination indemnity; he had, in addition, benefited from the early receipt of his pension entitlements. Accordingly, paragraph 1 provides no basis for the argument that the ITU is required to pay an amount equivalent to the contributions that it would otherwise have made to the UNJSPF.

5. The complainant also places emphasis on the expression “full salary”, arguing that it “implies an

entitlement to payment of all components of a salary” and that “[s]ocial benefit contributions [are] an important part of [...] salary”. Further, it is put that, had it been intended to exclude pension fund contributions, the Tribunal “would have specifically awarded net salary, or just salary”.

Contrary to that argument, had it been its intent the Tribunal would have specifically ordered the payment of an amount equivalent to the pension fund contributions that would otherwise have been paid by the ITU. As pointed out in Judgment 1904, upon separation from service, “the right to participation in the Pension Fund [...] no longer existed” (see also Judgments 1338 and 1797). The Tribunal declined to order the complainant’s reinstatement and, thus, he has no right that would oblige the ITU either to pay contributions to the UNJSPF or to pay the equivalent amount to him. Nor did the Tribunal proceed on the basis of a “notional reinstatement” which would have required the complainant to give credit for the termination indemnity paid to him on separation. In that context, the expression “full salary” merely indicated, as was the case in Judgment 1338, that the complainant was to receive an amount, by way of damages, that included allowances and other entitlements that he would have received directly in the usual course of his employment, but not the benefits accruing from reinstatement or an amount equivalent to those benefits.

## DECISION

For the above reasons,

The application is dismissed.

In witness of this judgment, adopted on 10 May 2007, Mr Michel Gentot, President of the Tribunal, Ms Mary G. Gaudron, Judge, and Mr Giuseppe Barbagallo, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 11 July 2007.

Michel Gentot

Mary G. Gaudron

Giuseppe Barbagallo

Catherine Comtet