

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

**B.**

**v.**

**ILO**

(Application for execution)

**129th Session**

**Judgment No. 4248**

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for execution of Judgment 3446 filed by Mr T. Y. B. on 15 August 2016, the reply submitted by the International Labour Organization (ILO) on 5 November 2018, following a stay of proceedings granted by the President of the Tribunal at the complainant's request, the complainant's rejoinder of 18 January 2019, the ILO's surrejoinder of 21 February, the complainant's additional submissions of 24 May and the ILO's letter of 28 May 2019 informing the Registrar of the Tribunal that the complainant's additional submissions called for no specific comments on its part;

Considering Articles II, paragraph 1, and VI, paragraph 1, of the Statute of the Tribunal;

Having examined the written submissions;

#### CONSIDERATIONS

1. The complainant applies for the execution of Judgment 3446, which was delivered in public on 11 February 2015. In that judgment, the Tribunal determined that the receivable issue was whether the complainant had, on 24 March 2010, sustained injuries as a result of a commuting accident which was attributable to the performance of his

official duties entitling him to compensation under Article 8.3 of the Staff Regulations. Accordingly, it made the following order:

- “1. The impugned decision of 18 May 2012 is set aside to the extent that it dismissed the complainant’s grievance against the rejection of his claim for compensation under Article 8.3 of the Staff Regulations.
2. The ILO shall compensate the complainant accordingly for the injuries that he sustained in the accident of 24 March 2010.
3. It shall pay him costs in the amount of 1,500 United States dollars.
4. All other claims are dismissed.”

2. This application is centrally concerned with the compensation which the Tribunal awarded the complainant under point 2 of the foregoing order, which is payable pursuant to paragraph 12 of Annex II of the Staff Regulations. It remains unpaid and the complainant asks the Tribunal to order the ILO to pay it immediately. Paragraph 12 of Annex II of the Staff Regulations states as follows:

“Regardless of whether the official returns to duty in the Office [...] or not and of whether there is continuing invalidity which affects the official’s earning capacity or not, an official shall be entitled to lump-sum compensation for permanent disfigurement or permanent loss of a member or function. The amount of such compensation shall be assessed on the basis of medical evidence and in relation to loss of enjoyment of life, by reference to a guide approved by the Director-General.”

It is noted that the ILO paid the complainant the costs awarded under point 3 of the order in Judgment 3446. It also fully reimbursed him the costs of his medical treatment for the injuries that he sustained as a result of the accident and it compensated him by way of salary and allowances that were due to him under paragraph 7(c) of Annex II of the Staff Regulations.

3. The complainant states that Judgment 3446 has not been fully executed because the parties disagree on the percentage of his permanent loss of function and thus on the lump-sum payment that is due to him under paragraph 12 of Annex II of the Staff Regulations. The medical report of 23 February 2016 on the medical evaluation which the ILO requested after the public delivery of Judgment 3446 determined that the complainant’s permanent partial lower limb disability was 7 per cent

and permanent whole body disability was 3 per cent. The suggestion that he undergo another medical evaluation in two years' time was made by the ILO's Medical Adviser. This was made on the basis that it would have helped to assess whether there was any deterioration in the 3 per cent permanent whole body disability to permit a more accurate calculation of the lump-sum payment due to the complainant. In a letter dated 15 September 2016, the Director of the Human Resources Development Department (HRD) informed the complainant that it was in the strict interest of ensuring the most fair and objective assessment of the complainant's entitlement that the proposal for him to undergo a further medical evaluation in January 2018 was made. In that letter, the Director of HRD also informed the complainant that the ILO was prepared to pay him compensation corresponding to the 3 per cent permanent whole body disability, if he did not wish to await the further medical evaluation.

4. The further medical evaluation was eventually done on 21 November 2017 in a clinic in Geneva, Switzerland. According to the medical report on this evaluation, the complainant's disability could be considered as consolidated or permanent within the meaning of paragraph 12 of Annex II of the Staff Regulations and his whole body loss of function was 9 per cent, which entitled him to a lump-sum payment of 28,795.14 United States dollars. The Director of HRD informed the complainant of this in a letter dated 27 February 2018, in which he also indicated that, pursuant to paragraph 7(a) of Annex II of the Staff Regulations, the complainant's file would remain open for the reimbursement of all future reasonable medical expenses related to the injuries he had sustained in the accident of 24 March 2010. In that same letter, the Director of HRD also informed the complainant that the ILO was notified three days prior to the date of the letter that the Department of Labour, Social Affairs and Health of the Canton of Geneva had temporarily suspended, as from 1 March 2018, the license of the clinic where the complainant's 21 November 2017 medical evaluation was done. The Director of HRD asked the complainant to confirm his acceptance of the proposed lump-sum payment (28,795.14 United States dollars). The complainant eventually communicated, in an email of 12 October

2018, that he did not accept the proposed amount. This, he stated, was because the evaluation on 21 November 2017 did not accurately reflect the loss of bodily function which he was facing in his daily life and also because he had experienced “highly suspicious and unethical professional practices during [his] medical assessment at the clinic” where the evaluation was done. The complainant sent to the ILO the copy of a one-page document, which he had proceeded to obtain from a medical institution in Addis Ababa, Ethiopia, of his own volition and without the ILO’s prior agreement or knowledge. The document stated that the Medical Board of the School of Medicine of the Addis Ababa University had reviewed the complainant’s medical record as an outpatient and had recommended that his permanent whole body disability be established at 33 per cent.

5. The Tribunal finds that a reasonable resolution to the impasse at which the parties now stand with respect to the execution of point 2 of the Tribunal’s order in Judgment 3446 will be to order them to agree on the appointment of a medical expert with a specialisation in orthopaedic surgery and/or traumatology to conduct a medical evaluation and determination of the complainant’s permanent loss of function, by which the ILO will be guided in the execution of point 2 of the Tribunal’s order in Judgment 3446.

## DECISION

For the above reasons,

1. The ILO shall, in agreement with the complainant, appoint a medical expert with a specialisation in orthopaedic surgery and/or traumatology within thirty days from the public delivery of this judgment. The medical expert shall conduct a medical evaluation for the purpose of determining the percentage of the complainant’s permanent loss of function as a result of the injuries that he sustained in the accident of 24 March 2010.

2. The compensation awarded to the complainant by the Tribunal in point 2 of its order in Judgment 3446 shall be calculated by reference to the medical expert's determination of the complainant's permanent loss of function.
3. In the event that the parties do not agree on the appointment of the medical expert, the ILO shall notify the President of the Tribunal, who will then appoint a medical expert by her or his own order and notify the parties accordingly.
4. The medical expert's fees and the costs of the examination, including the complainant's travel costs, shall be paid by the ILO.

In witness of this judgment, adopted on 22 October 2019, Ms Dolores M. Hansen, Vice-President of the Tribunal, Mr Michael F. Moore, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 10 February 2020.

DOLORES M. HANSEN

MICHAEL F. MOORE

HUGH A. RAWLINS

DRAŽEN PETROVIĆ