

114th Session

Judgment No. 3153

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for interpretation and execution of Judgment 2861 filed by Ms M.d.R. C.eS.d.V. against the World Meteorological Organization (WMO) on 12 April 2010, the Organization's reply of 28 July, the complainant's rejoinder of 9 November 2010 and WMO's surrejoinder of 15 February 2011;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. Facts relevant to this case are set out in Judgment 2861, delivered on 8 July 2009, concerning the complainant's first, third, fourth, fifth, sixth and seventh complaints. Suffice it to recall that in October 2006, after unsuccessfully appealing her reassignment to another post, the complainant was informed that her contract would not be renewed upon its expiry on 31 May 2007. However, on 3 November 2006, following an exchange of correspondence between the Secretary-General of WMO and the complainant, the Secretary-General informed her that she was dismissed with immediate effect. In

Judgment 2861 the Tribunal set aside that decision, inter alia, and ordered WMO to pay the complainant the salary, benefits and other allowances that she would have received at grade P.5 from 3 November 2006 until 31 May 2007 and, unless already paid, the allowances that would then have been payable in respect of the non-renewal of her contract, all amounts to bear interest at the rate of 8 per cent per annum from due dates until the date of payment. It also ordered the Organization to pay her exemplary, material and moral damages, and costs.

By a letter of 7 August 2009 from the Chief of the Human Resources Division (HRD), the complainant was notified that WMO had ordered a payment to be made to her bank account, the amount of which represented the total due to her in execution of Judgment 2861. On 18 August she requested more detailed information regarding the calculations used by the Organization to determine the amount of that payment. The Chief of HRD replied by a letter of 31 August and appended a statement which included a detailed breakdown of the salaries and allowances WMO had used to arrive at the amount of the payment. The calculations were made on the basis that the complainant had separated from service on 3 November 2006 and that the Tribunal had not ordered her reinstatement. She was informed that an additional amount would be deposited into her bank account at the beginning of September 2009, as the first payment had failed to include the interest due on her repatriation grant.

The complainant replied on 22 September, stating that the Organization's calculations, and hence the amount paid to her, were incorrect. She requested WMO to pay interest on the damages and costs awarded to her by the Tribunal, and to correct the amount it had paid in respect of her accrued annual leave. She further asserted that the Organization had an obligation to pay its share of her pension contributions to the United Nations Joint Staff Pension Fund (UNJSPF) for the period from November 2006 to May 2007. By a letter of 27 October 2009 from the Chief of HRD, she was informed that the Organization considered that it had in good faith fully executed Judgment 2861. The Tribunal had not ordered interest

to be paid to the complainant on the amounts awarded to her for damages and costs, nor was there an express order for reinstatement of her pension rights. The effective date for the calculation of her benefits was 3 November 2006, the date of her cessation of service.

In a letter of 30 October 2009 to the Secretary-General, the complainant reiterated her view that WMO had a duty to pay all amounts ordered by the Tribunal, as well as to provide her with full and clear details regarding the related calculations. She informed him that, if the Organization failed to comply with her requests in this respect, she would file an application for execution with the Tribunal.

After an exchange of correspondence between the complainant and the WMO Staff Pension Committee, on 5 November 2009 she was notified that, as the date of her separation from service for the purpose of determining her pension benefits was 3 November 2006, in the absence of an express decision received within 30 days regarding her choice of pension benefit, she would be deemed to have opted for a deferred retirement benefit. The next day she informed the Committee that she was not in a position to take a decision regarding her future pension benefits because the Organization had failed to make contributions to the UNJSPF for the period from November 2006 to May 2007 and the Committee had not given her the information that she had requested. She asked to be provided with a monthly breakdown of the pension contributions which she owed for the aforementioned period, as well as an estimate of her pension entitlements calculated on the basis of full contributions having been made until 31 May 2007.

By a letter dated 10 November 2009 from the Chief of HRD, the complainant was again notified that WMO considered that it had in good faith fully executed Judgment 2861. The Secretary of the Staff Pension Committee wrote to her on 16 November, explaining that she could consult her annual pension statements online via the UNJSPF website. She was also advised that, as the Committee had no discretion in the application of the UNJSPF Regulations, she was required to submit a decision regarding her pension benefit as soon as possible. On 21 December she was informed that the Pension

Committee had nothing further to add to the information contained in its letters of 5 and 16 November 2009. The complainant filed her application to the Tribunal on 12 April 2010.

B. The complainant submits that WMO's duty to pay its share of her pension contributions to the UNJSPF flows from the contractual terms of her appointment, which was due to expire on 31 May 2007. Her participation in the UNJSPF was a benefit to which she was entitled during her employment. In her view, as the Tribunal ordered the Organization to pay her, *inter alia*, the salary, benefits and other allowances that she would have received from 3 November 2006 until 31 May 2007, WMO's refusal to pay pension contributions for the disputed period amounts to a failure on its part to execute Judgment 2861 fully.

She asks the Tribunal to order WMO to pay its share of her pension contributions to the UNJSPF for the period from November 2006 to May 2007, inclusive. She also seeks an order requiring the WMO Staff Pension Committee to provide her immediately with the information she requested in her letter of 6 November 2009 and to set a new deadline for her decision regarding her pension benefits, that deadline to be at least six months after the date of delivery of the Tribunal's decision in the present case. She seeks moral damages for delay in the execution of Judgment 2861, costs, and "such other relief as [the Tribunal] deems fair, just and necessary".

C. In its reply WMO states that appeals against decisions taken by its Staff Pension Committee must be brought in accordance with the Regulations, Rules and Pension Adjustment System of the UNJSPF, in particular Article 48 of the aforementioned Regulations. The complainant has not exhausted the appropriate internal means of redress available to her and her claims for relief against the Pension Committee are irreceivable under Article VII of the Statute of the Tribunal. They also lack "legal basis" because the Committee promptly provided her with the information she requested in her letter of 6 November 2009.

The Organization asserts that it executed Judgment 2861 fully, in good faith and as quickly as possible. Referring to the case law, it points out that the Tribunal did not order the complainant's reinstatement and therefore, as her employment with WMO ended with effect from 3 November 2006, her right to participate in the UNJSPF likewise ended on that date.

D. In her rejoinder the complainant elaborates on her pleas. Pointing to consideration 105 and the decision in Judgment 2861, she argues that the actual date of her separation from service was 31 May 2007 and not, as the Organization contends, 3 November 2006. In her view, by choosing the latter date as the basis for its calculations, the defendant is subtly attempting to uphold the Secretary-General's decision to dismiss her summarily, in direct contravention of the Tribunal's decision to set aside her dismissal. Furthermore, WMO has repeatedly erred in its calculations of the amount due to her and she accuses it of bad faith. Indeed, its calculations are still incorrect, because although it made a final payment to her on 2 September 2009, it failed to recalculate the interest due by reference to that date. She asserts that the Organization's refusal to make pension contributions to the UNJSPF constitutes both a failure to execute Judgment 2861 fully and a breach of the relevant Staff Regulations and Staff Rules, and she points out that there is no provision in the UNJSPF Regulations which would prevent such contributions being made for the disputed period. In addition to the relief initially claimed, the complainant asks the Tribunal to determine clearly the date of her separation from service and to order WMO to bear the actuarial costs of its share of her pension contributions for the period from 3 November 2006 until 31 May 2007. She also seeks an order that the Secretary-General recalculate all amounts of interest owed to her as a result of the Tribunal's decision in the present case.

E. In its surrejoinder the Organization maintains its position. It denies the complainant's allegations of bad faith and reiterates that, as she ceased to be a staff member on 3 November 2006, she had no further right to participate in the UNJSPF as of that date. In its view,

its decision not to make further contributions to the complainant's pension is in accordance with the decision of the Tribunal in Judgment 2861 and the relevant case law.

CONSIDERATIONS

1. The complainant has filed an application for interpretation and execution of Judgment 2861, in particular of paragraph 3 of the decision, which reads as follows:

“WMO shall pay the complainant the salary, benefits and other allowances that she would have received at grade P.5 from 3 November 2006 until 31 May 2007 and, unless already paid, the allowances that would then have been payable in respect of the non-renewal of her contract, all amounts to bear interest at the rate of 8 per cent per annum from due dates until the date of payment.”

2. The background facts are set out in Judgment 2861. For the purpose of this application, it is sufficient to note that the complainant joined WMO as Chief of the Internal Audit and Investigation Service, at grade P.5, on 1 June 2003 on a two-year fixed-term contract. The contract was renewed for a further period of two years to 31 May 2007. However, on 3 November 2006 the Secretary-General summarily dismissed the complainant. In Judgment 2861 the Tribunal, among other things, set aside this decision as well as the Secretary-General's subsequent decision of 28 September 2007 rejecting the complainant's appeal against her summary dismissal.

3. The complainant claims that the Organization has not fully executed paragraph 3 of the Tribunal's decision because it has not paid its share of the contributions to the UNJSPF for the period from November 2006 to May 2007. She contends that since the Tribunal set aside the decisions in relation to her dismissal, her date of separation from WMO was 31 May 2007, when her contract was set to expire, and not 3 November 2006 as the Organization asserts. Therefore, in accordance with paragraph 3 of the decision, WMO was, in her view,

obligated to pay its share of the UNJSPF contributions up to the date of her separation from service.

4. At this juncture, it is important to note that in Judgment 2861 the complainant sought reinstatement in addition to other relief. However, the Tribunal observed, at consideration 104, that “the relationship between the complainant and WMO makes reinstatement impractical” and dismissed the claim for reinstatement. A similar situation was addressed by the Tribunal in Judgment 2621, at consideration 5, in these terms:

“The Tribunal declined to order the complainant’s reinstatement and, thus, he ha[d] no right that would oblige the [Organization] either to pay contributions to the UNJSPF or to pay the equivalent amount to him. [...] In that context, the expression ‘full salary’ [in this case, ‘salary, benefits and other allowances’] 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.”

5. The same reasoning is equally applicable in the present case. Without reinstatement, or an express decision of the Tribunal otherwise, the complainant has no right, deriving from the orders actually made, to the pension contributions she requests.

6. As the complainant was not reinstated, her employment relationship with WMO ended on 3 November 2006 and with her separation from service, her right to participate in the UNJSPF ended (see Judgments 1338, 1797 and 1904). Further, as also stated in Judgment 2621 under 5, “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 [organisation]”. More recently, in Judgment 3061, the Tribunal reached the same conclusion in circumstances similar to those of the present case.

7. The complainant asks the Tribunal to order the WMO Staff Pension Committee to convey to her the information about her pension status and the amounts of her future benefits as requested in her letter of 6 November 2009 to the Committee. She also asks the Tribunal to nullify the effects of the Committee's decision concerning the deadline she was given to make a decision regarding her future pension benefits. As these claims do not arise from Judgment 2861, they are beyond the scope of this application.

DECISION

For the above reasons,
The application is dismissed.

In witness of this judgment, adopted on 2 November 2012, Mr Seydou Ba, President of the Tribunal, Ms Dolores M. Hansen, Judge, and Mr Michael F. Moore, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 6 February 2013.

Seydou Ba
Dolores M. Hansen
Michael F. Moore
Catherine Comtet