

112th Session

Judgment No. 3061

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for interpretation of Judgment 2902 filed by Mr E. A. on 16 March 2010, the reply of the United Nations Industrial Development Organization (UNIDO) of 18 June and the complainant's rejoinder of 21 July 2010;

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

Having examined the written submissions;

CONSIDERATIONS

1. The complainant asks for the “[r]estoration of pension entitlements, health insurance coverage, annual leave entitlements and other relevant entitlements for the period 1 January to 30 June 2006, in accordance with the Tribunal’s interpretation of Judgment 2902”. The Organization disputes the complainant’s interpretation of the Tribunal’s decision and asks the Tribunal to dismiss the application.

2. In Judgment 2902 the Tribunal ordered, in part:

- “1. The decision of the Director-General of 9 October 2007 dismissing the complainant’s appeal is set aside, as is the earlier decision not to renew his appointment.

2. UNIDO shall pay the complainant the salary and allowances he would have received had his appointment been renewed until 30 June 2006, together with interest at the rate of 8 per cent per annum from due date until the date of payment. The complainant is to give credit for earnings, if any, in the period from 1 January 2006 until 30 June 2006.”

3. The complainant’s claim is grounded on his interpretation of the Tribunal’s order setting aside the decision dismissing his appeal and the “*decision not to renew [his] contract*” (emphasis added). In his view, this means that his separation from UNIDO should not have taken place on 31 December 2005, that his appointment should have been extended retroactively and that he is therefore entitled to all the benefits he would have enjoyed had he remained in service until 30 June 2006.

4. As UNIDO points out, the interpretation of phrases such as “full salary”, “salary and related emoluments” and “salary and allowances” is well settled in the Tribunal’s case law. In Judgment 2718, for example, the Tribunal stated:

“11. The application for interpretation also concerns the Tribunal’s decision to award Mr [M.] ‘material damages equivalent to the amounts of salary and related emoluments that he would have received for the period 1 March 2003 to 28 February 2005 had he been appointed as Regional Director’.

UNIDO contends that such formulation does not include, as requested by Mr [M.], the payment of ‘the pension contributions for the relevant period on the understanding that [he] would also contribute his share’, on the ground that Judgment 2592 formulation – ‘salary and related emoluments’ – is ‘apparently more restrictive’ than that found in other judgments where an organisation was ordered to pay ‘salary, *allowances and all benefits* to which [the complainant] would have been entitled had he stayed in the organisation’ (see Judgment 2090 under 9; emphasis added).

The Tribunal has already ruled on that issue in Judgment 2621 under 5, stating that ‘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 [Organization]’; the Tribunal did not do so, either in Judgment 2621 or in Judgment 2592. In Judgment 2621 the Tribunal ruled that having ‘declined to order the complainant’s reinstatement [the latter] ha[d] no right that would oblige the [Organization] either to pay contributions to the [Fund] or

to pay the equivalent amount to him. [...] In that context, the expression “full salary” [in this case, “salary and related emoluments”] 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.’

12. There have been other cases where the decision to award damages did not include pension or health benefits, such as the one decided in Judgment 1904 under 7, or in Judgment 1797 under 13, since the Tribunal did not order the Organization to reinstate the complainant in employment.

UNIDO was therefore right in applying for an interpretation of Judgment 2592 concerning the meaning of ‘earnings’, since at the same time it also needed a specific amplification on the subsequent matter of the car and other benefits, as explained above. Those facts had not been introduced into the record by the complainant in his complaint leading to Judgment 2592 and he belatedly clarified them, in part, only in his reply to the Organization’s present application. For these reasons, no legal costs should be determined against the Organization.”

5. For these same reasons, the complainant’s interpretation in the present case is rejected.

6. UNIDO points out that it was in a position on 11 March 2010 to make full payment to the complainant in accordance with the terms of the judgment. However, implementation of the judgment has been delayed due to the complainant’s failure to provide UNIDO with the particulars of the bank account to which payment should be made and the bringing of this application. Therefore, it asks the Tribunal, should it dismiss the complainant’s application, to confirm that UNIDO may treat the date of payment for the purpose of the interest calculation as 11 March 2010. As the complainant does not dispute his failure to provide banking particulars, the date of payment for the purpose of the interest calculation is 11 March 2010.

DECISION

For the above reasons,

1. The complainant's application is dismissed.
2. UNIDO may treat 11 March 2010 as the effective date of payment for the purpose of the calculation of interest.

In witness of this judgment, adopted on 10 November 2011, Ms Mary G. Gaudron, Vice-President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Ms Dolores M. Hansen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 8 February 2012.

Mary G. Gaudron
Giuseppe Barbagallo
Dolores M. Hansen
Catherine Comtet