

**EIGHTY-FIFTH SESSION**

***In re* Limage (No. 2)  
(Application for execution)**

**Judgment 1748**

**The Administrative Tribunal,**

**Considering the application filed by Mrs. Leslie Limage on 12 November 1997 for the execution of Judgment 1639, the reply of 29 December 1997 from the United Nations Educational, Scientific and Cultural Organization (UNESCO), the complainant's rejoinder of 15 January 1998 and the Organization's surrejoinder of 26 February 1998;**

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

**Having examined the written submissions;**

**CONSIDERATIONS**

**1. By Judgment 1639 of 10 July 1997 the Tribunal granted the complainant relief against a decision of 4 July 1995 by UNESCO ordering her summary dismissal. This is an application from her for the execution of that judgment. The relief it granted was the quashing of her dismissal, and an order to the Organization to pay her:**

**"the total of salary, allowances and other benefits pertaining to her grade and step as from 7 July 1995 up to the date at which the Director-General takes a new decision on her case in accordance with due process, less any sums received by her from the Organization or in occupational earnings from other sources since 7 July 1995."**

**The judgment ordered the Organization to pay her also 5,000 United States dollars in moral damages and 4,000 dollars in costs.**

**2. By a letter of 9 September 1997 the Director of the Bureau of Personnel told her that, for the reasons stated in the letter, the Director-General had taken another decision to dismiss her at 10 September. That decision she has challenged in a new internal appeal but it is immaterial to this case.**

**3. On 7 October 1997 the Organization made her an interim payment of 592,000 French francs, the equivalent of 100,000 dollars at the prevailing rate of exchange.**

**4. On 17 October it gave her a statement which showed that the balance it owed her came to 82,246.01 francs, and it paid that amount on 25 October. She contests that reckoning in respect of four items. She is claiming:**

- (a) 115,438.64 francs in compensation for sixty days' annual leave due to her at 7 July 1995;**
- (b) 50,023 francs in compensation for 26 public holidays in Paris between that date and 10 September 1997;**
- (c) 27,954 francs, the sum deducted by way of compulsory contributions to the staff health insurance fund; and**
- (d) 198,716.28 francs, an amount that the Organization deducted on account of her occupational earnings.**

**5. Under (a) the complainant claims compensation for sixty days' annual leave which had accrued to her by the date of her original summary dismissal and compensation for further leave which she said had accrued between her first dismissal and her second, i.e. from 7 July to 10 September 1997. On the quashing of her summary dismissal in 1995 UNESCO extended her appointment to the date of her second summary dismissal and postponed payment of compensation for unused leave. It has included in the statement of 17**

October 1997 the sum of 115,438.64 francs for sixty days' annual leave. It cites Staff Rule 109.8, which sets at sixty working days the maximum number of days' leave payable at the end of service. The rule is clear. The compensation due to the complainant is limited to sixty days' annual leave, and she has been paid that amount.

6. Under claim (b) she is claiming compensation for public holidays in Paris that fell within the period from 7 July 1995 to 10 September 1997 on the grounds that staff in employment were able to take those holidays whereas she was not. The claim cannot be sustained. She has been awarded in full the salary and allowances due to her for the period in which she was out of work and cannot be entitled, any more than were the Organization's employees, to any further payment in compensation for public holidays in that period.

7. In claim (c) she objects to the compulsory deduction of 27,954 francs in contributions to the staff health insurance fund on the grounds that neither she nor her son stood to benefit. She observes that for lack of money they both had to forgo medical treatment while she was unemployed. Again, her claim fails. Rule 106.3(a) makes membership of the fund compulsory for any staff member who is not expressly excluded under the contract of employment. If she or her son had incurred medical expenses she would have been entitled to claim reimbursement.

8. Lastly, under claim (d) she maintains that her sole occupational earnings were the sums she was paid from October 1995 to June 1996 as a visiting professor at the University of California in Los Angeles (UCLA). Her gross earnings - before tax - came to 36,000 dollars, and she claims that the expenses which she incurred in taking up that employment, and which she estimates at some 37,480 dollars, should not count.

9. The Organization submits that the term "occupational earnings" in Judgment 1639 means gross earnings and that she may not deduct the expenses she says she incurred in earning that money. It did allow a sum of 2,433 dollars in respect of taxes deducted.

10. Though the judgment is silent about deducting expenses from the complainant's occupational earnings, it would be nonsense to let the Organization deduct the gross amount of her earnings. To take just one item of expenditure, she had to pay the cost of travel to Los Angeles - 3,800 dollars - to take up the professorship at the University. She could not seriously be expected to bear that cost herself by letting the Organization subtract the amount from her gross earnings. Judgment 1639 must be so interpreted that if any deduction is made on account of her occupational earnings the sum deducted will be net income, i.e. earnings less any reasonable expenses she incurred.

11. The Organization has made no submissions on the expenses it would regard as allowable if the sum of earnings were net, and the Tribunal will itself determine which of the items of expenditure she lists should be deducted from her earnings.

12. Besides her travel expenses of 3,800 dollars, which, as has been said, clearly are allowable, she claims the cost of her stay for three ten-week terms at the University hostel for four nights a week: at 84 dollars a night the total came to 10,080 dollars. She had to keep her flat in Paris and pay all outgoings thereon. That sum too is allowable.

13. She claims the cost of travel by bus once a week during term from Los Angeles to Santa Barbara, where she stayed at her mother's address, and back again. At 50 dollars for each return journey the total came to 1,500 dollars. She also contributed 1,200 dollars to the cost of her stays with her mother. The alternative to paying those sums would have been to pay for another three nights a week for thirty weeks at the hostel, or a total of 7,560 dollars. Her claim to the expenditure of 2,700 dollars is therefore allowable.

14. She claims 3,600 dollars for board. But since she would have had to pay for food wherever she had been living the amount is not allowable. But her claim to 500 dollars for the purchase of books and materials is directly connected with her teaching post and is allowable.

15. She claims the cost of attendance at two conferences connected with comparative education, one in Virginia in the spring of 1996 that cost 2,000 dollars and another, a world conference in Sydney in July 1996, that cost her 4,000 dollars. She claims those amounts on the grounds that such expenses are normally reimbursable to regular members of the university faculty for the discharge of duties expected of them. But

she was not a regular member of the faculty. The Tribunal does not see why it was necessary for her as a visiting professor to go to those conferences, one of which took place after her temporary position had ended. The two items are not allowed.

16. The upshot is that she is entitled to deduct the following expenses from the total figure of her earnings:

Travel \$3,800

Lodging \$10,080

Weekend board, lodging and travel \$2,700

Books etc. \$ 500

Total \$17,080

Though she has claimed 37,480 dollars in total expenses she has listed only items that account for 26,680 dollars. In the absence of proof that there were further expenses directly attributable to her university appointment, she is not entitled to any amount beyond the total of 17,080 dollars.

17. She claims payment of interest at the rate of 10 per cent a year from the date of claim, the imposition on the defendant of a penalty of 25,000 French francs for each month of delay in payment, 20,000 francs in moral damages and 5,000 francs in costs.

18. Judgment 1639 was delivered on 10 July 1997. The complainant received the interim payment of 592,000 French francs on 7 October 1997; on 21 October she submitted the "check-out form"; and on 25 October the Organization paid her another 82,246.01 francs.

19. She had an uncontested right to payment of 9,000 dollars in moral damages and costs. She had been receiving no salary since July 1995, the date of her summary dismissal, and as a result of the judgment her salary continued to accrue until 9 September 1997, when the Director-General took the further decision to dismiss her summarily. The Organization is reading too much into the judgment in inferring that no payment was to be made to her until every single item due had been determined. She informed the Organization by appendix to a letter she wrote on 13 September 1997 to the Bureau of Personnel of the amount of her occupational earnings since dismissal from UNESCO.

20. The Organization could have paid the 9,000 dollars within one month of the date of delivery of the judgment. It could have made earlier than 7 October 1997 the interim payment which it did make, albeit withholding the amount of 36,000 dollars she had declared to have been her occupational earnings. Since it would be reasonable to allow the Organization fourteen days as from 13 September 1997 to make enquiries about the declared amount of her occupational earnings, it should have made payment by 27 September. Moreover, since it was wrong to withhold 17,080 dollars, the total of allowable expenses, it must pay interest on that amount.

21. The complainant is therefore entitled to payment of interest at the rate of 10 per cent a year on 9,000 dollars - the total of damages and costs - from 10 August to 7 October 1997; of interest at the same rate on the sum of 91,000 dollars from 27 September to 7 October 1997; and of the further sum of 17,080 dollars, plus interest at the same rate from 27 September 1997 up to the date of payment, but not of interest on the balance of 82,246.01 French francs, which was paid to her within three days of receipt of the duly completed "check-out form".

22. Lastly, she is awarded 5,000 French francs in costs.

## DECISION

For the above reasons,

1. The Organization shall pay the complainant the further sum of 17,080 United States dollars plus interest at the rate of 10 per cent a year from 27 September 1997;

2. It shall pay her interest, as set out in 21 above, on the sums due under Judgment 1639.

**3. It shall pay her 5,000 French francs in costs.**

**4. All her other claims are dismissed.**

**In witness of this judgment, adopted on 8 May 1998, Mr. Michel Gentot, President of the Tribunal, Miss Mella Carroll, Vice-President, and Mr. James K. Hugessen, Judge, sign below, as do I, Allan Gardner, Registrar.**

**Delivered in public in Geneva on 9 July 1998.**

**Michel Gentot  
Mella Carroll  
James K. Hugessen**

**A.B. Gardner**

Updated by PFR. Approved by CC. Last update: 7 July 2000.