

114th Session

Judgment No. 3154

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for interpretation of Judgment 2958 filed by the International Telecommunication Union (ITU) on 6 July 2011 and corrected on 14 July, the reply of 22 September from Mr H. V., the Union's rejoinder of 20 December 2011 and Mr V.'s surrejoinder of 5 April 2012;

Considering Article II, paragraph 5, of the Statute of the Tribunal;
Having examined the written submissions;

CONSIDERATIONS

1. Paragraph 2 of the decision in Judgment 2958, delivered on 2 February 2011, requires that "[t]he ITU shall pay the complainant the equivalent of three years' gross salary, minus the amounts received as termination indemnity".

2. By a note of 15 March 2011 – annexed to a letter dated 18 March 2011 to the complainant, who is the respondent in the present proceedings – regarding the execution of Judgment 2958, the ITU's Human Resources Management Department (HRMD) indicated that the complainant's monthly gross salary was equivalent to an

amount of 16,257.75 Swiss francs, considering gross salary as including base salary prior to the staff deduction (8,666.20 francs) plus the post adjustment (7,591.55 francs). In an e-mail dated 24 March 2011, the complainant noted that the ITU's calculation did not include the dependency allowances for his two children in the calculation of his gross salary and, consequently, he requested the necessary correction ("*les ajustements nécessaires*") to the amount due. In an e-mail dated 15 April 2011, the ITU replied that according to Judgment 2988, under 4, an organisation has the duty to calculate staff salaries and benefits in accordance with its regulations and rules. In that judgment, the Tribunal held that:

"4. While there is no evidence of bad faith, an organisation has a duty to calculate staff salaries and benefits in accordance with its regulations and rules. This applies equally to the calculation of the amount due for salary and benefits pursuant to a judgment of the Tribunal. In the present case, in calculating the amount owed to the complainant, [the Organization] failed to apply its regulations and rules. This failure, coupled with the delay in the payment of the indemnity and the additional two months' salary in lieu of notice, entitles the complainant to an award of moral damages in the amount of 1,000 United States dollars and costs of 300 dollars."

In the e-mail of 15 April, the Union further explained that, in its view, gross salary, as defined in ITU's Staff Regulations and Staff Rules, did not include dependency allowance. During a meeting which occurred on 12 May 2011, the ITU mentioned that it also doubted that the post adjustment should be considered as part of the complainant's gross salary.

3. The ITU seeks interpretation of paragraph 2 of the decision in Judgment 2958. It contends that, in light of the definition of gross salary as given in its Staff Regulations and Staff Rules, the notion does not include either dependency allowance, or post adjustment. Consequently, the ITU asks the Tribunal to allow it to request recovery of any overpayment made.

4. In his reply to the application the complainant requests the Tribunal to declare the application for interpretation of Judgment 2958

to be irreceivable insofar as it relates to the inclusion of his post adjustment in his gross salary; to state that the words “three years’ gross salary” as used in Judgment 2958 mean the full monetary amounts that he would have received if he had remained employed by the ITU during the period in question, including dependency allowances, salary increments and any other benefits; and to order the ITU to pay him moral damages and costs.

5. As the application for interpretation will fail on the merits, the Tribunal finds it unnecessary to examine the question of receivability.

6. The Tribunal is of the opinion that the decision must be interpreted, first of all, according to its considerations. In Judgment 2958, under 8, it stated the following:

“For the above considerations, the Secretary-General’s decision of 28 November 2008, maintaining the decision of 25 March 2008 not to renew the complainant’s contract, must be set aside, as must the ITU’s decision not to convert the complainant’s contract into a permanent one. However, considering the time that has passed and the potential administrative difficulty in reinstating the complainant in a post that no longer exists, the Tribunal, having regard to the time the complainant should have worked with the Union, orders that the ITU pay him compensation in the form of three years’ gross salary, minus the amounts received as termination indemnity. The complainant is also entitled to 40,000 Swiss francs in moral damages and 7,000 francs in costs.”

The ordinary meaning of “gross salary” is the full amount of a staff member’s regular remuneration including allowances, overtime pay, commissions and bonuses, and any other amount usually paid, before any deductions are made. In context, the notion of “gross salary” was chosen to indicate the base salary prior to the staff deduction, plus all allowances and benefits. This interpretation is consistent with the fact that the award of damages had to be the equivalent of reinstatement and that the express purpose was to compensate the complainant for the time he “should have worked with the Union”. Considering the meaning of the notion of “gross salary” (as comprising base salary prior to the staff deduction plus all

allowances and benefits) the ITU must then calculate staff salaries and benefits in accordance with its Staff Regulations and Staff Rules as stated in Judgment 2988, under 4.

7. Consequently, the ITU will pay the complainant the total amount owed (less any amount already paid) plus interest of 5 per cent per annum on the remaining amount, calculated from the time of the payment of the first amount to the time of the payment of the remaining amount due. As bad faith has not been proven in the present case, the complainant is not entitled to an award of moral damages. In Judgment 2800, under 21, the Tribunal held that:

“relations between an organisation and its staff must be governed by good faith; an organisation must treat its staff with due consideration and avoid causing them undue injury. Also, it is well established in the case law that bad faith cannot be presumed, it must be proven. Additionally, bad faith requires an element of malice, ill will, improper motive, fraud or similar dishonest purpose [...]”

The complainant, who is the respondent in the present proceedings, is entitled to an award of costs in the amount of 4,000 Swiss francs.

DECISION

For the above reasons,

1. The ITU shall pay the complainant the full amount owed (less any amount already paid) plus interest of 5 per cent per annum on the remaining amount, calculated from the time of the payment of the first amount to the time of the payment of the remaining amount due.
2. It shall also pay him costs in the amount of 4,000 Swiss francs.
3. All other claims are dismissed.

In witness of this judgment, adopted on 2 November 2012, Mr Seydou Ba, 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 6 February 2013.

Seydou Ba
Giuseppe Barbagallo
Dolores M. Hansen
Catherine Comtet